



FOMB sues to claw back billions in payments to Government vendors and contractors, as well as fees and interest payments made to banks and bondholders

CRIM and Ten Municipalities to submit fiscal plans after FOMB designates Puerto Rico's municipalities as covered instrumentalities under PROMESA

Governor Ricardo Rosselló signs Opportunity Zones Development Act to set regulatory framework for development of Opportunity Zones

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Battle between the Government and the FOMB over Pension Cuts

The Federal Oversight Management Board ("FOMB") announced an average pension benefit reduction of 10% for the next fiscal year that starts in July, that could represent up to a 25% reduction in pensions, setting the stage for a confrontation between the Government of Puerto Rico and the FOMB.

In a televised message, Governor Ricardo Rosselló expressed his opposition to the cuts in government pension benefits that the FOMB is proposing. According to the Governor, the Government of Puerto Rico currently allocates about \$2.5 billion annually from the General Fund to cover payments to retired government employees. In his message, the Governor said that "given the savings and control spending that we have implemented in the Government, the pension cuts that the Board intends to impose are an ideological obsession, totally unnecessary."

The Governor appealed to the effect that the pension cuts would have on the population and the economy saying that 41% of the 170,000 retirees receive monthly checks of \$1,000 or less, thus a reduction in pensions would significantly diminish their quality of life. Mr. Rosselló also mentioned that pension benefits were a large percentage of government employees were already cut by legislation, by eliminating the Christmas Bonus, the Summer benefits, and other pension benefits, in 2014.

In his televised message, the Governor said that he will go to all necessary forums to show that these pension benefit reductions are

unjustified and that he will challenge in court, any attempt by the FOMB to use the budget to force the imposition of pension cuts.

In a Press Conference held on May 17, 2019, the Governor warned that a debt adjustment plan, including a reduction in pension benefits for government employees, will not have the endorsement of the Legislature or the signature of the Executive Branch.

Despite the local Government's opposition, the FOMB decided to submit the government debt adjustment plan in the next few weeks under Title III of the Puerto Rico Oversight, Management, and Economics Stability Act ("PROMESA"), for Judge Laura Taylor Swain's consideration..

Unless a more favorable agreement is reached with the Committee of Retired Employees of the Commonwealth of Puerto Rico, the adjustment plan will include pension cuts to around 167,000 people, which in certain cases could mean a cut of a quarter of the monthly retirement plan paycheck. The adjustment plan also includes the freezing of defined benefits for participants of the Judicial Retirement System and the Teachers Retirement System, as well as other adjustments that have not been implemented by the government yet.

The adjustments should result in about \$694 million in pension payments savings or an average reduction in the "Pay-Go" payroll of \$180 million. If the plan is approved, the Government is supposed to implement it.



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FOMB sues contractors, banks and bondholders to claw back billions in payments

The Special Claims Committee (“SCC”) of the Puerto Rico Financial Oversight and Management Board (“FOMB”) filed more than 230 lawsuits against several businesses and individuals to recover payments by the Puerto Rico Government that “were in conflict with the United States Bankruptcy Code and Puerto Rico”, according to the Board.

The FOMB said that these complaints will allow them to ensure that about \$4.2 billion in payments to vendors and contractors who worked for the Government of Puerto Rico were appropriately and fairly spent, and if not, to recover that money for the people of Puerto Rico. Some of the vendors and contractors are Arcos Dorados, America Aponte & Asociados, Intervoice Communications of Puerto Rico, Bristol-Myers Squibb, Evertec, Innovative Solutions, and Computer Learning Centers, among others.

Under Bankruptcy Law, a trustee may seek to claw back payments made 90 days prior to the date that the debtor files for bankruptcy. In this case, the SCC identified several businesses and individuals who received payments in excess of \$2.5 million who according to the SCC did not have a valid contract or for whom payments didn’t match the respective contract during the four years prior to May of 2017, when the Board initiated the debt adjustment proceeding under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”).

All of the claims stated that the transfers were “constructively fraudulent”, referring to those made in exchange for “grossly inadequate consideration”, as mentioned in the lawsuits. Pursuant to Bankruptcy Law, constructive fraud requires that, in exchange for a transfer, the debtor received less than “reasonable equivalent value”, and the debtor is unable to pay debts either at the time it was made or as a result of the transfer itself.

The FOMB also sued dozens of banks and bondholders, such as Barclays Plc, Bank of America Corp., Morgan Stanley, JP Morgan Chase & Co, Goldman Sachs Group Inc., Banco Santander SA and others that underwrote or otherwise helped engineer Puerto Rico’s debt, to claw back more than \$1 billion in fees and interest payments tied to debt that the FOMB claims is null and void. The FOMB argues that the debt was sold after the Government of Puerto Rico exceeded its constitutional debt limit.



These lawsuits were filed to target dozens of underwriters and advisers to recover interest payments from the biggest bondholders holding at least \$2.5 million of the securities. According to the FOMB, smaller investors won’t be affected.

FOMB requests CRIM and Ten Municipalities to Submit Fiscal Plans

After announcing that it was designating Puerto Rico’s 78 municipalities as covered instrumentalities under the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”) in order to secure their long-term fiscal viability, the Financial Oversight and Management Board (“FOMB”), requested the Municipal Revenue Collection Center (by its Spanish acronym, “CRIM”) and ten municipalities to submit a five year fiscal plan. The fiscal plans must be submitted on or before June 7, 2019.

The ten municipalities that must submit fiscal plans as part of a pilot program that seeks to increase revenues and identify alternatives and best practices to ensure the viability of the municipalities in Puerto Rico are Aibonito, Barranquitas, Orocovis, Cidra, Comerío, Isabela, San Sebastián and Villalba. According to the FOMB, these municipalities represent a mix of political representation, size, and financial strength.

The FOMB said that it will initially work with ten geographically aligned municipalities to develop fiscal plans and budgets to be certified by the end of the current fiscal year that ends in June. Each municipality will be required to include in their fiscal plans, spending reduction and efficiency measures, such as inter-municipal shared services agreements, programs to improve and optimize local revenue collection, economic development guidelines, and decentralization proposals.

CRIM’s fiscal plan, must include strategies to update the property registry, revise the classification and valuation of registered properties, review administrative guidance regarding exemptions and exonerations, and improve enforcement and collection efforts.



Governor Ricardo Rosselló signs Opportunity Zones Development Act

On March 14, 2019, Governor Ricardo Rosselló signed the Opportunity Zones Development Act, which sets forth the regulatory framework for the development of Opportunity Zones in Puerto Rico, under the U.S. Tax Cuts and Jobs Act of 2017. Opportunity Zones are designated low-income areas that offer financial incentives through tax benefits to potential investors in order to spur investment in distressed communities.

As part of the tax incentives with the program, investors can put their unrealized capital gains on the sale of an asset before January 1, 2027, in opportunity zones, where they gain tax deferral, if the amount invested is equal to the profit earned. Investors must sell their asset and realize a capital gain and then invest in an Opportunity Zone within 180 days of receiving those gains. The purpose of the law is to encourage investors to reinvest capital gains, which can come from any investment, such as stocks, bonds, real estate or partnership interests. The new law proposes an incentive framework for a 15-year period.

To qualify as an Opportunity Zone, the population must be classified as low-income communities, as defined in Section 45D(e) of the Federal Internal Revenue Code, and the applicable population census cannot have a poverty level of less than 20% and the average income must be lower than 80% of the state's median or metropolitan area income, depending on the location of the population census. About 97% of Puerto Rico was designated as an Opportunity Zone.

The Governor signed the law at the Opportunity Zones Summit in the Puerto Rico Convention Center, where he spoke about the different local incentives that investors may be eligible for when investing their capital gains in Puerto Rico's Opportunity Zones. Rosselló also mentioned that the local government is in conversations with the federal government in order to take about \$400 million of the Community Development Block Grant ("CDBG") funds that will be allocated to Puerto Rico, and convert them into a revolving fund with low interest that would allow the local government to work with some of the Opportunity Zones projects.

The local Opportunity Zones Development Act includes an 18.5% percent tax on the net income of an exempt business, dividend tax exemption, 25% exemption from patents and property taxes, and 25% exemption from construction taxes. The new law also includes a



maximum investment credit of 25%, transferable, a credit preference system for priority projects in Opportunity Zones, and capital gains tax deferral for profits invested in a qualified opportunity fund on the island under rules similar to those passed in the federal legislation. There will also be tax exemption for interest earned on loans to exempt businesses.