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Congress of the United States
House of Representatives
Washington, DC 20515-5400

July 12, 2016

Hon. Alejandro García Padilla
Governor of Puerto Rico
La Fortaleza
PO Box 9020082
San Juan, Puerto Rico 00902-0082

Dear Governor:

I write regarding Section 204(a) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (PROMESA), which became law on June 30, 2016. The Puerto Rico government must take certain steps to comply with Section 204(a), and I respectfully submit that it would be prudent to take some of those steps now, before the members of the Oversight Board are appointed.

As you are aware, Section 201 of PROMESA requires the Governor to craft a multi-year Fiscal Plan that meets specific requirements, subject to the approval of the Oversight Board. Section 202 requires the Governor and the Legislative Assembly to prepare an annual Budget that complies with the applicable Fiscal Plan, again subject to the approval of the Oversight Board. Section 203 provides a framework for the Oversight Board to ensure that the Puerto Rico government does not deviate from the applicable Budget during the course of the fiscal year.

Section 204(a) gives the Oversight Board the power to review individual legislative acts enacted by the Puerto Rico government, but this power is limited and well-defined. Specifically, under PROMESA, the governor will send each locally-enacted law to the Oversight Board within seven business days of its enactment. However, as long as the governor also transmits to the Oversight Board (1) a “score” of the locally-enacted law from the Puerto Rico Office of Management and Budget (OGP, for its Spanish-language acronym) or another appropriate government entity that estimates the impact of the locally-enacted law on expenditures and revenues, and (2) a certification from OGP or another appropriate government entity that the locally-enacted law is not significantly inconsistent with the applicable Fiscal Plan, then the locally-enacted law is completely insulated from review by the Oversight Board.

The only instances in which the Oversight Board would even be *authorized*—not required—to prevent enforcement of a locally-enacted law is if the Puerto Rico government, after being given numerous opportunities, either (1) fails to transmit to the Oversight Board the cost estimate of the locally-enacted law or the certification that the locally-enacted law is not significantly inconsistent with the Fiscal Plan, or (2) certifies that the law *is* significantly inconsistent with the

Fiscal Plan, but fails to provide a reasonable explanation to the Oversight Board for such inconsistency. In summary, as long as the Puerto Rico government adheres to the most basic requirements of responsible legislating, it is exceedingly unlikely that any locally-enacted law will ever be *reviewed* by the board, much less *reversed*.¹

In light of the foregoing, I urge your administration to establish a formal system whereby OGP or another appropriate government entity will provide a publicly-available estimate of the impact of legislation on expenditures and revenues. That way, OGP—or the other entity—will be in a position to make the necessary certification once the members of the Oversight Board have been appointed and an approved Fiscal Plan is in place. Beyond serving to ensure compliance with Section 204(a), having an independent body produce formal cost estimates of legislation will promote fiscal discipline on the part of the Puerto Rico government and will benefit the Puerto Rico public.

Given that Puerto Rico is in the midst of a fiscal crisis, it stands to reason that the Puerto Rico government should not be enacting any legislation without having a reasonable estimate of its fiscal impact. It is my understanding that, in 2006, the Puerto Rico government enacted legislation—Section 8 of Act 103-2006—that prohibited any bill from being approved unless OGP and the Puerto Rico Department of the Treasury certified that there were public funds available to pay for that bill and expressly identified the source of those funds. It is my further understanding that, in 2013, the Puerto Rico government enacted legislation—Act 67-2013—that repealed Section 8 of Act 103-2006.

For their situational awareness, I have copied the Director of OGP and the bipartisan leadership of the Puerto Rico Legislative Assembly.

Sincerely,



Pedro R. Pierluisi
Member of Congress

cc: Hon. Luis F. Cruz Batista, Director, Puerto Rico Office of Management and Budget (OGP)
Hon. Eduardo Bhatia, President, Puerto Rico Senate
Hon. Larry Seilhamer, Minority Leader, Puerto Rico Senate
Hon. Jaime Perelló, Speaker, Puerto Rico House of Representatives
Hon. Jenniffer González, Minority Leader, Puerto Rico House of Representatives

¹ It bears emphasis that this provision is a substantial improvement over the corresponding provision in the first version of PROMESA, released as a “discussion draft” on March 29, 2016. The discussion draft gave the Oversight Board the same broad power to review legislative acts that was given to the “District of Columbia Financial Responsibility and Management Assistance Authority” established in the *District of Columbia Financial Responsibility and Management Assistance Act of 1995* (Public Law 104-8). Specifically, the discussion draft required the Oversight Board to review every legislative act enacted by the Puerto Rico government and to make a determination—in the Oversight Board’s sole discretion—as to whether the act in question was consistent with the applicable Fiscal Plan and Budget. If the Oversight Board were to conclude that the act was significantly inconsistent with the Fiscal Plan and Budget, the Oversight Board was required to declare the act “null and void.”