

## **Pedro L. González Uribe (Secretaría)**

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**From:** Letters - FOMB <letters@promesa.gov>  
**Sent:** Monday, November 27, 2023 12:55 PM  
**To:** Secretaria  
**Cc:** José Luis Dalmau Santiago (Presidente); Jose L. Galarza Garcia (Asesores del Presidente); Jonathan E. Pérez Cora (Asesores del Presidente); Board Members; Robert Mujica; Jaime Elkoury; Paula A. González; Chief of Staff; Communications; Letters - FOMB; German Ojeda; Valerie Maldonado; Viviana Lebron; Jan Miranda; Filex Rosado  
**Subject:** FOMB - Letter - Senate - SR 755 - November 27, 2023  
**Attachments:** FOMB - Letter - Senate - SR 755 - November 27, 2023.pdf

Good afternoon,

Please see attached letter from FOMB Executive Director re: SR 755.

Best,

FOMB

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**Executive Director**

**BY ELECTRONIC MAIL**

November 27, 2023

Honorable Yamil Rivera Vélez  
Secretary  
Senate of Puerto Rico

**Re: Senate Resolution 755**

Dear Secretary Rivera Vélez:

We write in response to Senate Resolution 755 (“SR 755” or the “Resolution”).

SR 755 seeks to require the Oversight Board to immediately implement the agreement of July 21, 2022, filed in Adv. Proc. No. 21-119 (D.P.R.), and to partially implement Act 80-2020 (“Act 80”).<sup>1</sup> The Resolution also requests the Oversight Board provide information to the Senate on the reasons why the partial implementation of Act 80-2020 has not begun.<sup>2</sup>

The Oversight Board remains committed to working with the Puerto Rico Government to implement the early retirement program under Act 80 and continues to believe a fiscally responsible path exists for partial implementation in a manner consistent PROMESA, the certified Fiscal Plan for Puerto Rico, and the December 2021 Order of the U.S. District Court for the District of Puerto Rico.

The purpose of every early retirement program is to reduce the workforce. Early retirement programs are, by definition, not merit based and must not increase Government expenditures. That is why the Government and the Oversight Board agreed, and the U.S. District Court for the District of Puerto Rico ordered, that Act 80 can only be implemented to the extent that the Government will achieve savings and can continue to provide essential services even as some government employees retire early.

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<sup>1</sup> See SR 755 § 1.

<sup>2</sup> *Id.* § 2.

To ensure that the savings will be achieved, the Government and the Oversight Board agreed to permanently eliminate certain positions. The Oversight Board and the Government also agreed that only non-essential positions can be eliminated permanently so the Government can still provide all essential services without disruption.

The Oversight Board and the Government have made substantial progress in establishing the framework for implementing Act 80 for certain non-essential governmental employees in a manner that will achieve the required savings. Implementation is far along.

For example, the Oversight Board and the Government have agreed on, among other things, the method of calculating the savings to be achieved, the process for capturing the savings and depositing them in the Pension Reserve Trust created under the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico. Case No. 17-BK-3283-LTS, ECF No. 19784 (the “Commonwealth Plan of Adjustment”), the upcoming milestones, and the timing for implementation.

The Government and the various agencies and public corporations determined which positions could be eliminated and certified that the permanent elimination of the agreed-upon positions of employees eligible for early retirement under this partial implementation of Act 80 will not adversely impact the Government’s ability to provide essential services to Puerto Rico residents.

The Government took great care to complete this complicated and time-consuming determination, evaluating which position in each agency and office can be eliminated without affecting essential government services, and which positions must be retained. Replacement of employees would not achieve the purpose of the program to reduce government employees to ensure savings. An incentivized early retirement is not possible for every employee.

Most recently, the Government and the Oversight Board filed an Interim Stipulation in the U.S. District Court. This September 15, 2023, document outlines the agreed-upon terms and the mechanism for the partial implementation of Act 80.

The success of this partial implementation hinges on various conditions, including government agencies and public corporations faithfully complying with Circular Letter No. 2023-01/006-2022, meeting the deadlines and milestones outlined in the Interim Stipulation, and obtaining approval from the U.S. District Court for a final agreement submitted by the Government and the Oversight Board regarding cost savings.

On September 25, 2023, the U.S. District Court entered the Interim Stipulation as an Order, without revisions. The Oversight Board and the Government will continue working together to ensure that each step and requirement set forth in the Interim Stipulation is timely satisfied. Upon the conclusion of the agreed-upon process, including reaching an agreement on savings, the Oversight Board and the Government plan to file a stipulation confirming final agreement on the partial implementation of an incentivized early retirement program, and asking the U.S. District Court to

enter an Order approving that final stipulation to enable implementation of the program in the spring of 2024.

This substantial progress in the partial implementation follows a series of legal steps that provided a path to achieve the necessary savings from early retirements of employees occupying non-essential positions.

As background, Act 80 sought to alter the Commonwealth's pension regime in a manner inconsistent with the Commonwealth Plan of Adjustment. On December 20, 2021, the Oversight Board filed a complaint seeking to have Act 80 and three other pension-related laws enjoined and nullified.<sup>3</sup> After the complaint was filed, the Oversight Board and the Government engaged in discussions to resolve the dispute.

On December 27, 2021, the Oversight Board and the Government filed a stipulation and proposed order resolving the adversary proceeding subject to court approval.<sup>4</sup> On December 28, 2021, the Court approved the stipulation and issued an order ("December 28 Order") stating that:

[t]he Court's approval or 'SO ORDERING' of this agreement shall invalidate JR 33-2021 ("JR 33") and Acts 80, 81-2020 ("Act 81"), and 82-2020 ("Act 82") pursuant to PROMESA, including as significantly inconsistent with the certified fiscal plan, as of the enactment date for each of JR 33 and Acts 80, 81, and 82, except as provided for in paragraph 3 of this agreement.<sup>5</sup>

Paragraph 3 of the December 28 Order provides the following with respect to Act 80 and JR-33:<sup>6</sup>

The parties shall endeavor to reach an agreement on a means of implementing the incentivized early retirement provisions set forth in Act 80 for certain employees where doing so would create savings above and beyond the level of savings required in the currently certified fiscal plan (the "Baseline Savings") or otherwise satisfy some other metric the parties agree on, as follows:

- a. On a per agency level, the Government shall provide both the descriptions of the position proposed to be eliminated (the "Proposed Eliminated Positions") and the projected net savings that will result from the elimination of said position while taking into consideration the incremental cost of providing the incentivized early retirement benefit (the "Savings");

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<sup>3</sup> See *Fin. Oversight and Mgm't Bd. for P.R. v. Pierluisi Urrutia, et al.*, Adv. Proc. No. 21-ap-119, ECF No. 1 (D.P.R. Dec. 20, 2021).

<sup>4</sup> ECF No. 5.

<sup>5</sup> ECF No. 6 at ¶ 4.

<sup>6</sup> The December 28 Order also addressed certain tasks the parties were to undertake with respect to Acts 81 and 82. As explained in submissions to the Court, the Oversight Board and the Government reached agreements with regard to those laws. See ECF Nos. 8, 10.

- b. If the parties mutually agree on (i) the Proposed Eliminated Positions, (ii) the Savings, and (iii) that the Savings are above and beyond the Baseline Savings, or otherwise satisfy some other metric the parties may agree on, then the parties shall use their respective best efforts to concur on a means of implementation within 45 days after the date of this agreement, including necessary fiscal plan and budgetary funding in compliance with PROMESA; and
- c. The Eliminated Positions shall be eliminated within the Governmental system, and the eliminated positions, including any functionally similar positions, shall not be restored, recreated, or created within the affected agencies and corporations.<sup>7</sup>

After the issuance of the December 28 Order, the Oversight Board and the Government endeavored to reach an agreement consistent with the December 28 Order.<sup>8</sup> Thereafter, the Oversight Board and the Government engaged in extensive efforts to comply with the December 28 Order and attempt to reach an agreement to partially implement Act 80. The Oversight Board and the Government filed a series of stipulations, which the Court then entered as orders, including in February 2022, June 2022, July 2022, and August 2022. Thereafter the discussions and efforts continued, culminating in the Interim Stipulation on September 15, 2023<sup>9</sup> and the Order entered on September 25, 2023.<sup>10</sup>

The Oversight Board is providing this summary to inform the Senate about the status of the partial implementation of Act 80 in the spirit of cooperation. As always, the Oversight Board seeks to work together with the Legislature on any matter that impacts Government finances, as it values open and direct communication with Puerto Rico's elected leaders.

Nevertheless, PROMESA provides that “[n]either the Governor nor Legislature may . . . exercise any control, supervision, oversight, or review over the Oversight Board or its activities.”<sup>11</sup> Thus, to the extent SR 755 requires the Oversight Board to take specific actions with respect to Act 80 or otherwise compels the Oversight Board to report to the Legislature, the Resolution is inconsistent with PROMESA.

We also note that the information requested in the Resolution is readily available from the Court's electronic case management system and could also be acquired from the Governor or AAFAF.

Today, the Oversight Board and the Government have defined the scope of the partial implementation of Act 80 and a path towards achieving the necessary savings that is the goal of

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<sup>7</sup> ECF No. 6 at ¶ 3.

<sup>8</sup> See ECF Nos. 8, 10.

<sup>9</sup> ECF No. 38.

<sup>10</sup> ECF No. 39.

<sup>11</sup> PROMESA § 108(a)(1).

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any early retirement program. The Government completed the difficult process of defining non-essential positions, and the U.S. District Court approved the most recent stipulation that reflects the parameters of the implementation by the spring 2024.

The Oversight Board looks forward to continuing to work together for the benefit of the people of Puerto Rico.

Sincerely,



Robert F. Mujica Jr.  
Executive Director