

**FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO**



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Executive Director*

BY ELECTRONIC MAIL

May 21, 2020

The Honorable Wanda Vázquez Garced
Governor of Puerto Rico

The Honorable Thomas Rivera Schatz
President of the Senate of Puerto Rico

The Honorable Carlos J. Méndez Núñez
Speaker of the House of Representatives of Puerto Rico

Dear Governor Vázquez Garced, President Rivera Schatz, and Speaker Méndez Núñez:

We are writing to you pursuant to Section 204(a) of PROMESA, with respect to Act 47-2020.

Act 47-2020, among other things, amends Act 60-2019, known as the Incentives Code of Puerto Rico, to expand the scope of health professionals eligible for the tax benefits granted therein. Specifically, Act 47-2020 extends the benefits of Act 60-2019 to general medical practitioners in addition to specialists in the fields of audiology, chiropractic, and optometry.

The Oversight Board received a copy of Act 47-2020 (the “Act”) along with the Governor’s corresponding PROMESA Section 204(a) certification of compliance (the “Compliance Certification”) on May 4, 2020. The Oversight Board hereby notifies you that: (i) the Governor failed to provide the formal estimate of the impact the Act will have on expenditures and revenues, as required under Section 204(a)(2)(A); and (ii) the Compliance Certification is deficient. Judge Swain has confirmed the Oversight Board’s authority to challenge the sufficiency and accuracy of the Governor’s documentation under Section 204(a). *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, No. 17-3283 (LTS), 2020 WL 1873380, at *7 (D.P.R. Apr. 15, 2020); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 403 F. Supp. 3d 1, 13 (D.P.R. 2019).

The estimated financial impact of the Act contained in the Compliance Certification is not a formal estimate and is deficient. The Compliance Certification states the Act could have an estimated annual impact on revenues of \$25.7 million, which would depend on the number of “medical professionals that request” and “ultimately approved to receive [the Act’s] incentives,” as well

“the income ultimately reported by the qualified professionals.”¹ The Oversight Board understands forward-looking estimates must rely in some part on projections, but the Government’s estimate lacks even the barest specificity. The Compliance Certification lists an estimated annual impact, but then provides a number of complicating factors without including their potential effect on the estimate, and concludes by admitting the analysis is an “an educated estimate that must revised [sic] on an annual basis.” Moreover, the Compliance Certification does not indicate how the estimate was derived and whether it reflects the maximum cost of the Act, the minimum cost, or something else. Finally, while the Compliance Certification seems to assume that the “estimated annual impact,” as uncertain as that estimate is, will be constant over the period of the certified Fiscal Plan, it does not state so specifically. Given the number of variables cited in the Compliance Certification, it seems unlikely that a properly constructed formal estimate would assume identical costs in each year.

Accordingly, the Oversight Board directs you, pursuant to Section 204(a)(4)(A), to provide a complete formal estimate by May 28, 2020 identifying, among other things:

1. The total number of medical practitioners who are eligible to seek approval for the tax incentive;
2. Minimum and maximum estimates of the percentage of medical practitioners applying for this incentive;
3. The number of medical practitioners by each area of specialty or sub-specialty who are eligible to seek approval for the tax incentive;
4. Minimum and maximum estimates of these medical practitioners’ estimated income, listed by each area of specialty or sub-specialty; and
5. Minimum and maximum estimates of the Act’s impact on the certified Fiscal Plan based on the income reported by such practitioners in previous years.

The Oversight Board believes this information is necessary to prepare the formal estimate of the impact that the Act will have on expenditures and revenues pursuant to Section 204(a)(2)(A) of PROMESA. Of course, if the governmental entity with expertise in budgets and financial management that prepares the formal estimate determines additional information and data is necessary to substantiate the estimate, please provide that additional information as well.

¹ The Compliance Certification justifies the Act by citing to the current health crisis, stating: “This legislation serves the public interest by promoting the retention of professionals in the health field, such a feat is particularly relevant in light of the COVID-19 pandemic.” To the extent the Act’s purpose is to assist first responders in the wake of the COVID-19 pandemic, it is grossly overbroad. The Act provides exemptions for several classes of health practitioners – such as audiologists, chiropractors, and optometrists – whose services do not appear implicated by the COVID-19 pandemic. Retaining these professionals, while helpful, does not assist the Commonwealth in addressing the pandemic. Accordingly, even if such a policy were wise in the wake of the COVID-19 pandemic, the Act is not tailored to address such a policy. Furthermore, as noted above, no matter how worthy the purpose of the Act may be, its costs must be offset in order for the Act to be consistent with the certified Fiscal Plan.

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In addition, the Compliance Certification is itself defective. Currently, the Compliance Certification estimates the Act will decrease revenues by up to \$25.7 million *per year* but still concludes the Act is not significantly inconsistent with the Fiscal Plan. The Compliance Certification does not identify any measures to reduce spending or increase revenue from other sources to offset the decrease in revenues resulting from the Act. The Oversight Board finds it difficult to understand how the Act, which the Government itself estimates will reduce revenue by tens of millions of dollars per year, without any corresponding cut in spending or proposal to increase revenues from other sources, can be anything other than significantly inconsistent with the certified Fiscal Plan.

As required by the Fiscal Plan, to ensure revenue neutrality, the implementation of any incentive law initiatives must occur sequentially, with the Government ensuring that initiatives are paid for before revenues are reduced. Therefore, revenue reductions must be accompanied by specific offsetting savings and/or increase in revenue measures of a sufficient amount identified in the enabling legislation.

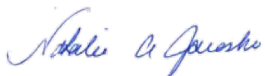
Accordingly, when the Government provides the required formal estimate on expenditures and revenues, the Oversight Board requests that the Government provide one or more proposed measures to cover the projected lost revenue as a result of the Act. The Government may propose offsetting savings and/or increases in revenues, so long as the measures to do so are consistent with the certified Fiscal Plan.

Pursuant to PROMESA Section 108(a)(2), the Governor and Legislature are each enjoined from, among other things, implementing any statute or rule that impairs or defeats the purposes of PROMESA as determined by the Oversight Board. To avoid any misunderstanding, please be advised the Oversight Board has determined implementation of Act 47-2020, prior to satisfaction of all Section 204 requirements, would impair and defeat the purposes of PROMESA. Act 47-2020, therefore, must not be implemented at this time.

Should you fail to comply with this directive, the Oversight Board reserves the right to take such actions as it considers necessary, consistent with Sections 204(a)(5), 204(c) and 108(a)(2), including preventing and seeking remedies for the enforcement or application of Act 47-2020.

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

Sincerely,



Natalie A. Jaresko

CC: Mr. Omar Marrero Díaz