



GOVERNMENT OF PUERTO RICO
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY
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VIA ELECTRONIC MAIL

September 1st, 2021

Hon. Miguel Cardona

Secretary
United States Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: **Government of Puerto Rico
Maintenance of Efforts Full Waiver Request**

Hon. Secretary Cardona,

As Fiscal Agent and Financial Advisor of the Government of Puerto Rico (“Commonwealth”), and its Component Units (“CU’s”), the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”, for its Spanish Acronym) appreciates the consideration provided by the United States Department of Education (“USDE”) for the Commonwealth to properly address the Maintenance of Efforts (“MoE”) requirement, as required by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)², the Coronavirus Response and Relief Supplemental Appropriations Act (“CRRSA”)³, and the American Rescue Plan (“ARPA”)⁴.

As discussed with several USDE staff members during the past months, although the initial deadline for the Commonwealth to submit baselines figures for the MoE requirement was May 17, 2021, several noteworthy factors had to be dully analyzed beforehand by the Commonwealth to provide a proper response

¹ As levied by its Organic Act, Act No. 2-2017.

² Public Law 116-136 § 18008 (2020).

³ Public Law 116-260 § 317 (2021).

⁴ Public Law 117-2 § 2004(a) (2021)



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to the captioned matter. For completeness purposes, we hereby summarize said factors below.

By calendar year 2016, the Commonwealth and its CUs had accumulated over \$50 billion in unfunded pension liabilities and over \$70 billion of debt and was facing an imminent default. Because the Commonwealth and its CUs cannot take advantage of Chapter 9 of the United States Bankruptcy Code and an attempt to create a territorial bankruptcy law was struck down by the United States Supreme Court, Congress stepped in to head off Puerto Rico's financial and debt crisis by passing the Puerto Rico Oversight, Management, and Economic Stability Act⁵ ("PROMESA"). PROMESA imposed an automatic stay on Puerto Rico's debt obligations and created the Financial Oversight and Management Board for Puerto Rico (the "FOMB" or "Oversight Board"). The Oversight Board is tasked with restructuring Puerto Rico's staggering debt burden and restoring sustained economic growth to Puerto Rico so that the Commonwealth can achieve fiscal balance and regain access to the capital markets.

Immediately after its formation, the Oversight Board began working with the Commonwealth to create a fiscal plan designed to achieve fiscal responsibility and access to the capital markets. The initial outcome of this work was the Commonwealth's Fiscal Plan that the Oversight Board certified on March 13, 2017. A few months later, the Oversight Board commenced Title III cases for the Commonwealth, and some of its CUs⁶, thereby imposing an automatic stay on the enforcement of debt obligations of these entities. Although significant advances and progress have been made, there is still some road to tackled ahead.

⁵ Public Law 114-187 (2016).

⁶ Such as: the Puerto Rico Sales Tax Financing Corporation, Highway Transportation Authority, Employees Retirement System, and the Puerto Rico Electric Power Authority. Thereafter, on September 27, 2019, the Oversight Board also commenced a Title III case for the Public Buildings Authority.



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In addition to these restructuring proceedings, over the last four years, the people of Puerto Rico have endured a series of natural disasters and emergencies without precedent in modern history:

- On September 6, 2017 and September 20, 2017, respectively, Hurricanes Irma and Maria struck Puerto Rico, causing unprecedented humanitarian, economic, and infrastructure-related damages and upending the daily lives of Puerto Rico's over three million residents. Thousands of residents were left homeless, basic utilities were completely shut down, and schools, hospitals, and businesses were destroyed. Tens of thousands of Puerto Ricans fled the Island. The Federal Government's response has become one of the largest and most complex disaster recovery efforts in U.S. history.
- On December 28, 2019, the first of many significant earthquakes shook Puerto Rico, registering at a magnitude of 4.7 on the Richter scale. On January 6, 2020, Puerto Rico experienced a 5.8 magnitude earthquake. The next day, Puerto Rico experienced a magnitude 6.4 earthquake, its strongest and most destructive earthquake in a century. Thereafter, on May 2, 2020, an earthquake with a 5.4 magnitude struck Puerto Rico's southwestern coast. The seismic event, which briefly knocked out power in some areas, hit near the city of Ponce. These earthquakes represent only four of more than 1,000 overall earthquakes of magnitude 3 or greater in Puerto Rico during 2020, with six over a magnitude 5.5. Hundreds of structures—including homes, local government institutions, small businesses, and houses of worship—have been damaged or destroyed by these devastating shocks. According to a January 29, 2020, report published by the United States Geological Survey ("USGS"), there is a high likelihood of continued, material aftershocks over the course of the next several years. While there likely will be fewer earthquakes over time, Puerto Rico continues to be at risk of potentially catastrophic earthquakes.



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- On top of the hurricanes and earthquakes, Puerto Rico—like the rest of the world—was confronted with the global and ongoing COVID-19 pandemic in early 2020, which has required immediate action and persistent vigilance.

The above-mentioned difficulties have certainly impacted the Commonwealth's budgets and its financial projections. Consequently, the Commonwealth hereby **formally requests a full waiver** of the MoE requirement included in the CARES Act, the CRRSA, and the ARPA. For clarity purposes, this waiver request is with respect to the following funds: the Elementary and Secondary School Emergency Relief Fund I ("ESSER I"), the Governor's Emergency Education Relief Fund I ("GEER I"), ESSER II, GEER II and ESSER III.

If further information or details are needed with respect to this request, please feel free to reach out at your convenience.

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Omar J. Marrero,

Executive Director

On behalf of the Hon. Pedro Pierluisi, Governor of Puerto Rico

C/c: Hon. Pedro Pierluisi
Hon. Francisco Parés
Mr. Juan C. Blanco, Esq.
Mr. Eliezer Ramos, Esq.
Ms. Natalie Jaresko
Ms. Ginorly Maldonado

Enclosures