



January 4th, 2017

José L. Carrión
Chairman
Fiscal Oversight and Management Board

RE: Response Letter to Oversight Board

Esteemed Mr. Carrión

I write on behalf of Governor Ricardo Rosselló Nevares and his new administration (the “New Administration”) for the government of Puerto Rico (the “Government”) in response to the December 20, 2016 letter (the “Letter”), which you, on behalf of the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”), sent to former Governor Alejandro García Padilla and Governor Rosselló Nevares.¹

At the outset, I wish to emphasize that the Oversight Board’s views on several key points raised in the Letter substantially align with the New Administration’s public policy platform upon which it was elected on November 8, 2016. As Governor Rosselló Nevares noted at a press conference on December 28, 2016, the New Administration’s governing platform under its “Plan para Puerto Rico” embodies 80% of the framework outlined in the Letter. For example, we agree that:

- The only way to solve Puerto Rico’s economic and fiscal crisis is “through real economic growth” (Letter, at 2).
- “Real economic growth” will only be achieved through, among other things, “fundamental structural reforms that create a more competitive economy” with a focus on “liberalizing the labor market, lowering the cost of reliable energy, rationalizing and optimizing taxation and streamlining the permitting processes to enable investment.” (Letter, at 4). Indeed, the first pillar of the New Administration’s “Plan para Puerto Rico” is to reform these areas and remove obstacles to doing business in Puerto Rico, thereby cultivating local investor confidence necessary to support future economic development in Puerto Rico.
- In addition to fundamental structural reforms, achieving a sustainable fiscal balance will require “a comprehensive restructuring of the way the Government delivers services” by both improving the quality and efficiency of essential government services and the efficiency of revenue collection. (Letter, at 7).

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Letter.

- Structural reforms and improved government efficiency alone will not be sufficient to close the current budget gap, thus “long-term liabilities will need to be restructured under a fiscal plan in compliance with PROMESA.” (Letter, at 9).

From these points of agreement, the Oversight Board and the Government should be able to further agree on the path forward under the New Administration. Consistent with the language and intent of PROMESA, it is Puerto Rico’s elected leaders who retain primary responsibility over budgeting and fiscal policy.² The New Administration will immediately work to establish credibility and trust from all stakeholders (local and national) by effectively proposing and executing needed reforms and restructuring, all of which will be done in coordination with the Oversight Board.

This response sets forth the New Administration’s views on how best to achieve these shared goals.

**I. First Steps: Defining The Size And Scope Of The Problem;
Closing The Information Gaps; And Addressing Puerto Rico’s Liquidity Problems.**

We agree that a critical step to addressing Puerto Rico’s financial and economic crisis is “defining the nature and magnitude of Puerto Rico’s fiscal and economic problem” (Letter, at 3). The Oversight Board acknowledges in the Letter that financial information gaps must be filled in before a fiscal plan can be developed—*i.e.*, Puerto Rico’s last set of audited financials is for fiscal year ending June 2014 (Letter, at 4). In that regard, the Oversight Board reports that under the latest “baseline gap” analysis “if the Government made no debt payments (which is legally and equitably not an option), Puerto Rico would face an average annual budget shortfall of more than \$3.2 billion” (Letter, at 3).

We understand that the Oversight Board is seeking “an independent third party validation of the starting point of the Baseline Projection and the bridge from the last available audited financial statements of fiscal year 2014” (Letter, at 4). As requested by the Oversight Board, the New Administration is in the process of establishing “a high-level task force” with the support of an external strategic financial and legal advisory team to work on a fiscal plan during this first week of the New Administration (Letter, at 10).

In moving forward, we note that in accordance with PROMESA any proposed fiscal plan by the Government must, among other things:

- "Ensure the funding of essential public services",³

² See H.R. Rep. 114-602(I), 2016 WL 3124840, at *45.

³ See PROMESA § 201(b)(1)(B).

- "Provide adequate funding for public pension systems"⁴;
- "Ensure that assets, funds, or resources of a territorial instrumentality are not loaned to, transferred to, or otherwise used for the benefit of a covered territory or another covered territorial instrumentality of a covered territory, unless permitted by the constitution of the territory"⁵

The foregoing provisions of PROMESA are important and noteworthy because they require the Government to have an exact understanding of cash inflows and outflows in terms of determining that there exists sufficient cash to fund essential services necessary to protect the health, welfare, and safety of its citizens. Additionally, it is important that the Government in redirecting any cash flow or raising financing does not violate the stated restrictions of PROMESA and applicable law. As a result, the New Administration believes that its first order of business, with the assistance of its strategic financial advisory team and the financial advisers to the Oversight Board, is to focus on liquidity and the methods and means to ensure essential services are provided to the people of Puerto Rico on an uninterrupted basis at least through 2017; thereby giving the Government sufficient runway to fully develop and refine a fiscal plan (together with the Oversight Board) and to engage in meaningful dialogue and negotiations with its creditors.

II. The Oversight Board's January 31, 2017 Deadline For Submitting

A Certifiable Fiscal Plan Should Be Extended By At Least 45 Days.

The New Administration values the Oversight Board's guidance with respect to the development of the fiscal plan as set forth in the Letter. Indeed, PROMESA anticipates that the Government and Oversight Board will "work together as partners for prosperity"⁶ In addition, it is anticipated under PROMESA that "the governor will have numerous opportunities to craft a fiscal plan that conforms to the law."⁷

We appreciate the Oversight Board's desire to have a fiscal plan certified by January 31, 2017. However, there are several practical reasons for giving the Government a sufficient opportunity beyond the Oversight Board's stated deadline to responsibly develop a certifiable fiscal plan:

First, a January 31, 2017 deadline for achieving a certifiable fiscal plan is problematic because Governor Rosselló Nevaes will only have been in office since January 2, 2017. Less

⁴ Id.

⁵ PROMESA § 201(b)(1)(M).

⁶ H.R. Rep. 114-602(I), 2016 WL 3124840, at *111.

⁷ *Id.* at *112.

than a month is simply not enough time for the New Administration's appointees and the "high-level task force" (as suggested by the Oversight Board in the Letter) to fully and responsibly understand and assess Puerto Rico's fiscal challenges. It would be far more helpful, as well as consistent with PROMESA, to allow the New Administration and the "task force" sufficient time to perform their responsibilities and to develop their own understanding of the situation so as to maximize the fiscal plan's reliability and the Government's autonomy.⁸

Second, because the fiscal plan is the cornerstone of the restructuring process under PROMESA, developing the fiscal plan without leaving enough time to vet and finalize the underlying financial and economic data could lead to a flawed fiscal plan and undermine the success of any restructuring efforts. A rushed restructuring process not based upon a reliable and credible fiscal plan, even if certified, is a recipe for serial restructurings and could prevent Puerto Rico from achieving fiscal responsibility within 10 years.

Third, the Oversight Board's fiscal plan deadline will undercut the New Administration's ability to properly engage its creditors in good-faith negotiations to achieve a consensual restructuring of Puerto Rico's debts. We note that there are 63 covered entities with multiple variations of debt held by different groups of bondholders with different and competing interests. Under Title II of PROMESA, the Government is responsible in the first instance to engage in good-faith negotiations aimed at achieving consensual voluntary agreements with its bondholders.⁹ Although it may be difficult to achieve consensual Title VI voluntary agreements with every covered entity issuer, even within the time period suggested below, it will be important as a precursor to any restructuring action taken by or on behalf of the Government that various bondholder groups are given adequate financial information for productive dialogue. These discussions could lead to at least a short-term liquidity solution and/or forbearance of remedies, if not a longer term solution.

For these reasons, the New Administration respectfully requests the Oversight Board to extend its January 31, 2017 deadline for submitting a certifiable fiscal plan by **at least 45 days**, subject to further reasonable extensions as may be necessary under the circumstances.

III. PROMESA's Mandatory Stay Should Be Extended To May 1, 2017.

While PROMESA's mandatory stay expires on February 15, 2017, it is well within the Oversight Board's discretion to certify to the governor that an additional 75 days from

⁸ *Id.* at *45 (stating that PROMESA "establishes the method for developing Fiscal Plans for territorial governments and instrumentalities that provide the appropriate elected officials with the *autonomy* to develop such Fiscal Plans with guidance from the Oversight Board.") (emphasis added).

⁹ *See* PROMESA § 206(a)(1) (requiring that the Oversight Board must determine that "the *entity* has made good-faith efforts to reach a consensual restructuring with creditors" prior to issuing a restructuring certification necessary to initiate a Title III proceeding") (emphasis added).

February 15 to May 1, 2017 is needed to complete a voluntary process seeking to achieve a consensual resolution with the Government's bondholders.¹⁰ Such an extension is warranted given the fact that (i) the last set of audited financials was for the fiscal year ending June 30, 2014; (ii) financial information which resolves serious budgetary gaps has yet to be completed for finalization of a fiscal plan; (iii) there is a new incoming administration which must address in short order serious financial and budgetary issues, multiple defaults by the Past Administration, among other things; and (iv) official discussions between the New Administration and the Government's creditors have not yet transpired.

Moreover, we are very concerned that a rushed process to certify a fiscal plan by January 31, 2017, and a view that the movement of the PROMESA stay on February 15, 2017 is an intractable deadline, could prematurely precipitate Title III filings for some or all of Government's issuers without any significant support from bondholder groups. In our view, accelerated Title III proceedings would be akin to a "free fall bankruptcy filing" which would: (i) lead to contentious litigation and disputes with bondholders and other parties; (ii) cause prolonged delay; (iii) create massive professional fees; and (iv) jeopardize the Government's access to a free flow of capital at market rates. Such an outcome would be at odds with the congressional intent behind the passage of PROMESA—*i.e.*, good-faith negotiations with Puerto Rico's bondholders based upon credible financial information seeking at first a consensual voluntary agreement as provided for under Title VI.

For all of the reasons set forth above, the New Administration respectfully requests that, pursuant to section 405(d)(1)(B) of PROMESA, the Oversight Board issue a certification to the governor extending the stay by **75 days to May 1, 2017**.

IV. The New Administration has taken immediate steps to address the fiscal crisis

Within just a few hours of taking oath, Governor Rosselló has taken immediate steps to address the Island's fiscal crisis, issuing a series of Executive Orders and introducing several pieces of legislation geared towards reducing government spending and providing an expedite procedure for infrastructure projects. It is important to note that Executive Order No. 2017-001 sets a goal of reducing government spending by ten percent (10%) for the current fiscal year. Also it imposes a reduction of ten percent (10%) in professional service contracts, and a five percent in utility spending for all government agencies and public corporations. Furthermore, it orders a twenty percent (20%) reduction in positions of trust in each agency and/or public corporation.

Executive Order No. 2017-003, declares a state of emergency in infrastructure, thus creating and expedite process for infrastructure projects which are much needed in order to boost the local economy, and as complement, Executive Order No. 2017-004 creates a Government

¹⁰ See PROMESA § 405(d).

Task Force for urgent infrastructure projects that require the approved expedite process. Lastly, Executive Order No. 2017-005 orders all agencies and public corporations to establish a Zero-Base Budgeting methodology as a way to reduce government spending.

Governor Rosselló has also introduced amendments to the local Public-Private Partnership (3Ps) Act in order to expand the projects and initiatives that may be subject to a 3Ps. Additionally, the proposed amendments also allow the public employees retirement systems to invest and participate in 3Ps agreements that would bring more funds and would help in the recovery of the now nearly insolvent pension systems. Moreover, the New Administration has introduced a bill reinstating the Office of the Inspector General, as a way of both cutting superfluous government spending and serving as a preventive measure against corruption. All of these steps serve to demonstrate the New Administration commitment to address Puerto Rico's fiscal crisis and provide mechanisms to promote economic development.

As such, we request an extension to present a Certifiable Fiscal Plan and to extend the Mandatory Stay to May 1st 2017. In addition to the extension requests made herein, we also ask to immediately set up meetings with the designated representatives for the Oversight Board and New Administration during the first weeks of January to discuss and follow through on the issues raised in our respective letters. Please know that the New Administration is committed to making the fiscal plan and reform implementation and related initiatives the highest priority. Also note that, consistent with Governor Rosselló Nevares's campaign commitments—including his party's policy platform set forth in the "Plan para Puerto Rico"—the issues before us are of the utmost urgency. This urgency and the New Administration's priorities, however, must be balanced with our political responsibility to maintain basic and essential government services that are in the best interests of the people of Puerto Rico, including providing for their collective safety, health, education, job opportunities, and economic growth.

The New Administration looks forward to further discussions with the Oversight Board and collaborating with the Oversight Board in establishing a strong foundation for Puerto Rico's solvency, future economic growth, and open access to the capital markets—all for the benefit of the people of Puerto Rico.



Elías F. Sánchez-Sifonte
Governor's Representative
Financial Oversight and Management Board of Puerto Rico