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# FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



David A. Skeel, Jr.  
Chair

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Andrew G. Biggs  
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Natalie A. Jaresko  
Executive Director

## **BY ELECTRONIC MAIL**

June 22, 2021

Honorable Pedro Pierluisi Urrutia  
Governor of Puerto Rico

Honorable José Luis Dalmau  
President of the Senate of Puerto Rico

Honorable Rafael Hernández  
Speaker of the House of Representatives of Puerto Rico

Mr. Omar J. Marrero Díaz, Esq.  
Executive Director  
Puerto Rico Fiscal Agency and  
Financial Advisory Authority

Dear Governor Pierluisi Urrutia, Senate President Dalmau, Speaker Hernández, and Mr. Marrero Díaz:

We write regarding Act 7-2021 (the “Act”), formerly known as House Bill 120 (“HB 120” or the “Bill”). While the Governor signed the Act, through AAFAF he also certified to the Oversight Board: “HB 120 is significantly inconsistent with the Certified Fiscal Plan.” As you know, the Oversight Board had previously informed the Government the Act is significantly inconsistent with the Certified Commonwealth Fiscal Plan (the “Fiscal Plan”) and would impair and defeat the purposes of PROMESA as determined by the Oversight Board, in violation of PROMESA §§ 108(a)(2), 204(a) and 207.<sup>1</sup>

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<sup>1</sup> HB 120 was the subject of numerous letters between the Oversight Board and the Legislature, including letters dated January 29, 2021, February 20, 2021, March 19, 2021, and March 25, 2021. Additionally, on June 3, 2021, the Oversight Board sent a letter to the Governor expressing its significant concerns regarding HB 120. All of the Oversight Board’s correspondence with the Legislature, the Governor, and AAFAF regarding HB-120 is available on its website: <https://oversightboard.pr.gov/documents/>.

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Additionally, AAFAF had previously advised a legislative committee considering HB 120 that it had several concerns with the Bill, including that it “is diametrically opposite to the public policy established in Law 106-207, which has allowed the payment of the pensions of [Puerto Rico’s] public servants during the past three years” and which was created to stave off “the humanitarian crisis that would have arisen if the payments to [] retirees were interrupted as a result of the lack of liquid assets of the Retirement System.” (February 3, 2021 letter, attached hereto as Exhibit 1 AAFAF’s letter also noted that because HB 120 prevents AAFAF from agreeing to a plan of adjustment that does not comply with HB 120’s terms, the Bill “basically prohibit[s]” AAFAF “from collaborating in preparation of fiscal plans, budgets, or adjustment plans on behalf of the Government of Puerto Rico” which “entail[s] handing over to the FOMB . . . total control over the destinies of Puerto Rico, without any representation of the democratically elected Government.” *Id.*

On June 18, 2021, AAFAF submitted the certification to the Oversight Board pursuant to PROMESA § 204(a) (the “Certification”) stating “that Act 7 is significantly inconsistent with the Certified Fiscal Plan.” (Certification attached hereto as Exhibit 2. AAFAF provided several reasons for its conclusion. For example, AAFAF observed “[t]he reformulation of Puerto Rico’s pension system, as stated in Act 7, is contrary to the provisions of the Fiscal Plan and the assumptions of the POA currently filed before the Title III Court. Accordingly, its provisions could be interpreted as contrary to several provisions of PROMESA and to the powers granted to [the] Oversight Board. See e.g., Sections 108(a)(2), 312 and 313 of PROMESA, 48 U.S.C. secs. 2128, 2172-73. In addition, Chapter 3 of Act 7 seeks to have debt of the Government of Puerto Rico issued, guaranteed, and/or modified without the approval of the Oversight Board pursuant to Section 207 of PROMESA.” (Certification at pages 2-3, attached hereto as Exhibit 2) In the Certification, AAFAF also notes that the Act’s requirements regarding FACSIR—the pension trust purportedly created by the Act—“are significantly inconsistent with the reform measures established [in] Section 20.2 of Chapter 20 of the Certified Fiscal [Plan].” (Certification at page 7)

While the Oversight Board appreciates the Act purports to provide better treatment for retirees, we must point out the Act’s intention is to strike down the Oversight Board’s agreement with the statutory retirees’ committee and the core settlement with financial creditors that enables Puerto Rico’s public debt to be reduced from \$35 billion to \$7 billion with a commensurate reduction in annual debt service. In sum, if the Act were implemented, it would eliminate the currently proposed plan of adjustment by eliminating the settlements with the retiree committee and the General Obligation bondholders. Moreover, the Act’s promised benefits to retirees are not financially attainable. Negotiations would recommence, creditors unpaid for five years would urge the Court to let them enforce their claims by grabbing the Commonwealth’s revenues, and the Oversight Board’s tenure would be extended. Thus, despite your effort to support retirees, the Act seriously harms retirees and the Commonwealth. Indeed, as funds build up in the TSA and the economy enjoys a brief upswing as a result of the federal stimulus packages and investment of

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federal reconstruction funding, cash accumulating, could benefit the financial creditors asserting priority claims under the Puerto Rico Constitution.

In response to the Certification, and in accordance with PROMESA § 204(a)(3)(C), the Oversight Board hereby notifies the Governor and the Legislature that AAFAF has certified Act 7 is significantly inconsistent with the Fiscal Plan. In addition, based on its own analysis of the fiscal impact of the Act, the Oversight Board agrees with AAFAF's conclusion that Act 7 is significantly inconsistent with the Fiscal Plan.

In addition, the Oversight Board confirms its prior determination (and notice to you) that the Act impairs and defeats the purposes of PROMESA in violation of PROMESA § 108(a). As such, the Act's implementation is statutorily barred by PROMESA section 108(a)(2) and no officer or employee of the Government may take any action to implement the Act.

Further, pursuant to PROMESA § 204(a)(4)(B), the Oversight Board hereby notifies the Governor and the Legislature that the Act cannot be corrected to eliminate the inconsistency, nor can the Government provide an explanation for the inconsistency that the Oversight Board will find reasonable and appropriate. As such, the Oversight Board directs the Legislature to repeal the Act immediately.

Please confirm by 12:00 PM AST on June 25, 2021 that Act 7 will not be implemented. Please also confirm by 12:00 PM AST on June 25, 2021 that the Legislature will undertake the repeal of Act 7 in its entirety. Please note that, absent confirmation of both of items, the Oversight Board will take any such action it deems necessary, consistent with PROMESA §§ 104(k), 108(a), 204 and 207, including seeking remedies and penalties to nullify Act 7 and to prevent the implementation and enforcement of the Act. We hope such action will be unnecessary.

We look forward to continuing to work together for the benefit of the people of Puerto Rico.

Sincerely,



Natalie A. Jaresko

CC: David A. Skeel, Jr.  
Andrew G. Biggs  
Arthur J. González  
Antonio L. Medina  
John E. Nixon  
Justin M. Peterson  
Betty A. Rosa

TRANSLATION



**GOVERNMENT OF PUERTO RICO**

Puerto Rico Financial Advisory Authority and  
Fiscal Agency

February 3, 2021

Hon. Domingo J. Torres Garcia  
President

Commission on Labor Affairs and Transformation of the Pensions System for an Honorable  
Retirement

**Puerto Rico House of Representatives Rico**

The Capitol  
San Juan Puerto Rico

**House Bill 120**

Dear Mr. President:

The Puerto Rico Financial Advisory Authority and Fiscal Agency (“AAFAF”) appears to  
comment on House Bill 120 (“HC 120 ”), which it titled:

*To create the “Law for an Honorable Retirement,” in order to establish and standardize an energetic and vigorous public policy of zero cuts to the pensions of participants of the retirement systems and people retired from public service in Puerto Rico; to create the necessary legal framework for the eventual establishment of a Trust for the Joint Administration of Retirement Systems that ensures the payment of pensions of public servants; to provide the public policy that will guide the conversations and representations of the Government of Puerto Rico, its municipalities, instrumentalities, and agents in any debt restructuring, adjustment, mediation, or negotiation process against the retirement systems, their participants and retirees; to propose a model for the constitution and treatment of different classes of creditors in a Debt Adjustment Plan that complies with this public policy; to amend Articles 2, 3, 5, and 9 of Law 2-2017, as amended, known as the “Puerto Rico Financial Advisory and Fiscal Agency Authority,” to amend Section 1-104 and to add a new Article 1-111 to Law No. 447 of May 15, 1951, as amended, known as the “Retirement System of the Employees of the Government of the Commonwealth of Puerto Rico,[“] to amend Article 1.1 and to add a new Section 2.6 to Law 160-2013, as amended, known as the “Retirement System for Teachers of the Commonwealth of Puerto Rico Act,” and to add a new Article 1-A and to amend Article 2 of Law No. 12 of October 19, 1954, as amended, known as the “Retirement of the Judiciary Act,” to temper*

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*them to the public policy established in this Law; to amend Articles 1.4 and 1.6 of Law 106-2017, as amended, known as the “Law to Guarantee Payment to Our Retirees and to Establish a New Defined Contributions Plan for Public Servants; to amend Article 2 of Law No. 104 of June 29, 1955, as amended, known as the “Claims and Lawsuits Against the State Act,” to create a legal tool for compliance with this public policy; and for other related purposes.*

As provided in Law 2-2017, known as the Financial Advisory and Fiscal Agency Act (“Law 2”), the AAFAF was created with the purpose of acting as fiscal agent/financial advisor and informative agent of the Government of Puerto Rico, its agencies, instrumentalities, subdivisions, public corporations, and municipalities, thus assuming the responsibilities of fiscal agency and consultancy previously performed by the Government Development Bank for Puerto Rico.

In addition, Law 2-2017 establishes the AAFAF as the government entity in charge of the collaboration, communication, and cooperation between the Government of Puerto Rico and the Financial Oversight and Management Board for (FOMB). To those ends, Law 2-2017 provides that the AAFAF: (i) will be in charge of the supervision, execution, and administration of the Fiscal Plan approved and certified pursuant to PROMESA; (ii) will ensure that all entities of the Government of Puerto Rico comply with the Fiscal Plan; and (iii) will oversee all matters related to the restructuring, renegotiation, or adjustment of any existing or future obligation, and the contingency plans for any existing or future obligation of the Government of Puerto Rico. See, Article 5 of Law 2-2017.

Consonant with the foregoing, the expertise and central area of competency of the AAFAF lies in the financial advisory and fiscal agent functions, with regard to measures that impact compliance with: (i) the Fiscal Plan for Puerto Rico, as amended, certified on May 27, 2020, by the FOMB; (ii) certified plans for the public instrumentalities declared covered under PROMESA; and (iii) the Budget certified by the FOMB for the current fiscal year.

As is evident from its Preamble, HB 120 establishes as a matter of public policy, a rejection by the Government of Puerto Rico of any effort that seeks to advance a Debt Adjustment Plan proposed by the FOMB while the latter implements cuts to present or future pensions. On the other hand, the measure establishes the circumstances under which the Government of Puerto Rico could collaborate with the FOMB for the prompt resolution of the public debt restructuring process under Title III of PROMESA. To those ends, the measure creates the Law for an Honorable Retirement, which establishes the parameters of what constitutes a model Debt Adjustment Plan, predicated on a public policy of zero cuts to pensions for government employees.

The aforementioned public policy seeks to create a trust for the joint administration of the Retirement Systems of the central government, of the teachers, and of the judiciary (in

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hereinafter, FACSIR or Trust<sup>1</sup>), which will be financed with the individual's and employers' contributions corresponding to their participants and for "the savings produced through a Debt Adjustment Plan that protects 100% of the benefits existing for retirees and participants at the time of the filing of the petition for bankruptcy on May 3, 2017." In addition, the FACSIR will be financed by the savings acquired through the elimination of the debt service of any government bonds issued in violation of the laws and the Constitution of Puerto Rico.

On the other hand, HB 120 proposes: (1) to return to the Trust the income corresponding to individual contributions and interest not accrued through the various defined contributions programs implemented during the past two decades; (2) pursue the right to recover from the financial institutions responsible for the advice and illegal issuance of public debt, those amounts that have accrued in profits, commissions, or sales related to that contested debt; and (3) grant the retirees and participants of the Retirement Systems a proprietary interest on the assets and income of the trust to ensure the payment of their pensions, in a manner analogous to how the obligations of the Urgent Interest Fund Corporation and the Government Development Bank have been secured in their restructurings.

Finally, HB 120 proposes to amend Law No. 447 of May 15, 1951, as amended, which creates the "Retirement System for the Employees of the Government of the Commonwealth of Puerto Rico"; Law No. 12 of October 19, 1954, as amended, known as the "Law of Retirement of the Judiciary"; and Law 160-2013, as amended, known as the "Law of the Retirement System for Teachers of the Commonwealth of Puerto Rico," in order to temper them to the aforementioned public policy.

From the outset, we can see that this bill is largely identical to H/B/ 2434, discussed during the 18<sup>th</sup> Legislative Assembly. On that occasion, the bill was left pending in the Conference Committee, after the negotiations between legislative bodies to approve it did not prosper.

Due to the complexity of the bill, we will detail the discussion of those sections that, in our opinion, have the greatest impact, according to their corresponding chapter.

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<sup>1</sup> The FACSIR is the new Retirement System proposed in this bill, constituting a new trust in which are consolidated the resources and obligations of the Retirement System of the Employees of the Government of Puerto Rico, as established by Law No. 447 of May 15, 1951, as amended; the Retirement System for the Judiciary, created by Law No. 12 of October 19, 1954, as amended; and the Retirement System Teachers of Puerto Rico, as established by Law 160-2013. In addition, through the FACSIR, the management and expenses of the administration of those systems, after the confirmation of a viable Adjustment Plan (as defined in the bill), which will give preferential treatment to the Retirees and Participants of the Retirement Systems.

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### I.

#### CHAPTER 2 - PUBLIC POLICY

##### A.

Through Art. 2.01, HB 120 establishes a public policy of the Government of Puerto Rico, its Public Corporations, the Municipalities, and the Retirement Systems, predicated, in pertinent part, on:

[T]he most absolute and energetic rejection of any Adjustment Plan or Restructuring Agreement that reduces, harms, threatens, subordinates, or exacerbates the pensions, annuities, benefits, and other current claims of Retiree public servants and Participants of the Retirement Systems, more than what they were already reduced, harmed, threatened, or exacerbated prior to the filing of the petition for bankruptcy on May 3, 2017.<sup>2</sup>

Furthermore, the aforementioned public policy rejects any Adjustment Plan or Restructuring that intends to use Section 1129(b) of the United States Bankruptcy Code to impose additional cuts to Pensioned public servants and Participants of the Retirement Systems; along with any Adjustment Plan or Restructuring Agreement (i) whose viability or guarantee of payment for debt service requires increasing or establishing regressive taxes, rates, or other mechanisms that increase the water, electricity, transportation, education services and other essential public services to collect public income from the pockets of the working and pensioned families in Puerto Rico; and (ii) whose viability or guarantee of payment for debt service requires cuts to essential public services provided by the Government of Puerto Rico.

On the other hand, the same article states that no action will be taken to allow the confirmation of any Adjustment Plan that is incompatible with the public policy stated above, in order to ensure that any Adjustment Plan proposed by the FOMB complies with the requirements provided in Section 314(b)(3) and Section 314(b)(5) of PROMESA. Consonant with the foregoing, subsection (o) of Article 2.01 of HB 120 provides for the creation of the FACSIR, which will have be tasked with safeguarding, collecting, manage, and guaranteeing “the resources destined to the payment of all pensions and benefits to which our public servants are currently entitled, as detailed in Chapter 3 [of the bill], so that it allows protecting, capitalizing, and guaranteeing in perpetuity the retirement rights and benefits for the Retirees and Participants covered by this Law.”

While we agree with promoting a public policy of zero cuts in pensions, it is not recommended that the fiscal agency of the Government of Puerto Rico, which is in charge of the interaction of

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<sup>2</sup> Art. 2.01 subsection (b) of House Bill Number 120, filed on January 5, 2021. 19<sup>th</sup> Legislative Assembly of Puerto Rico, 1<sup>st</sup> Ordinary Session.

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the Executive Branch with PROMESA, maintain relations and communications with the FOMB. The broad prohibition proposed in the bill could have the effect of derailing those endeavors that the AAFAF carries out on a daily basis as the government's fiscal agency before the FOMB, which include fighting every day to avoid a cut in pensions.

### B.

Article 2.02 amends Article 2 of Law 2-2017, known as, the “Puerto Rico Financial Advisory Authority and Fiscal Agency Act” (AAFAF, *by its Spanish acronym*) (“Law 2-2017”), in order to change its purposes of (i) recovering the confidence of investors to have access to capital markets; (ii) addressing the budgetary imbalance between income and expenses; (iii) negotiating the terms of debt repayment; and (iv) decelerating the growth of future debt and reducing the current, for objectives consonant with the public policy outlined in HB 120.

With regard to the pensions and benefits of the participants, retirees, and pre-retirees who are beneficiaries of the Retirement Systems, subsection (b) of Art. 2.02 establishes that the AAFAF must act:

(1) protecting all of the pensions, annuities, benefits, and other claims of public servants, whether they are participants, retirees or pre-retirees, against any Adjustment Plan or Agreement with Creditors that reduces, damages, threatens, subordinates, or exacerbates pensions, annuities, benefits, and other current credits of public servant Retirees and Participants of Retirement Systems, more than they were already reduced, harmed, threatened, subordinated, or exacerbated prior to the filing of the bankruptcy petition under Title III of PROMESA on May 3, 2017;

(2) planning the creation of a Trust for the Joint Administration of Retirement Systems (FACSiR) that is custodian, collects, administers, and adequately guarantees the resources intended for the payment of all pensions and benefits under the same rights that our public servants had at the time of the filing of the bankruptcy petition under Title III of PROMESA on May 3, 2017, so that it allows protecting, capitalizing, and guaranteeing in perpetuity the rights and retirement benefits of the Retirees and Participants of the Retirement Systems;

(3) achieving and preserving an adequate financing coefficient for the FACSiR that is never less than 1.2, through the establishment of an independent trust with which the Government of Puerto Rico is contractually obligated to:

(A) transfer all of the Income of the FACSiR in timely fashion and as agreed;



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(B) not take any action that undermines the right of the trust to receive and manage all of the FACSIR's Income ; and,

(C) not take any action that limits or alters the rights and the autonomy of the trust to comply with the payment of pensions, annuities, benefits, and other outstanding credits of the Retirees and Participants of the Retirement Systems at the time of the filing of the petition for bankruptcy under Title III of PROMESA on May 3, 2017, and of the Participants and Retirees of the FACSIR."

In addition, HB 120 amends the purposes, authorities, and powers of the AAFAF provided in Art. 5 of Law 2-2017, in order to provide that said entity will be empowered to collaborate, together with the Governor of Puerto Rico and his representatives, in the creation, execution, supervision, and oversight of any Fiscal Plan and of any Budget, as well as any Adjustment Plan or Restructuring Support Agreement, as such terms are defined in PROMESA, that conform to the Public Policy set forth by HB 120. However, it is provided that the AAFAF:

[W]ill not be empowered to collaborate in the creation, execution, supervision, and oversight of any Fiscal Plan, Budget, Debt Adjustment Plan, or Restructuring Support Agreement as such terms are defined in PROMESA, which are contrary to the Public Policy provided in Article 2 of this Law.

It is forbidden, in addition, for the AAFAF to propose, endorse, create, acknowledge, or advance any Adjustment Plan or Restructuring Agreement that (i) is contrary to the Public Policy established by HB 120 (ii) whose viability or guarantee of payment for the service debt requires increasing or establishing taxes, fees, or other mechanisms that produce a regressive effect, make more expensive or diminish the resources available for water, electricity, transportation, education services and other essential public services; or (iii) that includes a recognition or repayment of any part of the Contested Bonds<sup>3</sup>, without the proper adjudication of a court with jurisdiction that such bonds were issued in accordance with applicable laws and regulations, including the Constitution of Puerto Rico.

As we mentioned previously, the bill seeks to amend AAFAF's organic act, to -basically- prohibit this public corporation from collaborating in the preparation of fiscal plans, budgets, or

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<sup>3</sup> Defined in HB120 as:

collectively, all bond issues carried out by the Government of Puerto Rico, its Public Companies, Municipalities, or Retirement Systems whose legal guarantees, guaranteed amounts, committed payment sources or legal authorizations have been challenged before the United States District Court for the District of Puerto Rico or before the General Court of Justice by the Government of Puerto Rico, its Public Companies, Municipalities, Retirement Systems, the FOMB, the official creditors and retirees committees, any other Interested Parties, as said term is defined in the United States Bankruptcy Code, or people with standing to intervene through the filing of a petition for bankruptcy, memorandum of law, motion, complaint, or adversary proceeding pursuant to any case filed and pending final resolution under Title III of PROMESA.

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adjustment plans on behalf of the Government of Puerto Rico. PROMESA provides certain authorities to the FOMB, and it is the AAFAF who represents our Government to ensure that the priorities of the elected officials (who bear the weight of the will of the people expressed at the ballot box) are addressed. Let us remember that it is the FOMB who went to the federal forum in the Title III lawsuit. To prohibit the main fiscal agency of the Government from participating or collaborating in the negotiations and processes under PROMESA would entail handing over to the FOMB (whose members the People of Puerto Rico did not elect nor have the possibility of electing), the creditors, and the Court total control over the destinies of Puerto Rico, without any representation of the democratically elected Government.

Similarly, HB 120 forces the administration of retirement systems to be transferred to the FACSIR, which is a legal entity apart from the Retirement Board created by Law 106-2017. It was said Law that guaranteed the pensions of our retirees, and returned control of their contributions to the participants. The trust proposed in this bill reverses this system, creating a new legal entity to manage the retirement systems, in contravention of the public policy established about 3 years ago by law.

### **Observations of Strict Legislative Technique**

It is necessary to emphasize that, as part of the effort to express ourselves regarding the bill in question, and given the circumstances that there is a desire to amend part of our organic law, we noted some errors of strict legislative technique. House Resolution Number 161 (HR 161), as approved on January 25, 2021, expressly provides in Section 13.12 regarding the “Amendments to the Current Law,” the following:

In those cases in which the bill presented amends some legislation in force, the parts that are eliminated from the text, if any, will appear in bold letters and between brackets “[**bold**].” Those parts that are added to the text already in force, if any, will appear in “*italics*.” A simple type of letter “letter” will be used for those parts of the text in which the legislative intent is to keep them unaltered.

From a reading of HB 120 as it was filed and referred to this Honorable Commission, as is pertinent to the legislative intention to amend Articles 2, 3, 5, and 9 of Law 2-2017, as amended, known as the “Law of the Financial Advisory Authority and Fiscal Agency of Puerto Rico,” it is pertinent to point out that it does not comply with what is procedurally provided in the Regulation “[t]hat they will govern the legislative procedures and the internal government of the House of Representatives of Puerto Rico that will govern during the Nineteenth (19<sup>th</sup>) Legislative Assembly, as set forth in HR 161. We point out the foregoing so that this Honorable House of Representatives will take the action corresponding to these matters, due to the strictly technical legislative consequences it may have.

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### C.

Art. 2.12 amends Art. 1.4 of Law 106-2017, as amended, known as the “Law to Guarantee Payment to Our Retirees and to Establish a New Defined Contributions Plan for Public Servants” (“Law 106-2017”), in order to change its public policy, emphasizing that the elimination of the employer contributions that were made to the three Retirement Systems, as well as the Additional Uniform Contribution, would be provisional; thus the responsibility for the direct payment of the same imposed on the Government of Puerto Rico would remain in force “while the controversy regarding the legal guarantees and legal authorizations, or lack of both, of the three bond issued carried out by the Retirement Systems Administration (ASR, *by its Spanish acronym*) in 2008 is argued in the United States District Court for the District of Puerto Rico.” In that sense, it intends to reverse the “Pay as you Go” system established by Law 106-2017, in favor of the old trust system supported by employer contributions.

To put into perspective the magnitude of the actuarial deficit regarding the payment of pensions for those who gave their productive lives to public service, we mention that the Retirement System for the Employees of the Government of Puerto Rico has approximately 120,000 active participants and 125,000 retirees and beneficiaries, to whom approximately \$1.7 billion are disbursed annually in pensions. The actuarial deficit of said system is approximately \$38 billion.<sup>4</sup>

Given this situation, and to address the humanitarian crisis that would have arisen if the payments to our retirees were interrupted as a result of the lack of liquid assets of the Retirement System, Law 106-2017 was enacted. Said statute adopted a “*pay-as-you-go*” plan whereby the public agencies, corporations, municipalities, and other entities considered employers pay a “Pay Go” charge that is equivalent to the amount in effect paid to the Retirees and Beneficiaries from each covered entity. On its part, the General Fund guarantees that the retirees continue to receive their payments as usual. This way, a new legal scaffolding was created that advances the wellbeing and best interests of the retirees, but also of the active participants who will retire in the future, whose contributions are being segregated prospectively according to Law 106-2017.

With the adoption of said statute, a public policy was advanced that seeks to defend those who are most vulnerable. As of the approval of this new plan, every year approximately \$2.3 billion is separated for the payment of the pensions of our retirees. Naturally, given the virtual insolvency of the retirement systems, in order to direct these funds to the payment of the pensions, the Government has made, and continues making, multiple adjustments in other areas

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<sup>4</sup> On the other hand, the Retirement System for Teachers has approximately 38,000 active participants and 42,000 retirees and beneficiaries, to whom approximately \$800 million are disbursed annually in pensions. The actuarial deficit of that system is approximately \$18 million. Finally, the Retirement System for the Judiciary has approximately 370 active participants and 490 retirees and beneficiaries. The actuarial deficit of this system has been estimated at \$700 million.

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of government work. If this urgent measure had not been taken, the consequences in the lives of thousands of Puerto Rican families would have been devastating.

### II.

#### **CHAPTER 3 - TRUST FOR THE JOINT ADMINISTRATION OF THE RETIREMENT SYSTEMS**

As is evident from its title, this Chapter focuses on the design and creation of the FACSIR, which will be made up of the Retirement System of the Employees of the Government of the Commonwealth of Puerto Rico, created by Law No. 447 of May 15, 1951, as amended, the Retirement System for the Teachers of Puerto Rico, created by Law 160-2013, as amended, and the Retirement System for the Judiciary of the Commonwealth of Puerto Rico, created by Law No. 12 of October 19, 1954, as amended, together with all of their Programs and Plans. It is also provided, that the powers and authorities conferred on the three Retirement Systems in their respective enabling acts will be consolidated in the FACSIR, although shared during the transition period.

In essence, the FACSIR will exist by virtue of its organic act once the authorization of an Adjustment Plan is legislated, modeled in accordance with the provisions of Chapter 4 of HB 120 and:

[I]t will assume all of the legal obligations of the Retirement Systems, including, without it being construed as a limitation, that of paying the pensions, the annuities, the benefits, and other credits of the retired public servants and participants of the Retirement Systems, without any impairment of any of the pensions, annuities, benefits, credits, and liabilities that were in effect prior to the filing of the bankruptcy petition under Title III of PROMESA on May 3, 2017.

On its part, Art. 3.03 provides, in summary, that the Government of Puerto Rico would agree to be contractually bound with the FACSIR and with any Participant or Retiree of the Retirement Systems or the FACSIR, to not take any action that undermines, limits, or alters either (i) the right of the FACSIR to receive the income granted through the bill (over which it would have full and exclusive ownership) and distribute the same to their Participants, and (ii) the rights, remedies, or collaterals of such Participants, under any Adjustment Plan modeled as provided in Chapter 4 of the bill. In addition, Art. 3.05 establishes a statutory lien on the pensions, annuities, and benefits of the Participants of the Retirement Programs, after approval of the aforementioned Adjustment Plan; preserving in their entirety the benefits existing prior to the petition for bankruptcy filed by the Government of Puerto Rico on May 3, 2017.

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As we pointed out previously, this new scaffolding is diametrically opposite to the public policy established in Law 106-2017, which has allowed the payment of the pensions of our public servants during the past three years.

On the other hand, Art. 3.10 proposes contractually obligating the Government to reestablish the fringe benefits eliminated over the last few years, once it is determined that this would “not represent a solvency risk or limit the FACSIR's ability to sustain the Adequate Financing Coefficient (as defined in the bill).” In addition, those benefits are expanded “to include temporary public employees, irregular public employees, employees of companies from the private sector contracted by the Government of Puerto Rico, the FACSIR, and any companies from the private sector contracted by the FACSIR, and any companies from the private sector that have other investments, subsidies, exemptions, grants, or participation of the Government of Puerto Rico [...]”

On the other hand, Art. 3.13, in turn, contractually obligates the Government to transfer the following amounts to the Trust, as restitution of individual contributions and recognition of damages for interests not accrued under the Retirement Savings Account Program.

- Two thousand sixty-three million, three hundred seventy-six thousand dollars (\$2,063,376,000) for the concept of refund of the individual contributions retained and not remitted to the individual accounts of the Participants of defined contributions programs since January 1, 2000, until the filing of the petition for bankruptcy on May 3, 2017.
- Two hundred thirty-two million, one hundred sixty-three thousand dollars (\$232,163,000), for the concept of a credit to compensate for the compound interest not accrued in the individual accounts of the Participants of these programs.
- One thousand four hundred million dollars (\$1,400,000,000) consigned in Joint Resolution Number 46 of July 27, 2019;
- eight hundred ninety-five million, five hundred thirty-nine thousand dollars (\$895,539,000), charged to the revenues of the General Fund, in excess of the amount included in the Certified Budget for the fiscal year 2018-2019 and fiscal year 2019-2020, deposited in the uncommitted funds of the State Treasury

On this issue, we highlight that the Adjustment Plan presented by the FOMB within the process of restructuring the public debt contemplates an approximate disbursement of \$1.4 billion dollars for the restitution of the individual contributions required by the “Sistema 2000.” In addition, it enables the creation of a trust to guarantee the benefits of the retirees and that the mismanagement of the past does not happen again.

III.

CHAPTER 4 - ADJUSTMENT PLAN

As for the Adjustment Plan proposed by this Chapter, we emphasize that PROMESA creates the FOMB with the express purpose of providing the mechanisms whereby the covered entities achieve fiscal responsibility and access to capital markets.<sup>5</sup> On the other hand, PROMESA establishes that the FOMB is the entity with the *exclusive* power to submit an Adjustment Plan to the Court that processes the debt restructuring process under Title III. In addition, it is up to the FOMB to present said Adjustment Plan, if it determines at its sole discretion that it complies with the Certified Fiscal Plan.<sup>6</sup> Therefore, any state provision that provides for the development or presentation of an Adjustment Plan could have the effect of being inconsistent with the provisions of PROMESA and could be challenged by the local entity created by said federal statute.

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<sup>5</sup> SEC. 101. FINANCIAL OVERSIGHT AND MANAGEMENT BOARD.

(a) PURPOSE.—The purpose of the Oversight Board is to provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets.

<sup>6</sup> SEC. 104. POWERS OF OVERSIGHT BOARD.

(J) RESTRUCTURING FILINGS.-

(1) IN GENERAL. — Subject to paragraph (3), before taking an action described in paragraph (2) on behalf of a debtor or potential debtor in a case under title III, the Oversight Board must certify the action.

(2) ACTIONS DESCRIBED. — The actions referred to in paragraph (1) are-

(A) the filing of a petition; or

(B) the submission or modification of the plan of adjustment.

(3) CONDITION FOR PLANS OF ADJUSTMENT. — The Oversight Board may certify a plan of adjustment only if it determines, in its sole discretion, that it is consistent with the applicable certified Fiscal Plan.

SEC. 312. FILING OF PLAN OF ADJUSTMENT.

**EXCLUSIVITY. — Only the Oversight Board, after the issuance of a certificate pursuant to section 104 (j) of this Act, may file a plan of adjustment of the debts of the debtor.**

SEC. 315. ROLE AND CAPACITY OF OVERSIGHT BOARD.

(a) ACTIONS OF OVERSIGHT BOARD. — For the purposes of this title, the Oversight Board may take any action necessary on behalf of the debtor to prosecute the case of the debtor, including-

(1) Filing a petition under section 304 of this Act;

(2) submitting or modifying a plan of adjustment under sections 312 and 313; or

(3) otherwise generally submitting filings in relation to the case with the court.

(b) REPRESENTATIVE OF DEBTOR. — **The Oversight Board in a case under this title is the representative of the debtor** (emphasis ours).

## TRANSLATION

We must remember that, with regard to the process of the presentation of the Adjustment Plan, PROMESA provides that the same be subject to the approval of the Title III Court, who will have the power to confirm the same, subject to compliance with certain conditions.

### IV.

#### CONCLUSION

We wish to reaffirm our support for every effort to protect the beneficiaries of the retirement systems of the Government of Puerto Rico, people who gave their productive lives for the benefit of the People of Puerto Rico. In public service we are called upon not to make decisions that are the result of lack of reflection, and that can have as an effect intentions opposed to the well-being that we all wish for our people. It must be crystal clear for the legislative record; the public policy of Governor Pedro Pierluisi and this Administration is; no more cuts to pensions as a result of the Title III processes.

Now then, HB 120 deals with highly complex issues that are currently before the consideration of the Federal Court as part of the debt restructuring processes. As is known, these processes are already entering their fourth year. However, Judge Laura Taylor Swain ordered the FOMB that on or before February 10, 2021, it submit to her consideration an amended Adjustment Plan or a terms sheet for a future Adjustment Plan. In due course, this Legislature could be called upon to express itself with respect to the content of an amended Adjustment Plan. Given that, we very respectfully understand that the decisions that affect said process must wait for an amended Adjustment Plan to be presented, to then be reevaluated in the light of the new circumstances that arise.

On the other hand, last January 29, 2021, the FOMB expressed itself regarding HB 120. In said communication, the FOMB indicated that the bill was inconsistent with the Certified Fiscal Plan and multiple PROMESA provisions since, according to the FOMB, it attempts to interfere with the exclusive powers granted to the FOMB to serve as the exclusive representative of the Title III debtors and to formulate, propose, and pursue the respective Adjustment Plans. In its opinion, the FOMB understands that such action violated various provisions of PROMESA, including Sections 104(j)(1), 104(j)(3), and 312 a). Thus, the formal position of the FOMB is that this bill cannot be approved as it would be inconsistent with the Fiscal Plan. Said communication was sent to the presidents of the legislative chambers, as well as to the Governor of Puerto Rico.<sup>7</sup>

In view of the foregoing, we believe that, if the legislative processing of this bill continues, as written, the statute would face serious pitfalls if challenged by the FOMB in the pertinent judicial forums. It is necessary to remember that Judge Laura Taylor Swain has previously decided that,

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<sup>7</sup> See Exhibit.

## TRANSLATION

under PROMESA, the federal court has allowed the FOMB to invalidate local legislation that is inconsistent with the certified fiscal plan.<sup>8</sup>

If this Honorable body approves this bill, as written, during this session, the AAFAF very respectfully understands that the Law will face irredeemable challenges if it is challenged by the FOMB in the pertinent judicial forums. We insist on the communication received, as recent as last week, in which the FOMB let it be known that its formal position is that this bill should not be approved as it would be inconsistent with the Fiscal Plan. Therefore, if this bill is approved as written, it will most likely be litigated in the Federal Court.

In addition, it is necessary to point out that as recently as December 23, 2020, Judge Swain issued an Opinion and Order whereby she ordered the Government of Puerto Rico to stay the implementation and effectiveness of five (5) statutes recently enacted by the Puerto Rico Legislature.<sup>9</sup> Thus, given the clear precedents of the Title III Court, bills such as this one cannot be implemented by our government without the endorsement of the FOMB. Otherwise, it will lead to lawsuits in which the Government of Puerto Rico would have to incur significant expenses in legal representation and that, as we have discussed, could be in conflict with clear precedents of the Title III Court.

In conclusion, we support the principle of zero pension cuts that appears to permeate the entire bill under analysis, but we are impeded from endorsing H.B. 120 as written, on the grounds mentioned above.

We remain at your disposal to answer any question on the matter.

Cordially,

(Signed)

Omar J. Marrero Díaz, Esq.  
Executive Director

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<sup>8</sup> See, decision [in] the case regarding Law 29-2019, *The Fin. Oversight & Mgmt. Bod. For Puerto Rico v. Vázquez Garced (In re The Fin. Oversight & Mgmt. Bd. For Puerto Rico)* Adv. Proc No. 19-00393 (LTS), 2020 WL 1873380, at \*7 (D.P.R. Apr. 15, 2020).

<sup>9</sup> “Opinion and Order Denying the Government's Motions for Summary Judgment and Granting in Part the Oversight Board's Motions for Summary Judgment”) in the case of PROMESA Title III No. 17 BK 3283-LTS, Adv. Proc. No. 20-080-LTS, Adv. Proc. No. 20-082-LTS. Said Opinion and Order impacted the following statutes:

- Law No. 82 - 2019 - "Regulatory Law of Pharmacy Benefits and Services Administrators"
- Law No. 138 -2019- To add Article 31,031 and Article 31,032 to Chapter 31 of Law No. 77 of 1957, Puerto Rico Insurance Code
- Law No. 181 - 2019 - "Salary Adjustment for Members of the Puerto Rico Fire Department Bureau Act"
- Law No. 176 -2019 - To amend Law No. 8 of 2017, Law for the Administration and Transformation of Human Resources in the Government of P.R. and Law No. 26 of 2017, Law of Compliance with the Fiscal Plan.
- Law 47-2020 that amends Law 60-2019, as amended, known as "Puerto Rico Incentives Code.”





## Section 204(a) Certification for Act 7-2021 Enacted on June 9, 2021

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### I. Introduction

This document should be considered for all intents and purposes a submission under Section 204(a) of PROMESA, 48 U.S.C. §2144(2)(B).

### II. Purpose of Legislation

Act 7-2021 (“Act 7”), officially titled the “Dignified Retirement Act” (*Ley para un Retiro Digno*), establishes, among others, a public policy that rejects any efforts seeking to advance a Plan of Adjustment (“POA”) proposed by the Financial Oversight and Management Board for Puerto Rico (“Oversight Board” or “FOMB”), if such POA includes cuts to present or future pensions. Also, Act 7 defines the circumstances under which the Government of Puerto Rico (“Government”) can collaborate with the Oversight Board for the prompt resolution of the public debt restructuring process under Title III of PROMESA. To that end, this new legislation sets forth the parameters of a model POA in accordance with the public policy of zero pension cuts to Government employees.

In addition, Act 7 prohibits the Government from cooperating with the Oversight Board if the POA includes pension cuts, and orders the Government to draft and submit to the Legislative Assembly a specific POA, as defined in Chapter 4 of the Act. Moreover, Act 7 orders the creation—under certain circumstances—of a pension trust for the joint administration of the Retirement Systems (“FACSiR”), and challenges the validity of certain bond issuances.

As explained in the Statement of Motives, the primary reason for enacting Act 7 is to establish mechanisms that ensure the payment of present pensions to retirees, as well as the future pensions of active government employees, while avoiding to continue penalizing and imposing cuts on the already affected government workforce. In support of said public policy, the Statement of Motives also outlines the context in which the POA has been developed, and subsequently amended as of May 11, 2021, maintaining the proposal to freeze

## Section 204(a) Certification Act 7-2021

benefits for participants of the Retirement Systems and a pension reduction of 8.5% applicable to beneficiaries that receive more than \$1,500 per month.

Chapter 1 of Act 7 includes several general provisions, declares a state of financial emergency for the Government and the Retirement Systems, and provides certain definitions of terms used throughout the Act. Among said general provisions, Article 1.02 declares the primacy of this Act over any other state law and, in general, renders without effect any law or provision inconsistent with Act 7. Article 1.03 states that the provisions of Act 7 shall apply to the Government, public corporations, municipalities, and any other entity or public instrumentality created under the laws and the Constitution of the Commonwealth of Puerto Rico.

Pursuant to the definitions of the terms included in Article 1.05, a specific Trust is created for the joint administration of the Retirement Systems. Through this trust, the resources and obligations of the Retirement Systems would be consolidated, and their management and administration expenses would be centralized, after the confirmation of a viable, fair and equitable adjustment plan for the people and for the beneficiaries and participants of the Retirement Systems. Additional provisions pertaining to the FACSIR are included below in the discussion of Chapter 3.

Chapter 2 of Act 7 establishes as public policy that rejects any efforts seeking to advance a POA proposed by the Oversight Board if such POA includes present and future pension cuts. Also, this public policy rejects any POA or Restructuring Agreement that intends to use Section 1129 (c) of the Federal Bankruptcy Code to increase or establish regressive taxes that requires cuts to essential public services.

Furthermore, Chapter 2 states that no action may be taken by the Government to allow the confirmation of any POA that is incompatible with the public policy set forth in Act 7. Lastly, the public policy proposed in Chapter 2 of Act 7 grants pensioners and participants of the Retirement Systems a proprietary right over the assets and income of FACSIR to ensure the payment of their pensions.

Chapter 3 of Act 7 mandates the creation of FACSIR –under certain conditions– for the purpose of restructuring the public retirement systems under a new and sole defined benefit system. As part of the creation of the FACSIR, all powers and faculties of the ERS, the TRS and the JRS, (together, the “Retirement Systems”), are intended to form part of this new structure that will operate with complete

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independence from the Government, with its own Board of Directors as governing body.

FACSiR will assume the legitimate obligations of the Retirement Systems, including, without any limitation: pension payments, annuities, benefits and other claims from public servants, pensioners and participants of the Retirement Systems, without affecting prevailing pension structures, annuities, benefits, claims and responsibilities that were in place before submitting the bankruptcy petition under Title III of PROMESA on May 3<sup>rd</sup>, 2017.

Articles 3.11 and 3.12 establish that individuals will contribute in accordance to their salary, pursuant to progressive valuation. These individual contributions should produce to the FASCiR the equivalent of 10% of the average value of the ordinary expenses of the Government. Also, the Government will contribute in accordance with the salary of the employees at the time of withholding their individual contribution, and will submit to the FASCiR the employer contribution, which will be calculated taking into consideration progressive valuations.

Lastly, Article 3.13 also requires the Government to allocate the following quantities to the FASCiR as restitution for the individual contributions and as a recognition of the damages caused by the loss of interest under the Retirement Savings Account Program. These quantities can be described as follows:

- \$2,063,376,000.00 as restitution for individual contributions withheld and not remitted to the individual accounts of Participants from defined contribution programs from January 1<sup>st</sup>, 2000 through the submission of the Title III petition on May 3<sup>rd</sup>, 2017;
- \$232,163,000.00 to compensate for interest that should have been earned by individual contributions pursuant to System 2000;
- \$1,400,000,000.00 allocated through Joint Resolution 46 of June 27<sup>th</sup>, 2019;
- \$895,539,000.00 originating from unobligated resources from the Certified Budget for FY19 and FY20.

Chapter 4 of Act 7 creates an alternative POA, states the priorities for the repayment of claims and creditors, according to the classes defined therein, the caps and levels of repayments, and other conditions of the POA for the Government of Puerto Rico, its public corporations and municipalities. Article 4.01 of Act 7 establishes classes of creditors and categories of claims in

## Section 204(a) Certification Act 7-2021

accordance with the Public Policy of Act 7, namely: (1) Claims on Contested Bonds, (2) Claims on Non-Contested Bonds, (3) Claims of Pensioners and Participants of the Retirement Systems, and (4) General Claims of Unsecured Creditors. Also, Article 4.01 requires the implementation of an alternative POA that must comply with Act 7's classification of bonds and creditors; provides no recovery for Claims on Contested Bonds; limits recoveries for Claims of Non-Contested Bonds; leaves Claims of Pensioners and Participants of the Retirement Systems unimpaired; redirects portions of pre-petition debt service payments of Contested Bonds to fund FACSIR, among other conditions.

According to the public policy established in Act 7, as it relates to the POA, Article 2.01 states that the Government: (1) rejects any POA or debt restructuring agreement that reduces or worsens the pensions, annuities, benefits and other current credits of public servants, Pensioners and Participants of the Retirement Systems; (2) rejects any POA that seeks to use Section 1129(b) of the United States Bankruptcy Code to impose additional cuts on Pensioners and Participants of Retirement Systems; (3) rejects any POA whose viability or guarantee of payment for debt service requires increasing or establishing regressive taxes, rates or other mechanisms that cause water, electricity, transportation, education and other essential public services to be more expensive; (4) rejects any PAO whose viability or guarantee of payment for the debt service requires cuts to essential public services provided by the Government of Puerto Rico, its public corporations and municipalities, including, without limitation, education, health, environmental protection, housing, sanitation and solid waste management, security and emergency management, sewage and water processing, electrical energy, road infrastructure and mass transportation; (5) states that no action may be taken that will allow the confirmation of any POA that is incompatible with the provisions of Act 7, including, without limitation, the enactment or repealing of legislation and regulations, or any necessary authorization; and (6) will guarantee that no funds and resources designated for Title III activities and procedures of the Government, its public corporations and municipalities, shall be used in relation to any POA incompatible with the provisions of Act 7.

In addition, Article 4.02 of Act 7 prevents the Government of Puerto Rico from designing, proposing, advancing or implementing any POA that requires the use of the mechanism provided in Section 1129(b) of the Bankruptcy Code to the detriment of any of the classes of creditors that group the claims of Pensioners and Participants of the Retirement Systems. In other words, this Article prohibits governmental cooperation with the Oversight Board for formulating and implementing any POA that fails to comply with Act 7.

### III. Analysis and Assumptions

Act 7 appears to be contrary to several provision of PROMESA. Specifically, Act 7 could be interpreted as contrary to Section 312 of PROMESA insofar as it could be read to interfere with the powers granted to the Oversight Board as the sole entity authorized to develop and submit a POA to the Title III Court. In addition, it is the responsibility of the Oversight Board to certify said POA, if it determines in its sole discretion that it complies with the applicable Certified Fiscal Plan. Hence, by requiring the development of an alternative that must comply with the new public policy established in Chapter 2 of Act 7, and by amending Act 2-2017 to assign to AAFAF the duty and authority to develop this alternative POA consistent with said public policy, Act 7 could be interpreted as contrary to Section 312 of PROMESA.

Also, several provisions of Act 7 could be interpreted as preventing the Oversight Board from discharging its duties by barring government cooperation with the Oversight Board. Act 7 also amends AAFAF's Organic Act to, in essence, prevent collaboration in the preparation of fiscal plans, budgets or plans of adjustments on behalf of the Government if these documents are contrary to the public policy established in Act 7. This ban on implementation or collaboration in relation to any POA that departs from the model POA established in Act 7 could be interpreted as contrary to Section 108(a)(2) of PROMESA.

Some provisions of Act 7 could be interpreted as modifying public debt without prior Oversight Board consent. In that sense, claims of Pensioners and Participants of the Retirement Systems under the proposed POA, as set forth in Article 4.01 of Act 7, must receive recovery through the establishment of the FACSIR. This could be interpreted to be in conflict with Section 207 of PROMESA, and the Certified Fiscal Plan, since it modifies billions of dollars of debt to retirees without the approval of the Oversight Board.

Finally, Act 7 could also be interpreted to be in violation of the Commonwealth Certified Fiscal Plan. In that sense, Act 7 discards the pension reform measures contemplated by the Fiscal Plan certified on April 23, 2021 ("Certified Fiscal Plan"), through the amendments to the previously mentioned laws that established the Retirement Systems.

For purposes of this 204 Certification, the Government has assumed the potential cost of implementation of some provisions of Act 7. For example, it

## Section 204(a) Certification Act 7-2021

assumed that the FACSIR is to be created, even though some provisions of Act 7 could be interpreted to mean that the creation of FACSIR is contingent upon certain conditions being met, including the invalidation of Contested Bonds, as defined in the Act, and the approval of the POA proposed in Chapter 4 of the Act.

### IV. Fiscal Impact

Based on the analysis and assumptions discussed above, and as certified by the Department of Treasury and the OMB, the implementation of Chapter 2 has a significant yet, at this time, undetermined impact on the expenditures of the Government for the pertinent fiscal years covered by the Certified Fiscal Plan, particularly, to the extent that Chapter 2 of Act 7 discards the pension reform measures contemplated by the Fiscal Plan and establishes a new pension system that requires an initial funding not contemplated in the FY21 Certified Budget. **See Attachments A and B.** Therefore, implementation of some provisions of Act 7 might require reprogramming budgeted resources since the current Certified Budget and the Oversight Board's proposed budget for FY22 do not contemplate resources for the retirement structure established in Act 7.

It should be noted that the Certified Fiscal Plan states that restructuring the pension systems will achieve \$198 million in savings from FY2022 to FY2026. See Section 20.2 of the 2021 Fiscal Plan for Puerto Rico at 274. Therefore, the Government can assume, for purposes of this Section 204 Certification, that discarding these measures, as proposed in Act 7, would imply a fiscal impact equivalent to or greater than the savings projected of \$198 million. In addition, Chapter 3 of Act 7 requires an allocation of \$4.5 billion not contemplated in the FY2021 Certified Budget (and not previously disbursed pursuant to previous Joint Resolutions):

- \$2,063,376,000.00 for restitution concept of individual contributions withheld and not remitted to individual accounts of Participants from defined contribution programs since January 1<sup>st</sup>, 2000 through the submission of the Title III petition on May 3<sup>rd</sup>, 2017;
- \$232,163,000.00 to compensate for interest that should have been earned by individual contributions pursuant to System 2000;
- \$1,400,000,000.00 allocated through Joint Resolution 46 of June 27<sup>th</sup>, 2019;
- \$895,539,000.00 originating from unobligated resources from the Certified Budget for FY19 and FY20.

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For purposes of illustrating this potential fiscal impact for the covered years by the Certified Fiscal Plan, see **Figure 1**. It should be noted, however, that Act 7 may entail an additional fiscal impact on expenditures that at the moment remains undetermined.

### **V. Determination of Compliance or Non-Compliance with the Certified Fiscal Plan**

Based on the above analysis and assumptions, and as required by Section 204(a)(2)(C) of PROMESA, the Government hereby notifies the Oversight Board that Act 7 is significantly inconsistent with the Certified Fiscal Plan.

The reformulation of Puerto Rico's pension system, as stated in Act 7, is contrary to the provisions of the Fiscal Plan and the assumptions of the POA currently filed before the Title III Court. Accordingly, its provisions could be interpreted as contrary to several provisions of PROMESA and to the powers granted to Oversight Board. See e.g., Sections 108(a)(2), 312 and 313 of PROMESA, 48 U.S.C. secs. 2128, 2172-73. In addition, Chapter 3 of Act 7 seeks to have debt of the Government of Puerto Rico issued, guaranteed and/or modified without the approval of the Oversight Board pursuant to Section 207 of PROMESA, 48 U.S.C. sec. 2147.

Concerning the Certified Fiscal Plan, Articles 3.02, 3.03, 3.05 and 3.09 of Act 7 require the following: (1) transfer all current legal obligations, pensions and annuities to the FACSIR; (2) establish a contractual obligation of the Government of Puerto Rico in favor of pensioners and the FACSIR; (3) create a statutory lien over all of the rights, titles, interest, assets and incomes of the FACSIR in an effort to secure pensions, annuities and benefits of the pensioners and (4) maintain the pension benefits that were in place before the Government filed a petition under Title III of PROMESA. This measures are significantly inconsistent with the reform measures established on Section 20.2 of Chapter 20 of the Certified Fiscal.

VI. Appendix

Figure 1: Projected Fiscal Impact for Puerto Rico

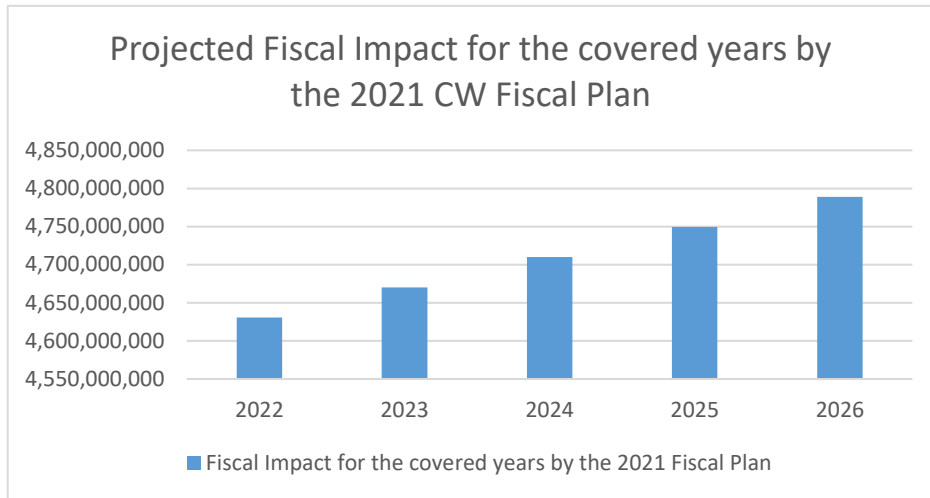
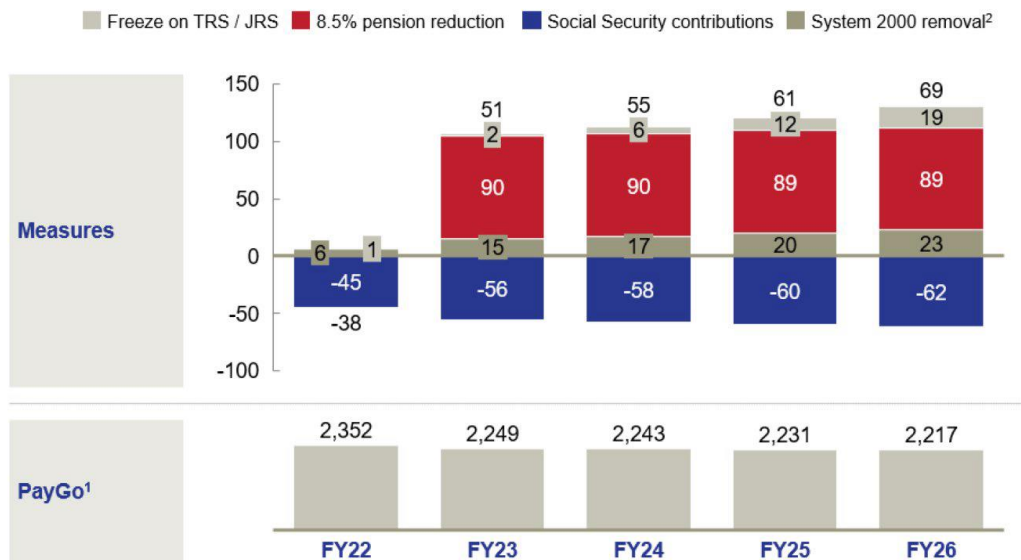


Figure 2: Pension Reform Summary from the Certified Fiscal Plan  
Exhibit 140: Pension reform summary of impact

Summary of pensions reform impact, \$M



<sup>1</sup> Post-measures

<sup>2</sup> System 2000 removal savings are in exchange for a one-time payment of ~\$1.5 billion per Section 20.2.4



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**VII. Reports**

- Attachment A (Department of the Treasury)
- Attachment B (Office of Management and Budget)
- Attachment C (Letter related to Joint Resolution 46-2019)
- Attachment D (Signing Statement 2021-001 of the Governor of Puerto Rico)