



GOVERNMENT OF PUERTO RICO

PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY

Executive Director | Omar J. Marrero, Esq. | omar.marrero@aafaf.pr.gov

May 10, 2022

VIA ELECTRONIC MAIL

Jaime A. El Koury

General Counsel
The Financial Oversight and
Management Board for Puerto Rico
P.O. Box 192018
San Juan, PR 00919-2018

Re: *Act 80 Early Retirement Program.*

Dear Mr. El Koury:

We acknowledge receipt of your May 6, 2022 letter (the “May 6th Letter”) regarding the Government of Puerto Rico’s (the “Government”) cost-savings analysis related to the early retirement program contemplated under Act 80-2020 (the “Act 80 Early Retirement Program”).

The Act 80 Early Retirement Program has been an ongoing issue between the Board and the Government that we have been working together to resolve. Even though we appreciate the Oversight Board’s efforts thus far to engage with the Government, we do disagree with certain characterizations in your May 6th Letter regarding the Government’s process of analyzing potential savings under the Act 80 Early Retirement Program that we are compelled to address.

As noted in your May 6th Letter, the Board commenced an adversary proceeding in December 2021 seeking to nullify Act 80 and two other retirement laws. On December 28, 2021, that adversary proceeding was resolved consensually when the United States District Court for the District of Puerto Rico (the “Title III Court”) entered a *Stipulation and Order Resolving Oversight Board Complaint Dated December 20, 2021 Concerning Acts 80-2020, 81-2020, and 82-2020 and Joint Resolution 33-2021*, Adv. Proc. No. 21-00119 [ECF No. 6] (the “Stipulation”). Under the Stipulation, the Title III Court directed the Government and the Board to work together to reach an agreement within



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45 days (i.e., by February 11, 2022) that would allow the Act 80 Early Retirement Program to create additional savings above and beyond the level required in the Commonwealth's certified fiscal plan. On January 27, 2022 (only two weeks before the Stipulation's deadline), the Board re-certified a revised Fiscal Plan for the Commonwealth (the "2022 Fiscal Plan") that included a prohibition on the use of defined benefit programs for public pensioners. Because Act 80 was legislated on the basis of modifying the level of defined benefits for ERS participants, the Government's initial cost-savings analysis was based on implementing a defined benefit program. Because defined benefit programs would no longer comply with the 2022 Fiscal Plan, the Government needed to undertake additional work to propose an alternative solution. On February 15, 2021, the Government and the Board informed the Title III Court that additional time would be necessary to complete the savings analysis and that the Board agreed to consensually extend the February 11, 2022 deadline by 120 days. Thus, the current deadline for completing the Act 80 savings analysis is **June 11, 2022** (the "Extension").

Over the last several months, the Government has consistently communicated with the Board to provide several iterations of cost-savings analyses pursuant to the Stipulation and in response to the Board's additional information requests.

- On February 11, 2022, the Government provided the Board its complete analysis of the estimated maximum projected savings based on employee data for those eligible for, and interested in, an early retirement program similar to the Act 80 Early Retirement Program. The potential maximum incremental net savings was estimated at approximately \$800 million, subject to an analysis on the impact of permanently eliminating certain Government positions. This analysis concluded by requesting a meeting with the Board to discuss next steps.
- On March 1, 2022, the Board requested additional information and proposed that the Government establish a workplan for completing the savings analysis.
- On March 6, 2022, the Government provided the Board with its proposed workplan to complete the analysis by early April 2022 and solicited meetings with the Board to discuss the proposed workplan.



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- On March 14, 2022, the Board advised the Government that the timeline for the proposed workplan was insufficient and instructed the Government to provide specified information related to eliminated positions and projected net savings by March 28, 2022.
- On March 28, 2022, the Government submitted to the Board a sample of its savings analysis for the largest agencies that would provide the highest level of potential savings. The purpose of this submission was to assist the Government and Board in jointly examining: (i) whether the Government's analysis and methodology conformed to the 2022 Fiscal Plan; and (ii) whether the proposed savings for these agencies would be sufficiently above and beyond the savings required in the 2022 Fiscal Plan. The Government indicated that if the Board was satisfied with the sufficiency of this sample analysis, then the Government would complete the final analysis for all applicable agencies before the June 11, 2022 deadline. We also requested that the Board send us a prompt response as to whether the Government's approach would satisfy the Board's concerns.

Throughout the process of working with the Board to comply with the terms of the Stipulation, the Government has provided the Board with the best information and analysis available to it within the timeframe permitted under the Stipulation and Extension. Contrary to the Board's assertion that this "effort has been futile," we believe that our information exchange has been both timely and forthright.

The Government understands, that ultimately, the Board's position as set forth in the May 6th Letter is that the Board has concluded that the March 28 savings analysis cannot form the basis for the Board and the Government to reach an agreement.

Consequently, if the analysis and approach we have detailed above and in our prior submissions are not going to lead to an implementation solution consistent with the 2022 Fiscal Plan, then we request the Board to promptly notify the Government so that we can proceed with alternative legislation designed to effectuate a different early retirement program that will be consistent with the 2022 Fiscal Plan.



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As always, we look forward to continuing to collaborate with you to achieve our common goals for the benefit of the people of Puerto Rico.

Very truly yours,

Omar J. Marrero Díaz
Executive Director

cc: Hon. Pedro R. Pierluisi
Julian Bayne
David A. Skeel, Jr.
Andrew C. Biggs
Arthur J. González
Antonio L. Medina
John E. Nixon
Justin M. Peterson
Betty A. Rosa