

# FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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## **BY ELECTRONIC MAIL**

April 27, 2021

The Honorable Pedro Pierluisi-Urrutia  
Governor of Puerto Rico  
La Fortaleza

Dear Governor Pierluisi:

This letter serves as a Notice of Violation (“NOV”) pursuant to Section 202(c)(1)(B) of PROMESA. The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) has determined, in its sole discretion, that the proposed Commonwealth of Puerto Rico budget for Fiscal Year 2022 (“FY22”), submitted to the Oversight Board on February 2, 2021 (the “Proposed FY22 Commonwealth Budget”) is not compliant with the 2021 Fiscal Plan for Puerto Rico (the “2021 Fiscal Plan”) as certified by the Oversight Board on April 23, 2021. The 2021 Fiscal Plan incorporates several important updates for new information and data, as well as focused investments and fiscal priorities. Unfortunately, the Proposed FY22 Commonwealth Budget does not take into account or incorporate these factors.

To assist the Government in revising the Proposed FY22 Commonwealth Budget to comply with the 2021 Fiscal Plan, the Oversight Board is providing a revised forecast of FY22 revenues pursuant to Section 202(b) of PROMESA. This letter also provides updated payroll and operating expenditure targets by concept of spend. These forecasts and expenditures must be used in the revised budget to be submitted to the Oversight Board no later than May 3, 2021.

### **I. Government’s FY22 Submission**

This NOV is in response to the February 2, 2021 initial Government submission. The Proposed FY22 Commonwealth Budget is not compliant with the 2021 Fiscal Plan and does not meet the requirements set forth by the Oversight Board. Substantial revisions and additional information from the Government are required before the Oversight Board can approve the Proposed FY22 Commonwealth Budget and submit it to the Legislature.

The Proposed FY22 Commonwealth Budget requests included \$704 million of additional funds above the Oversight Board’s initial targets. Each of the requests comprising the \$704 million of

additional spending were analyzed by reviewing supporting data, where provided, and engaging in discussions with the Government. Of these requests, \$276.4 million have been included in the 2021 Fiscal Plan based on adequate supporting data provided by the Government. The following list describes the most significant items of non-compliance which are in violation with the Oversight Board's 2021 Fiscal Plan:

- ERS Pensions
  - Government's request: \$127.9 million to fund the annual pension obligations for PayGo to government retirees.
  - Oversight Board's corrective action: \$73 million (General Fund)
    - The Government's request overstates PayGo obligations by excluding mortality assumptions and overestimates recurring one-time costs for early withdrawals and death benefits.
  
- Department of Transportation and Public Works
  - Government's request: \$127 million for the fourth phase of the "Abriendo Caminos" infrastructure improvement program and for regular maintenance programs.
  - Oversight Board's corrective action: \$93.7 million
    - Funding the \$87 million request for the fourth phase of the "Abriendo Caminos" infrastructure improvement program to be funded by unallocated capital expenditures.
    - Funding the \$6.7 million request for additional funding for regular maintenance of the road infrastructure system based on the amounts allocated in the FY21 budget.
  
- UPR Appropriation
  - Government's request: \$94 million to ensure no additional reductions to FY21 subsidy levels.
  - Oversight Board's corrective action: \$0
    - Inconsistent with the measures included in the FY21 Certified Fiscal Plan.
  
- Uniform Remuneration and Classification Plan ("URP"), Human Resources Management & Transformation, and the Department of the Treasury
  - Government's request: \$53 million to establish multi-year Civil Service Reform Pilot program to close the human capital gaps affecting financial management in the Commonwealth and focus on producing audited financial statements.
  - Oversight Board's corrective action: \$11.5 million
    - Funding a budget ceiling of \$10 million to cover salary adjustments and new recruitment. Additionally, providing \$1.5 million as non-recurring funding for implementation of civil service reform initiatives.
  
- Central American and Caribbean Games 2022
  - Government's request: \$50 million to support bid to host the 2022 Central American and Caribbean Games as a stimulus to economic activity in the western region of the

- Island.
  - Oversight Board's corrective action: \$50 million
    - Funding will be reserved under the custody of the Office of Management and Budget ("OMB") and made available following the selection of the host and will be subject to a future determination as to whether any or all of the funding is eligible for American Rescue Plan Act funds.
- Department of Public Safety
  - Government's request: \$50 million to fund the acquisition and implementation of technology to enhance communications and interoperability among security forces.
  - Oversight Board's corrective action: \$26.6 million
    - Funding of \$26.6 million based on the agency's request and historical spend levels to be funded by unallocated capital expenditures.
- Municipalities Appropriation
  - Government's request: \$44.0 million to ensure no additional reductions to FY21 subsidy levels.
  - Oversight Board's corrective action: \$0
    - Not consistent with the FY21 Certified Fiscal Plan
- Health and Social Services (Total Government requests: \$34.0 million)
  - Comprehensive Cancer Center
    - Government's request: \$10 million for additional payroll and operational expenses.
    - Oversight Board's corrective action: \$10 million
      - Funding the \$10 million request for two years. Funding will be reserved under the custody of OMB. Release of funds is contingent upon the agency delivering a Business Plan, with the goal of becoming self-sufficient by FY24.
  - Special Fund to address the Gender Violence Emergency
    - Government's request: \$7 million to fund initiatives for employees to respond more effectively to emergencies.
    - Oversight Board's corrective action: \$0.2 million
      - Funding request for media and advertisements as requested by the agency. The agency should further evaluate other funding sources including ARP Act federal funding, available to cover the remainder of the \$7.0 million.
  - Family and Children Administration
    - Government's request: \$6.5 million to hire social workers and maintain current payroll spend.
    - Oversight Board's corrective action: \$3.3 million
      - Funding request for hiring within understaffed technical and professional divisions, including hiring Social Workers, Family Services Technicians, and

other Child Protective Services positions. Funding appropriation based on a decreased staff and increased case load.

- Fight Against Child Poverty
  - Government's request: \$5.5 million to fund pilot program to address child poverty.
  - Oversight Board's corrective action: \$0
    - Adequate data was not provided to support request. The agency should further evaluate other available funding sources such as ARP Act funding.
- Department of Health
  - Government's request: \$5 million to fund first phase of initiative for enhanced access to basic health care in underserved towns.
  - Oversight Board's corrective action: \$0
    - Adequate data was not provided to support request. The agency should further evaluate other available funding sources, for example ARP federal funding.
- Key Fiscal and Economic Development Agencies (Total Government requests: \$24.0 million)
  - Fiscal Agency and Financial Advisory Authority ("AAFAF")
    - Government's request: \$15 million for additional payroll and professional fees at AAFAF.
    - Oversight Board's corrective action: \$0
      - Agency has not yet spent incremental funding provided in FY21 Certified Fiscal Plan and Budget. Additionally, operational functions are set to be transferred to the Department of the Treasury per Executive Order 2021-018, lowering the agency's operating costs.
  - Department of Economic Development and Commerce ("DDEC")
    - Government's request: \$5 million for additional resources as part of key fiscal and economic agencies at DDEC.
    - Oversight Board's corrective action: \$0
      - Adequate data was not provided to support request.
  - OMB
    - Government's request: \$2 million for Grant Management & PMO Division under OMB to manage federal fund grants.
    - Oversight Board's corrective action: \$0
      - The Grant Management system is currently used by only a handful of agencies, reducing its informational value.
  - Office of the Governor
    - Government's request: \$2 million to provide additional resources for the Office of the Governor.

- Oversight Board's corrective action: \$0
  - The role appears to be duplicative with that of AAFAF.
- Recent Graduates Employment and Retired Employment Opportunities
  - Government's request: \$24 million for programs to promote employment opportunities.
  - Oversight Board's corrective action: \$0
    - Hiring of additional back office positions is inconsistent with the 2021 Fiscal Plan's assumptions.
- Department of Natural and Environmental Resources
  - Government's request: \$18 million for programs to support climate change initiatives.
  - Oversight Board's corrective action: \$0
    - Adequate data was not provided to support request. The requested \$7.1 million debt service for the Cerrillos Dam is already included in the budget.
- Department of Justice
  - Government's request: \$17 million for technology and IT improvements within security forces.
  - Oversight Board's corrective action: \$2.8 million
    - Funding request to hire additional resources for various units, including special prosecutors and agents for the Specialized Domestic Violence, Sexual Crimes, and Child Abuse Units.
- Department of Correction and Rehabilitation ("DCR")
  - Government's request: \$15 million for salary increases for employees.
  - Oversight Board's corrective action: \$0
    - The request is not consistent with the rightsizing and payroll freeze measures included in the 2021 CFP.
- Department of Agriculture
  - Government's request: \$10 million to replace obsolete equipment, develop programs to increase use of agro-tech solutions for higher harvest yields, and implement fair labor standards.
  - Oversight Board's corrective action: \$3.0 million
    - Funding request for capital expenditure investment to replace obsolete machinery, including technology to eliminate manual processes to be funded by unallocated capital expenditures.
- PR Technology and Innovation Services
  - Government's request: \$5 million to provide resources to execute the modernization of operations and services in the government and develop IT focused public policy.
  - Oversight Board's corrective action: \$0

- The FY22 baseline is sufficient to cover the request as the agency is still working on their hiring process and operating initiatives.
- Department of the Treasury
    - Government's request: \$3 million to establish the Office of the Chief Financial Officer to enhance fiscal accountability and reliable reporting.
    - Oversight Board's corrective action: \$0
      - Funding already provided under the URP pilot program initiative to support this effort.
  
  - Public Broadcasting Corporation
    - Government's request: \$2 million for funding for ongoing operational expenses.
    - Oversight Board's corrective action: \$0.3 million
      - Funding for the early retirement benefits for 17 employees
  
  - Other (Total Government requests: \$6.1 million)
    - Musical Arts Corporation
      - Government's request: \$1.6 million for the continued operation of the Puerto Rico Symphony Orchestra.
      - Oversight Board's corrective action: \$0
        - The Government should seek federal funds available such as ARP Act to cover the loss of revenue due to the COVID-19 pandemic.
  
    - Department of Consumer Affairs
      - Government's request: \$1.4 million to hire consumer affairs field inspectors for underserved regions across the island.
      - Oversight Board's corrective action: \$0.7 million
        - Funding request for additional positions for various roles to address shortages in underserved regions.
  
    - Puerto Rico Federal Affairs Administration
      - Government's request: \$1.4 million for delegates to represent the people of Puerto Rico before Congress.
      - Oversight Board's corrective action: \$0
        - At this time, the Oversight Board takes no position on whether funding should be provided in light of PROMESA section 402 and subject to the Title III Court's adjudication of the claims of the Speaker of the House of Representatives in the adversary proceeding *Hon. Rafael Hernandez-Montanez v. Hon. Pedro Pierluisi-Urrutia, et al., Adv. Proc. No. 21-00042-LTS*.
  
    - Office of the Comptroller
      - Government's request: \$1 million to lead an audit of the government's existing debt.
      - Oversight Board's corrective action: \$1.0 million

- Providing non-recurring funds to establish operations and complete debt audit.
- Parole Board
  - Government’s request: \$0.7 million for personnel related to Carlos Morales consent decree and other payroll.
  - Oversight Board’s corrective action: \$0.3 million
    - Funding request for positions to ensure compliance with the consent decree.

## **II. Revised FY22 Revenue Forecast**

Pursuant to Section 202(b) of PROMESA, the Oversight Board has determined that the General Fund revenue forecast to be used for budgeting purposes in FY22 is \$10,147 million and the Other Funds revenue forecast is \$3,451 million.

## **III. FY22 Agency Expenditure Forecast**

In addition to complying with the revised FY22 revenue forecast, the Oversight Board expects the Government’s revised Proposed FY22 Commonwealth Budget submission to follow the agency payroll and operating expenditure targets provided in Appendix B.<sup>1</sup> In general, the parameters represent agency appropriations on a concept level basis after applying 2021 Fiscal Plan updates and fiscal priorities.

Budget targets for FY22 include additional spending in the following fiscal priority areas:

- **Incremental General Fund Budget Increases (\$208.3 million)**
  - ASES Reserve (\$103.7 million)
    - Funding to reflect the higher number of participants who qualify for enrollment in the Medicaid system due to COVID-19.
  - Puerto Rico Integrated Transit Authority (“PRITA”) (\$41 million)
    - \$6 million to cover operating shortfalls.
    - \$15.5 million for repairs and \$19.3 million for the private operator to be funded by unallocated capital expenditures, which will be reserved under the custody of OMB and made available once the private operator contract is effective.
  - Parametric Insurance (\$35 million)
    - Reflects the Commonwealth’s share of parametric insurance for payments upon the occurrence of a catastrophic event.
    - Funding will be reserved under the custody of OMB and made available once milestones specified in the 2021 Fiscal Plan are met.

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<sup>1</sup> See Appendix B, which provides the targets in an Excel spreadsheet.

- Department of Health (\$11.6 million)
  - Funding for payroll and operating expenditures to support staffing levels, services for the Puerto Rico Medical Services Administration (“ASEM” for its Spanish acronym), and supplies.
- Families (\$3.1 million)
  - \$2.8 million for the Family Socioeconomic Development Administration (“ADSEF” for its Spanish Acronym) for the Temporary Assistance for Needy Families (“TANF”) Program to obtain a required state match of Category A & D (Elderly Adults & Disabled) federal funds.
  - \$0.3 million for the Child Support Administration to hire alimony specialists as a result of increased agency case-load.
- Public Safety (\$4.7 million)
  - \$1.9 million for the Police Bureau for increased facility and utility costs.
  - \$1.2 million for the Department of Public Safety for leases, utilities, and professional services.
  - \$1.0 million for the Firefighters Corps for federal matching funds to repair damages to structures and hydraulic equipment to be funded by unallocated capital expenditures.
  - \$0.6 million for the Special Investigations Bureau, Special Independent Prosecutors Panel, and the Emergency and Disaster Management Bureau for facilities, IT, professional services, and personnel.
- Other (\$9.1 million)
  - \$5.9 million for the General Services Administration to close regional facilities operating at a loss, and to provide support for the required annual government reports.
  - \$3.2 million for the Institute of Puerto Rican Culture, Office of the Inspector General, the Ombudsman related agencies, the Office of Socioeconomic Development, and the Office of the Election Comptroller.
- **Budgetary Milestones & Incentives (\$16.8 million) – to be held under OMB custody account.**
  - \$8 million incremental funds for DDEC upon meeting certain milestones, including:
    - Up to \$7 million for DDEC’s operating and management as incentive-based funding for regular publication of economic incentives granted to private corporations and the associated returns.
    - \$0.5 million in additional professional services funding if DDEC completes an operational needs assessment analysis on or before September 30, 2021.
    - \$0.5 million in additional professional services funding if the consolidation of

Puerto Rico Tourism Company's back offices into DDEC are completed on or before March 31, 2022.

- \$2.4 million in incremental one-time professional service funds for PRITA upon meeting certain milestones, including:
  - \$1 million to perform initial assessment of legal, Federal Transit Administration, and Transportation Asset Management Plan considerations on or before August 31, 2021.
  - \$1 million to identify, procure, and implement the required system to operate the transit assets on or before December 31, 2021.
  - \$0.4 million to correct Federal Transit Administration deficiencies highlighted in the rejection letter dated September 2015 and submit New Grantee Status request on or before March 31, 2022.
- \$2.032 million in incremental funds for the Department of Health (“DOH”) upon meeting certain milestones, including:
  - \$1 million for professional fees if DOH can fully implement the completed capacity analysis on or before August 31, 2021.
  - \$1 million for professional fees if DOH can implement Time and Attendance reporting to the payroll system on or before March 31, 2022.
  - \$0.032 million as a one-time bonus if the eight-member implementation team can fully implement the Capacity Analysis by the required date – bonus to be paid on March 31, 2022.
- \$1.5 million incremental professional fee funds for the Department of the Treasury upon meeting certain milestones, including:
  - \$0.5 million if the Department of the Treasury publishes the 2018 CAFR on or before July 31, 2021.
  - \$1.0 million if the Department of the Treasury publishes the 2019 and 2020 CAFRs on or before December 31, 2021.
- \$1 million for facility repairs if DCR can implement Time and Attendance reporting to the payroll system on or before March 31, 2022.
- \$0.5 million for incremental professional fee funds if ADSEF can submit a detailed work-plan to implement a two-year Nutritional Assistance Program (“NAP”) work/volunteer requirement consistent with the 2021 Fiscal Plan on or before August 15, 2021.
- \$1.385 million for a one-time bonus for school directors that perform well on scorecards based on data captured and approved methodology on or before September 30, 2021.

- **Consent Decrees Funding (\$8.0 million)**

- \$8.0 million of incremental or newly segregated funding from FY21 to adequately meet requirements related to consent decrees outstanding for several Commonwealth agencies, including:
  - \$5 million for the Mental Health and Drug Addiction Services Administration's Rio Piedras Psychiatric Hospital to maintain minimum level of services required.
  - \$2.7 million for the Department of Natural and Environmental Resources to fund the consent decree for pump houses in San Juan.
  - \$0.3 million for the Parole Board for costs related to the Carlos Morales consent decree.

#### **IV. Control Language in Budget Resolutions**

The Commonwealth shall include the following language in the budget resolutions:

- The Department of the Treasury will remit to: the Legislative Branch and its components, the Judicial Branch, the University of Puerto Rico ("UPR"), and the non-profit entities that receive funds from the General Fund, monthly and in advance, the budgetary allotments corresponding to one-twelfth (1/12) of the budget allocation provided herein for such entities. The one-twelfth monthly allocation to each entity (except with respect to the Judicial Branch) shall be subject to the 2.5% withholding set forth in the section below during the first three quarters of FY2022.
- The Director of the Office of Management and Budget ("OMB") may authorize the encumbrance and disbursement of up to 97.5% of each appropriation intended for encumbrance and disbursement during the first three quarters of FY2022. The Director of the OMB shall withhold the remaining 2.5% of each appropriation until after the end of the third quarter of FY2022. Such withheld percentage of each appropriation shall only be encumbered and disbursed during the fourth quarter of FY2022 if (1) the first eight months of actual General Fund revenues reported to the Oversight Board reach the revenue forecast in the 2021 Fiscal Plan for that period and (2) the encumbrance and disbursement is approved first by the Oversight Board and then authorized by the Director of the OMB. If actual General Fund revenues for the first eight months of FY2022 fail to reach the revenue forecast for that period, the amount of the withheld percentage of each appropriation that may be encumbered and disbursed shall be reduced proportionally according to the negative budget variance between projected and actual General Fund revenues. Notwithstanding the foregoing, PayGo appropriations, Consent Decree amounts, Housing and Transportation Authority (HTA) appropriations, economic incentive funds and distributions, cigarette and rum distributions, allocations of SUT to FAM and agencies in the Department of Public Safety and in the Health groupings, as defined in the 2021 Fiscal Plan, shall not be subject to the 2.5% withholding requirement.
- Notwithstanding any statement here to the contrary, each of the appropriations listed in the General Fund in Budget FY2022 under the following sources of revenue is entirely dependent

on the level of revenues collected therefrom: (1) Allocation of the Sales and Use Tax (“SUT”) to the Municipal Administration Fund (“FAM,” by its Spanish acronym) (excluding Debt Portion); (2) Outflow of the Special Fund for Economic Development (“FEDE,” by its Spanish acronym) Portion of Corporate Income Taxes and Non-Resident Withholding; and (3) cigarette and rum distributions. As such, the disbursements of those appropriations will be gradual and subject to the actual collections thereunder. No expenditure, disbursement, pledge, or any other encumbrance of any such funds may be made until such time as the revenues are actually collected and received.

- No later than 45 days after the closing of each quarter of FY2022, the Secretary of the Treasury shall revise the projected net revenues of the General Fund for FY2022 (the “Quarterly Revision”) and shall notify the revision to the Director of the OMB, the Governor, and the Oversight Board. The Quarterly Revision shall project future revenues based on actual General Fund revenues and include revisions to the assumptions used to generate the General Fund’s net revenue projections.
- All appropriations authorized in any prior fiscal year, including appropriations without a specific fiscal year, are eliminated and no disbursement of public funds may be covered by such appropriations, except the following which the 2021 Fiscal Plan redeploys as current appropriations, subject to Oversight Board adjustment at any time: (1) appropriations authorized in the fiscal year to carry out permanent improvements that have been encumbered, accounted for, and kept on the books but not exceeding two fiscal years on the books; (2) appropriations in the certified budget for equipment with procurement cycles that extend beyond the end of the fiscal year, which are encumbered on or before June 30, 2022; (3) the portion of the appropriations authorized for the fiscal year that have been encumbered on or before June 30 of such fiscal year, which shall be kept in the books for 60 days after the termination of that fiscal year and after those 60 days no amount shall be drawn against such portion for any reason; (4) the appropriation in the amount \$130 million for the emergency reserve included in the FY2021 certified budget and required by *Section 5.2.8* of the 2021 Fiscal Plan (the “Emergency Reserve”); (5) the unobligated portion of the Public Assistance Federal Fund Matching appropriation included in the FY2021 certified budget; (6) the unused appropriations for the UPR Scholarships Fund included in the FY2019, FY2020, and FY2021 certified budgets, which are held under the custody of the Department of the Treasury; (7) unused appropriations for use in audit services held at the Department of the Treasury; (8) FY2021 unused General Funds intended for Medicaid related expenditures; (9) unused Title III funds; (10) reported unused funds from Department of Health’s Mental Disability program until the end of the following fiscal year; (11) unused Special Revenue Funds collected during prior fiscal years for Ports Authority, Puerto Rico Convention Center District Authority, and Puerto Rico Tourism Company, but limited to the amount of the FY2022 Special Revenue Funds appropriation; (12) reported unused funds from Department of Correction and Rehabilitation’s Juvenile program; (13) unused appropriations for State unemployment insurance, disability insurance, and chauffeur’s insurance, which are held under the custody of the Department of Labor and Human Resources; (14) unused appropriations for milestones and incentives held under the custody of OMB as approved by the Oversight Board; (15) unused appropriations for municipal voluntary cost sharing milestone; (16) unused appropriations for the school and road maintenance funds; and (17) FY2021 unused General

Funds intended for Catastrophic Illness Fund related expenditures. In addition, this restriction on the use of appropriations of prior fiscal years shall not apply to: (i) programs financed in whole or in part with federal funds; (ii) orders by the United States district court with jurisdiction over all matters under Title III of PROMESA; or (iii) matters pertaining to any consent decree or injunction, or an administrative order or settlement entered into with a federal agency, with respect to federal programs.

- On or before July 31, 2021, the Secretary of the Treasury, Executive Director of the Fiscal Agency and Financial Advisory Authority (AAFAF, by its Spanish acronym), and the Director of the OMB shall provide to the Oversight Board a certification indicating the amounts of unused FY2021 appropriations for all items enumerated in the previous section. If the Government fails to submit said certification, the amount of unused funds in items 1 and 2 will not carry over to the following fiscal year.
- Each power of OMB, AAFAF, or the Department of the Treasury, including the authorities granted under Act 230-1974, as amended, known as the “Puerto Rico Government Accounting Act” (“Act 230”), to authorize the reprogramming or extension of appropriations of prior fiscal years is hereby suspended.
- The appropriations approved in this budget may only be reprogrammed with the prior written approval of the Oversight Board. For the avoidance of doubt, this prohibition includes any reprogramming of any amount, line item or expenditure provided in this budget, regardless of whether it is an intra-agency reprogramming. Reprogramming also known as reapportionments may be made into spend concepts and/or objects not explicitly listed in the FY22 certified budget resolution as long as such requests are submitted to and approved by the Oversight Board.
- The Governor shall submit to the Oversight Board all reporting requirements set forth on Exhibit 147 of the 2021 Fiscal Plan according to the reporting cadence described therein. In addition, if the Oversight Board approves a reprogramming pursuant to the section above, the immediately subsequent report by the Governor must illustrate the specific implementation of such reprogramming, including the amount, the source of the reprogrammed amount identified by government entity and expenditure concept, the Government entity that received such amount, and the expenditure concept to which it was applied.
- In addition, the Governor shall submit to the Oversight Board a comprehensive reporting package in a similar format to that required in accordance with Section 203 of PROMESA for the following specified programs within different agencies: (1) Department of Education’s (PRDE) Special Education Program; (2) PRDE’s Remedio Provisional Program (3) Department of Health’s (DOH) Adult Hospital Program; (4) DOH’s Pediatric Hospital Program; (5) DOH’s Hospital Universitario Dr. Ramón Ruiz Arnau (HURRA) Bayamón Hospital Program; (6) DOH’s 330 Centers Payments; (7) DOH’s Intellectual Disability Program; (8) Mental Health and Anti-Addiction Services Administration’s (ASSMCA, by its Spanish acronym) Río Piedras Hospital Program; and (9) the Department of Correction and Rehabilitation’s (DCR) Juvenile Program. Program reporting must include and clearly detail budget to actuals on a concept level basis, any reprogramming of funds within the program, and any reprogramming of funds to/from other programs or agencies.

- In addition, in order to ensure maximum and proper use of federal funds, such as, but not limited to, (1) DRF, (2) CARES, (3) FFCRA, (4) CRRSAA, (5) and ARP, the Governor shall submit reporting to the Oversight Board on the disbursement of funds. Improved reporting will help prevent and combat actual, and claims of, misuse, fraud, waste, and abuse. Therefore, the Governor shall also submit weekly reports that detail any disbursements and use of federal funds received. Weekly reporting shall include a list of all awards broken down by agency, program, category, recipient, and sub-recipient detailing: (1) date award was granted; (2) date award expires/renews; (3) total award amount (split into payroll/non-personnel); (4) total award encumbrances and disbursements from prior fiscal years (split into payroll/non-personnel); (5) total award encumbrances and disbursements for the current fiscal year (split into payroll/non-personnel); and (6) total remaining award amount (split into payroll/non-personnel). The Governor shall also provide, as requested, performance metrics with regards, but not limited to, time required to submit claims, time required to submit compliance reporting, and time required to collect reimbursement claims.
- In addition, the Governor shall submit to the Oversight Board a monthly reporting package detailing capital expenditure spending by agency and by project including details for expenditures which have RFPs issued, which contracts have been awarded, and which are in process.
- Furthermore, the Governor shall submit to the Oversight Board a monthly reporting package detailing all of PRDE's salary and other payroll expenses within four categories: (1) Central Administrative Personnel; (2) Regional Administrative Personnel; (3) Regional School Support Personnel; and (4) School Personnel as established in this FY2022 Certified Budget resolution. In order to assess compliance and guarantee accountability, PRDE must submit such monthly reporting detailing salary and payroll expenses by the categories established herein along with a salaries and payroll reconciliation of funds disbursed and actual expenses recorded.
- The reports required pursuant to this section are in addition to the reports that the Governor must submit to the Oversight Board in accordance with Section 203 of PROMESA.
- In conjunction with the reports that the Governor must submit to the Oversight Board no later than 15 days after the last day of each quarter of FY2022, pursuant to Section 203 of PROMESA, the Secretary of the Treasury, Executive Director of AAFAF, and the Director of the OMB shall each certify to the Oversight Board: (1) that no appropriation of any previous fiscal year (except for the appropriations covered by the exceptions in the sections above) have been used to cover any expense; and (2) the Director of the OMB shall certify to the Oversight Board that no amount of (i) the Emergency Reserve and (ii) the unallocated capital expenditures under the custody of OMB has been obligated unless authorized in accordance with the section below.
- The Emergency Reserve, the unallocated capital expenditures, healthcare investments reserve, technology reserve, milestones reserve, and the economic incentive fund under the custody accounts of OMB and the Department of the Treasury, respectively, as detailed in the certified budget for FY2020, FY2021, and FY2022 may not be used to cover any allocation or expense whatsoever without the prior, written approval of the Oversight Board. The economic incentive

funds held under the custody of the Department of the Treasury will be released on a quarterly basis after a formal reapportionment is submitted by the Department of Economic Development and Commerce (DDEC, by its Spanish acronym), reviewed and approved by OMB, and submitted to the Oversight Board for review, and the Oversight Board provides its authorization to release such funding. Exceptions to the economic incentive fund release may apply upon meeting all of the specified criteria listed on the Milestones and Incentives Appendix C.

- The Emergency Reserve is intended to expedite response activities and, upon request, provide the Commonwealth Agencies and affected local governments with capital in the event of an emergency of such severity and magnitude that effective response exceeds the capacity of current budget resources and federal disaster assistance is not available or not yet available to respond to the emergency. Moreover, the Emergency Reserve is intended for extraordinary events like natural disasters or as otherwise agreed with the Oversight Board and that are generally outside of human control and unpreventable. The Emergency Fund is not intended to mitigate emergencies related to operational inefficiencies.
  - Accessing Emergency Reserve funds shall require: (1) a State of Emergency declaration, by the Governor of the Commonwealth, in accordance with Article 6.10 of Act 20-2017, as amended, known as the Puerto Rico Public Safety Department Act and in accordance with the above description of what constitutes an extraordinary event; (2) OMB shall request of the Oversight Board access to the emergency reserve fund for a finite period, indicating the agency or local government that will receive the advance, the amount of the advance, usage of funds requested and the PR Emergency Disaster Management (PREMA) request number from WEBEOC platform, as well as the projected re-payment date of the funds; (3) amounts approved by the Oversight Board and disbursed to the Government shall be replenished not later than the following fiscal year; and (4) agencies and municipalities, recipients of state emergency reserve funds, shall update OMB on a quarterly basis about the Public Assistance process with FEMA.
  - OMB shall request Emergency Reserve funds exclusively for the use of Government agencies and affected local governments. The agencies and affected local governments must be in an emergency declared area and the Emergency Reserve funds must be used for response activities related to the declared event. Non-profits, public corporations outside of the commonwealth, and individuals are not eligible applicants for advances through the Emergency Reserve fund.
  - OMB shall submit quarterly reports to the Oversight Board detailing the status of Emergency Reserve funds, amounts provided to agencies and affected local governments, amount of funds expended, amount of funds remaining, and updated projected re-payment dates. Agencies and local governments that received funds from the Emergency Reserve are required to file with FEMA a Request for Public Assistance (RPA) and Project Worksheet to ensure maximum federal fund reimbursements are replenished into the Emergency Reserve. As a rule, OMB shall offset late repayment by agencies and local governments with other Commonwealth funding to repay the Emergency Reserve on time.

- Cost share matching funds are restricted for use on approved projects/requirements under FEMA's Individual Assistance, Public Assistance, and Hazard Mitigation programs. Any unused cost share matching funds in a given fiscal year may be rolled over to the following fiscal year and are subject to the same restrictions. The use of these funds must be coordinated with CDBG-DR and CDBG-MIT in meeting cost share requirements.
- Funds to cover parametric insurance will be made available upon reaching the following milestones and after the approval and authorization from the Oversight Board.
  - (1) Develop a sophisticated insurance plan to develop a comprehensive program that considers the available markets, costs, meeting O&M requirements, and levels of coverage.
    - Conduct a risk analysis including hazards/perils covered
    - Analyze expected O&M requirements on a building by building basis
    - Identify the types and extent of insurance needed to protect against risk and meet O&M requirements
    - Identify insurance gaps between O&M requirements and insurance that is reasonably available
    - Identify the authority for developing, implementing, and enforcing the plan
    - Design, the financial arrangement structure for funding the plan and pay for losses, which includes a system for fixed contributions, a formalized plan to pay losses as they occur, and how funds will be distributed
  - (2) Prioritize insurance and strategically consider options to supplement the existing insurance coverage:
    - Identify how the Commonwealth will meet Flood Insurance requirements
    - Consider broader / expanded limits on existing policies
    - Consider a separate excess insurance policy that provides coverage above the current limits
    - Consider a Parametric policy and CAT Bond or a hybrid combination of the two to provide supplemental or excess coverage
  - (3) Engage the Insurance Commissioner
    - Establish the criteria for the Insurance Commissioner's certification of the insurance coverage that is reasonably available
- Funding for the Central American and the Caribbean Games will be held under the custody of OMB and made available following the selection of the host and will be subject to a determination on whether any or all of the funding is eligible for American Rescue Plan Act (ARP) funds.
- As a rule, necessary for the responsible disbursement of budgetary allocations for operating and other expenses, OMB shall withhold from any of the allocations to the agencies of the Executive Branch the amounts necessary to pay for the PayGo contribution, unemployment insurance, or taxes withheld from their employees, when OMB determines that such a withholding is necessary to ensure compliance with these obligations by the agencies concerned. Any such amounts withheld by OMB shall solely be reprogrammed to pay the corresponding outstanding obligations related to PayGo contributions, unemployment insurance, or taxes withheld from employees.

- Additional General Funds may be made available to agencies upon reaching certain, specified milestones and after written approval and authorization from the Oversight Board. Once the respective milestones are achieved, agencies must provide a formal notice and submit supporting data corroborating such achievement for the Oversight Board’s review.
- OMB and the Department of the Treasury are authorized to establish the necessary mechanisms to ensure that when implementing the concept of mobility, pursuant to the provisions of Act 8-2017, as amended, known as the “Puerto Rico Human Resources Management and Transformation in the Government Act,” the corresponding transfer of funds allocated to payroll and related costs of said employee are to be carried out simultaneously.
- The Secretary of the Treasury, the Director of the OMB, and the Treasurer and Executive Director of each agency or public corporation covered by the 2021 Fiscal Plan shall be responsible for not spending or encumbering during FY2022 any amount that exceeds the appropriations authorized for FY2022. This prohibition applies to every appropriation set forth in a budget certified by the Oversight Board, including appropriations for payroll and related costs. The Executive Director of AAFAF and the Director of the OMB shall also certify to the Oversight Board by September 30, 2021 that no amount was spent or encumbered that exceeded the appropriations in the certified budget for FY2021.
- For the avoidance of doubt, any reference within the budget to AAFAF, the Department of the Treasury, or OMB, or any of their respective officers, shall apply to any successor thereof.
- On or before July 31, 2021, the Governor shall provide to the Oversight Board budget projections of General Fund revenues and expenditures for each quarter of FY2022, which must be consistent with the corresponding budget certified by the Oversight Board (the “Quarterly Budget”). The Quarterly Budget shall be provided to the Oversight Board in Excel format and include detailed allocations by agency, public corporation, fund type and concept of spend. Together with the report that the Governor must provide under Section 203 of PROMESA not later than 15 days after the last day of each quarter, the Governor shall provide a quarterly variance analysis that is consistent with modified accrual accounting.
- If during the fiscal year the Government fails to comply with the liquidity and budgetary savings measures required by the 2021 Fiscal Plan, the Oversight Board may take all necessary corrective action, including the measures provided in PROMESA Sections 203 and 204.

In order to ensure agencies remain compliant with the 2021 Fiscal Plan, the Oversight Board has enacted a policy that includes review of contracts of \$10 million or more. The objective of these reviews is, among other things, to determine the extent to which the contracts are in compliance with the applicable fiscal plan(s). The Oversight Board encourages the use of additional object level professional service fee categories in order to support more transparency of how professional fees are spent. The Oversight Board is authorized to require review of contracts less than \$10 million to ensure compliance with the applicable fiscal plan(s). In addition, professional consulting contracts should include provisions requiring adequate transfer of skills and technical knowledge, from consultants to pertinent public sector personnel to the extent that the contract reflects recurring work that could be done by appropriately trained government staff.

Governor Pierluisi

April 27, 2021

Page 17 of 17

**V. Conclusion**

The Oversight Board looks forward to receiving the revised Proposed Commonwealth FY22 Budget by May 3, 2021, and to working together to certify a Commonwealth FY22 Budget by June 30, 2021.

Sincerely,



Natalie A. Jaresko

CC: Mr. Omar Marrero Díaz  
Juan C. Blanco Urrutia  
Francisco Parés Alicea

## APPENDIX A

Budget Support Deliverables for May 3, 2021:

1. Draft budget resolutions
  - a. General Fund resolution, including the Special Resolution, with concept of spend details for each appropriation
  - b. Special Revenue Fund resolution
2. Budget “Sabana” file for all fund types
3. Breakout of each agencies’ concept and object of spend mirroring the same level of detail included in Appendix B
4. Explanation of any capital expenditures included in the Proposed FY22 Commonwealth Budget

## **APPENDIX B**

(See FY22 Revised Budget Targets Excel sheet)

**APPENDIX C**  
**Milestones and Incentives**

Agency	\$ '000s	Description
DDEC	7,000	<p><b>Milestone:</b> Publicly publish quarterly reports on the agency’s website detailing all economic incentive donation/subsidy amounts given to private corporations. The reported detail should include:</p> <ol style="list-style-type: none"> <li>1. Name of Corporation;</li> <li>2. Brief description of the exempt activities conducted in Puerto Rico;</li> <li>3. Amount of cash incentives granted, if applicable;</li> <li>4. Brief description of the purpose of the use of the cash incentive, if applicable;</li> <li>5. Location of the business (municipality) where principal economic impact will be made;</li> <li>6. Number of cash incentives previously granted and aggregate amount of funding received for the last 3 years; and</li> <li>7. Annual return-on-investment (“ROI”) on each previous cash incentive grant and expected ROI in the current year.</li> </ol> <p><b>Incentive:</b> Reapportionments are currently required to release funds collected in Hacienda for economic incentives as well as public reporting (website publishing). This will continue to be a requirement for the transfer of funds. However, if all criteria are met beginning September 30, 2021, on a quarterly basis, the Oversight Board will provide the lesser of 7 percent of the total amount of incentives or \$2,333,000 on a quarterly basis for DDEC’s operation and management.</p>
DDEC	500	<p><b>Milestone:</b> Complete an operational needs assessment analysis to determine capacity issues, duplicity, and operational opportunities by September 30, 2021.</p> <p><b>Incentive:</b> \$500,000 in additional professional services funding for the implementation of the needs assessment, if the assessment is completed on time.</p>

<b>DDEC</b>	<b>500</b>	<p><b>Milestone:</b> Complete the consolidation of the back offices of the Tourism Company into DDEC.</p> <p><b>Incentive:</b> \$500,000 in additional professional services funding upon implementation of the recommendations laid out on or before March 31, 2022.</p>
<b>PRITA</b>	<b>1,000</b>	<p><b>Milestone:</b> Perform initial assessment of legal, Federal Transit Administration (FTA), and Transportation Asset Management Plan (TAMP) considerations.</p> <p><b>Incentive:</b> \$1,000,000 in additional professional services funding upon the completion of the assessment on or before August 31, 2021. Funds to be used to attain FTA Grantee status.</p>
<b>PRITA</b>	<b>1,000</b>	<p><b>Milestone:</b> Specify, procure, and implement required system to operate transit assets (e.g., IT infrastructure).</p> <p><b>Incentive:</b> \$1,000,000 in additional professional services funding upon the implementation of these systems on or before December 31, 2021. Funds to be used to attain FTA Grantee status.</p>
<b>PRITA</b>	<b>400</b>	<p><b>Milestone:</b> Correct all deficiencies highlighted in FTA grantee rejection letter dated September 2015 to address financial, legal, and technical capacity issues and submit a New Grantee Status request to FTA.</p> <p><b>Incentive:</b> \$400,000 in additional professional services funding to correct all deficiencies on or before March 31, 2022. Funds to be used to attain FTA Grantee status.</p>
<b>Department of Health</b>	<b>1,000</b>	<p><b>Milestone:</b> Complete the capacity analysis contracted in FY2021 and assign a team of 5-8 full-time employees to work exclusively on the implementation of the recommendations laid out in the capacity analysis, including:</p> <ol style="list-style-type: none"> <li>1. Redesign internal policies and procedures to eliminate non-value-added tasks and duplicity;</li> <li>2. Incorporate best practices; replace manual processes by implementing automated and innovative ones;</li> <li>3. Reallocate resources as identified in the capacity analysis; and</li> </ol>

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4. Train employees who have been reallocated to different positions and educate staff on newly implemented automated processes.

**Incentive:**

\$1,000,000 in incremental professional fee funds to assist Department of Health ongoing programs if the capacity analysis is completed on or before August 31, 2021.

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**Department of Health**

**1,000**

**Milestone:**

Implement time and attendance reporting system linking to current payroll system.

**Incentive:**

\$1,000,000 in incremental professional fee funds if the implementation is completed on or before March 31, 2022.

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**Department of Health**

**32**

**Milestone:**

Successful implementation of all recommendations included in the completed capacity analysis.

**Incentive:**

\$32,000 one-time bonus; \$4,000 for each of the eight employees in charge of sponsoring the implementation of the capacity analysis recommendations.

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**Department of the Treasury**

**500**

**Milestone:**

Publication of the 2018 CAFR by July 31, 2021.

**Incentive:**

\$500,000 of additional professional fee funding if the 2018 CAFR report is published on or before July 31, 2021.

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**Department of the Treasury**

**1,000**

**Milestone:**

Publication of the 2019 and 2020 CAFRs by December 31, 2021.

**Incentive:**

\$1,000,000 of additional professional fee funding if both the 2019 and 2020 CAFR reports are published on or before December 31, 2021.

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<b>DCR</b>	<b>1,000</b>	<p><b>Milestone:</b> Implement time and attendance reporting system linking to current payroll system.</p> <p><b>Incentive:</b> \$1,000,000 of additional purchased services funding for facility repairs if DCR completes the implementation on or before March 31, 2022.</p>
<b>Family Socioeconomic Development Administration</b>	<b>500</b>	<p><b>Milestone:</b> Submit a detailed workplan to implement a 2-year NAP work/volunteer requirement that is consistent with the 2021 Fiscal Plan.</p> <p><b>Incentive:</b> \$500,000 of additional professional fee funding to implement initiatives defined in the workplan on or before August 31, 2021.</p>
<b>Department of Education</b>	<b>1,385</b>	<p><b>Milestone:</b> Update scorecards to reflect the most recent information for school year 2020-2021 and provide reporting to the Oversight Board on agreed upon format.</p> <p><b>Incentive:</b> \$1,500 one-time bonus to school directors that perform well on scorecards based on data captured and an approved methodology measured by September 30, 2021.</p>