



GOVERNOR OF PUERTO RICO

Ricardo Rosselló Nevares

June 22, 2017

Mr. José Carrión

Chairman

Financial Oversight and Management Board for Puerto Rico

Re: Oversight Board Fiscal Plan Recommendations

Dear Mr. Chairman:

As you are aware, late last Friday in a letter dated June 16, 2017 (the "June 16 Letter") addressed to Senator Rivera Schatz, Speaker Méndez Núñez and me, the Oversight Board¹ publicly stated that the Government of Puerto Rico (the "Government") had not adequately implemented a furlough program and Christmas bonus reduction (the "Expenditure Controls") under the Commonwealth's fiscal plan as certified on March 13, 2017 (the "Fiscal Plan"). Following the June 16 Letter, we were advised by the Oversight Board's Executive Director, on behalf of the Oversight Board, that the Oversight Board intends to demand that the Government impose upon Puerto Rico's public employees the Expenditure Controls, as unilaterally adopted by the Oversight Board in the *Board Resolution Adopted on March 13, 2017* (the "Fiscal Plan Certification"). For the reasons set forth below, I wish to advise the Oversight Board that its recent demand that the Government immediately implement the Expenditure Controls does not comport with PROMESA section 205.

As you know, the Fiscal Plan was certified on March 13, 2017 pursuant to the Fiscal Plan Certification, in which the Oversight Board found that the Fiscal Plan satisfied each of the 14 requirements set forth under PROMESA section 201(b)(1). One of these requirements is that a certifiable fiscal plan must "adopt *appropriate* recommendations submitted by the Oversight Board under [PROMESA] section 205(a)." PROMESA § 201(b)(1)(K) (emphasis added).

PROMESA section 205(a) provides that the Oversight Board may "submit recommendations to the Governor or Legislature on actions the territorial government may take to ensure compliance with the Fiscal Plan" These recommendations, which are subject to the Government's self-determination, may include, among other things:

- "the management of the territorial government's financial affairs, including . . . placing controls on expenditures for personnel, reducing benefit costs . . . and placing other controls on expenditures," PROMESA § 205(a)(1);

¹ "Oversight Board" means the Financial Oversight and Management Board for Puerto Rico established under section 101(b)(1) of the *Puerto Rico Oversight, Management, and Economic Stability Act* ("PROMESA").



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- “the establishment of alternatives for meeting obligations to pay for the pensions of territorial government employees,” PROMESA § 205(a)(4);
- “the establishment of a personnel system for employees of the territorial government that is based upon employee performance standards,” PROMESA § 205(a)(8); and
- “the adjustment of staffing levels” PROMESA § 205(a)(9).

PROMESA section 205 is intended to give the Government sole discretion whether or not to adopt the Oversight Board’s recommendations. As noted in PROMESA’s legislative history, “[PROMESA] section 205 [was] substantially improved from the March 29th discussion draft” by removing “the anti-democratic provision empowering the oversight board to impose its recommendations over the objection of the Puerto Rico government.” H.R. Rep. 114-602(I), 2016 WL 3124840, at *114 (hereinafter, “H.R. Rep.”).² Although “[PROMESA] section 201 does require the fiscal plan put forward by the Puerto Rico governor to ‘*adopt appropriate recommendations*’ submitted by the oversight board under [PROMESA] section 205, . . . the term ‘*appropriate*’ provides the governor with significant flexibility to adopt sound recommendations and to decline to adopt unsound recommendations.” *Id.* (emphasis added). The purpose of this change was to ensure that the Government and Oversight Board “work together for the benefit of the people of Puerto Rico, [and] not to have parallel governing structures.” *Id.*

When the Board certified the Fiscal Plan on March 13, 2017, the “amendments” as contained in the Fiscal Plan Certification included: (1) the implementation of a furlough program and removal of all Christmas bonuses as necessary to achieve liquidity and budgetary savings; and (2) a public pension system overhaul that would progressively reduce total pension outlays by 10% by fiscal year 2020 to ensure the pension system can meet its obligations. The Oversight Board’s Fiscal Plan Certification failed to take into account that its “amendments” could not be addressed or considered by the Government until the subsequent budgetary process was completed. In that regard, the Fiscal Plan did not contemplate the depressive effect that future implementation of the proposed Expenditure Controls could have on Puerto Rico’s sustained macro-economic growth, which is an important cornerstone of the Fiscal Plan.

² The discussion draft of PROMESA would have “(1) authorized the oversight board to submit recommendations to the Puerto Rico government regarding steps the government could take to promote financial stability and management efficiency, (2) required the Puerto Rico government to respond in writing as to whether it supported or opposed those recommendations, and then (3) empowered the board to impose its recommendations over the objection of the Puerto Rico government so long as the board provided notice to Congress.” H.R. Rep. at *114.



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The Expenditure Controls were required unless the Government submitted³ “an implementation plan for its right-sizing measures, as well as a liquidity plan, reasonably expected to generate an additional \$200MM cash reserve by June 30, 2017.” Fiscal Plan Certification, at 3.⁴ In contravention of PROMESA section 205, the Oversight Board is now trying to strong-arm the Government into accepting the Expenditure Controls. Additionally, the Oversight Board’s indiscriminate distinction between the personnel and non-personnel measures within the demanded Expenditure Controls is arbitrary and unsound in nature.

In March 2017, the Oversight Board, in certifying the Fiscal Plan, could not have assessed the economic impact of the proposed Expenditure Controls without the benefit of evaluating the budget which was to be subsequently submitted by the Government to the Oversight Board. It follows, therefore, that the proposed Expenditure Controls were not part of the Fiscal Plan as certified. The Government is extremely concerned that the Expenditure Controls could significantly depress Puerto Rico’s macro-economic growth as assumed under the Fiscal Plan. In the Government’s view, the proposed Expenditure Controls carry with them the significant threat of triggering a serious drag on Puerto Rico’s economy, which could quickly spiral out of control. Indeed, the proposed Expenditure Controls will lead to the opposite result of what is required under PROMESA section 205(a): ***“to ensure compliance with the Fiscal Plan or to otherwise promote the financial stability, economic growth, management responsibility, and service delivery efficiency of the territorial government.”*** (emphasis added).

Upon formal notification from the Oversight Board in accordance with PROMESA section 205(a), the Government will consider the Oversight Board’s request with respect to the Expenditure Controls and will respond in accordance with PROMESA section 205(b). Although the Oversight Board cannot impose the Expenditure Controls without the Government’s acquiescence, I am hopeful that this issue can be satisfactorily

³ After the Government’s submission of the budget, the Oversight Board should have provided advance notice to the Government to give it sufficient time to respond to the Oversight Board’s position with respect to the Expenditure Controls. See, e.g., *Resolution #3 Adopted At the Seventh Public Meeting of the Financial Oversight and Management Board for Puerto Rico held on April 28, 2017 in New York*, dated April 28, 2017 (certifying the fiscal plan for the Puerto Rico Highways and Transportation Authority (“HTA”) and allowing the Government 30 days to respond to the Oversight Board’s proposed “amendments”); *Resolution #5 Adopted At the Seventh Public Meeting of the Financial Oversight and Management Board for Puerto Rico held on April 28, 2017 in New York*, dated April 28, 2017 (certifying the fiscal plan for the Puerto Rico Electric Power Authority (“PREPA”) and allowing the Government 30 days to respond to the Oversight Board’s proposed “amendments”). It should be noted that, although the Oversight Board also improperly labels the HTA and PREPA recommendations as “amendments,” the Oversight Board did provide the Government with an opportunity to respond rather than unilaterally impose such “amendments.”

⁴ The Government has demonstrated a commitment to achieving fiscal responsibility and has taken various measures, including legislation, towards that goal (e.g., Act 26-2017). Further, the Government has delivered implementation plans for the central government and other public corporations, and other deliverables requested by the Board, in a timely manner.



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resolved. In that regard, the Government will continue to use its best efforts to implement appropriate right-sizing and other measures in compliance with the Fiscal Plan that promote economic growth on the Island for the benefit of the people of Puerto Rico.

As always, we are available to discuss any of these matters at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ricardo A. Rosselló Nevares", with a long horizontal line extending to the right.

Ricardo A. Rosselló Nevares
Governor of Puerto Rico

cc. Andrew G. Biggs
Carlos M. García
Arthur J. González
José R. González
Ana J. Matosantos
David A. Skeel, Jr.
Elías F. Sánchez-Sifonte
Natalie Jaresko
Gerardo Portela Franco