



GOVERNOR OF PUERTO RICO

Ricardo Rosselló Nevares

February 12, 2017

Mr. José Carrión

Chairman

Financial Oversight and Management Board

Dear Mr. Carrión,

I acknowledge your letter, dated February 2, 2017 (the “Letter”) in which you request that Governor Ricardo Rosselló (the “Governor”) and his administration (the “Administration”) “discuss[] and analyz[e] with the Board in advance the implications of new legislation.”¹ *See* Letter at 2. In support of this request, the Oversight Board cites Sections 204, 207, and 303 of PROMESA as the “many tools it may deploy in respect of legislation” in the absence of a certified Fiscal Plan. *See* Letter at 1. At the outset, I must emphasize that the Administration has and will continue to work in cooperation with the Oversight Board in all matters within the spirit and intent of PROMESA.² However, the Oversight Board’s request to preliminary review all legislation as a matter of right is not contemplated by PROMESA and infringes upon the autonomy of the Government of Puerto Rico.

First, the Administration disagrees with the Oversight Board’s assertion that it may currently use its enforcement powers under Section 204 of PROMESA to compel preliminary review of all new legislation. Nothing in Section 204 mandates that the Administration must submit any legislation to the Oversight Board prior to its enactment. Section 204(a)(1) only requires submission of legislation to the Oversight Board *after* it has been duly enacted.³ After enactment, Section 204(a)(2) requires the Governor to submit the new law to the Oversight Board with (i) a formal cost estimate, and (ii) a certification that the law either is or is not “significantly inconsistent” with the Fiscal Plan for the fiscal year.⁴ Notably, the

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”).

² *See* H.R. Rep. 114-602(I), 2016 WL 3124840, at *111 (Jun. 3, 2016) (hereinafter “H.R. Rep.”) (“The Puerto Rico government and the oversight board should work together as partners for prosperity, not as petty rivals for power.”).

³ *See* PROMESA § 204(a)(1) (“Except to the extent that the Oversight Board may provide otherwise in its bylaws, rules, and procedures, not later than 7 business days *after a territorial government duly enacts any law* during any fiscal year in which the Oversight Board is in operation, the Governor shall submit the law to the Oversight Board.”) (emphasis added).

⁴ *See* PROMESA § 204(a)(2) (“Governor shall include with each law submitted to the Oversight Board . . . a formal estimate prepared by an appropriate entity of the territorial government with expertise in budgets and financial management of the impact, if any, that the law will have on expenditures and revenues” and a certification by such entity finding that “the law is not significantly inconsistent with the Fiscal Plan for the fiscal year” or that



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newly enacted legislation is “insulated from [Oversight Board] review” if the Governor’s submission includes both the required estimate and certification of compliance with the Fiscal Plan.⁵

Moreover, the Oversight Board’s view that the requirements of Section 204 are independent of the need for a certified Fiscal Plan is inaccurate. Setting aside the prerequisite that Section 204 only applies “after a territorial government duly enacts any law,” Sections 204(a)(2)(B) and (C) each require that the certification provided by the Administration with respect to the legislation must be judged against the “Fiscal Plan for the fiscal year.”⁶ Therefore, if no Fiscal Plan is certified, the Governor is required to submit new legislation to the Oversight Board after its enactment with only a cost estimate. The certification is not required because there is no Fiscal Plan in place to evaluate any inconsistencies.

The Administration’s interpretation of Section 204 is further supported by Section 204(a)(6), which specifically provides that the Oversight Board may conduct a preliminary review of any proposed legislation only “at the request of the Legislature.”⁷

“the law is significantly inconsistent with the Fiscal Plan for the fiscal year . . . together with the entity’s reasons for such finding.”).

⁵ H.R. Rep. at *113 (“as long as the governor provides the board with (1) a ‘score’ of the bill from the Puerto Rico Office of Management and Budget (OMB) or another appropriate entity estimating the impact of the act on expenditures and revenues, and (2) a certification from the Puerto Rico OMB or another appropriate entity that the law is not significantly inconsistent with the certified fiscal plan, **then the act is insulated from board review**. It would only be if the Puerto Rico government, after being given numerous opportunities, fails to transmit to the board the cost estimate or the certificate of ‘no significant inconsistency,’ or if the Puerto Rico government certifies that the law is significantly inconsistent but fails to provide a reasonable explanation for such inconsistency, that the board would even be authorized—rather than required—to prevent enforcement of the legislative act in question.”) (emphasis added).

⁶ Under PROMESA, “Fiscal Plan” is defined as both a “Territory Fiscal Plan” and “Instrumentality Fiscal Plan.” A “Territory Fiscal Plan” means “a fiscal plan for a territorial government submitted, approved, and certified in accordance with section 201.” Such a Fiscal Plan has not yet been certified for Puerto Rico. *See also* PROMESA § 204(a)(2)(B)-(C) (“The Governor shall include with each law submitted to the Oversight Board . . . (B) If the appropriate entity . . . finds that the law is not significantly inconsistent with **the Fiscal Plan for the fiscal year**, it shall issue a certification of such finding; [and] (C) If the appropriate entity . . . finds that the law is significantly inconsistent with **the Fiscal Plan for the fiscal year**, it shall issue a certification of such finding, together with the entity’s reasons for such finding”) (emphasis added); PROMESA § 204(a)(3)(C) (authorizing the Oversight Board to “send a notification to the Governor and Legislature if . . . (C) the Governor submits a law to the Oversight Board under [Section 204(a)] that is accompanied by a certification described in [Section 204(a)(2)(C)] that the law is significantly inconsistent **with the Fiscal Plan**.”) (emphasis added).

⁷ PROMESA § 206(a)(6) (“At the request of the Legislature, the Oversight Board may conduct a preliminary review of proposed legislation before the Legislature to determine whether the legislation as proposed would be consistent with the applicable Fiscal Plan under this subtitle, except that any such preliminary review shall not be binding on the Oversight Board in reviewing any law subsequently submitted under this subsection.”).



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Second, the Letter also asserts that the Oversight Board may currently use its enforcement powers pursuant to Section 207 of PROMESA, which provides that “no territorial government may, without the prior approval of the Oversight Board, issue debt or guarantee, exchange, modify, repurchase, redeem, or enter into similar transactions with respect to its debt.” At this time, the Administration has not enacted, and does not intend to enact, any new laws issuing any additional debt for Puerto Rico or any of its instrumentalities or covered entities. As such, we respectfully disagree with the Oversight Board on the current applicability of this provision.

Finally, the Oversight Board’s reference to enforcement powers under Section 303 of PROMESA is also misplaced. Section 303 expressly retains in the Government of Puerto Rico “the exercise of the political or governmental powers of the territory.” Section 303(1) also provides a narrow limitation to this autonomy, stating that:

“whether or not a case has been or can be commenced under [Title III] . . . a territory law prescribing a method or composition of indebtedness or a moratorium law, **but solely to the extent that it prohibits the payment of principal and interest** . . . , may not bind any creditor of a covered territory or any covered instrumentality thereof that does not consent to the composition or moratorium.” (emphasis added).

However, this narrow limitation is not currently applicable. To date, the Administration has not enacted any new moratorium laws that would prohibit the payment of principal and interest to creditors. The newly enacted Puerto Rico Financial Emergency and Fiscal Responsibility Act (the “Fiscal Responsibility Act”) set a new “Willingness to Pay” policy that established a priority for debt payments and in no way prohibits the payment of principal and interest as the previous Administration’s moratorium law did. Further proof of this change in policy was the Governor’s announcement this week of interest payments for general obligation bonds and the transfer of available resources to a trust solely for the payment of principal and interest on debt. But even if the Fiscal Responsibility Act did prohibit payments of principal and interest (which it does not), Section 303 does not give the Oversight Board any unique powers or enforcement mechanisms.

The Administration’s intent is not to interfere with the Oversight Board as it carries out its responsibilities under PROMESA, but the request in the Letter goes to the heart of the Puerto Rico government’s autonomy, which is preserved under PROMESA.⁸ As the House Report emphasizes, “as long as the Puerto Rico

⁸ See, e.g., H.R. Rep. at *45 (noting that “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.”).



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government adheres to the most basic requirements of responsible legislating, it is exceedingly unlikely that any legislative act will ever be reviewed by the [Oversight Board], much less reversed.” H.R. Rep. at *113. In that respect, the Administration agrees with the Oversight Board that the “[e]nforcement mechanisms under PROMESA should be a last resort and will hopefully not be necessary.” *See* Letter at 2.

The Administration looks forward to continuing discussions and collaboration with the Oversight Board for the benefit of the people of Puerto Rico.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. F. Sánchez".

Elías F. Sánchez
Governor's Representative
Financial Oversight and Management Board