
FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

December 24, 2020

Mr. Omar J. Marrero Díaz
Executive Director
Puerto Rico Fiscal Agency and Financial Advisory Authority

Dear Mr. Marrero Díaz:

We write to you regarding the Transport and other Public Services Bureau's ("NTSP" for its Spanish acronym) draft regulations pursuant to Act 109 of June 28 of 1962, as amended (the "Draft Regulations"). We regret the need to contact you about pressing matters during the holiday season, but recent steps taken by the NTSP require your immediate attention and action to address violations of PROMESA that have immediate adverse consequences for the Commonwealth's Fiscal Plan as well as for the Oversight Board's efforts to achieve fiscal responsibility for the Commonwealth.

To provide context, the Draft Regulations propose to increase the rates (also known as tariffs) for several categories of transportation, impose new categories of administrative fines, and set a minimum wage for Commercial Motor Vehicle operators. The Draft Regulations therefore implicate aspects of the certified Fiscal Plan for the Commonwealth of Puerto Rico, including Section 10.6 which requires, among other things: (i) the elimination of inefficient on-island freight regulation; and (ii) that the NTSP issue an administrative order eliminating the minimum land freight charge across Puerto Rico.¹ The Draft Regulations also threaten to harm business and economic growth by increasing transportation costs.

As such, the Draft Regulations are subject to the Oversight Board's Rules, Regulations and Orders Review Policy (the "Policy") established pursuant to Section 204(b)(4) of PROMESA. Yet, the NTSP has not submitted them to the Oversight Board for review and approval in accordance with the Policy.

We have brought this violation of the Policy to the attention of Mr. Luis D. García Fraga, President of the NTSP, on numerous occasions, requesting that he submit the Draft Regulations for review

¹ 2020 Commonwealth Fiscal Plan (May 27, 2020), at 126-27.

and commit not to promulgate them absent Oversight Board approval. We refer you to our various requests and prior correspondence with the NTSP and the Public Service Regulatory Board for additional discussion of our position and why the Draft Regulations and related measures must be reviewed and approved by the Oversight Board prior to enactment. *See Exhibits 1 to 4.*

Mr. García's responses to our communications and requests effectively reject the Oversight Board's authority and statutory mandate to review the Draft Regulations. While Mr. García informed us he will wait for AAFAF to translate the Draft Regulation and then submit them in compliance with the Policy, he refused to halt the approval of an administrative order (the "Administrative Order") to adjust the tariffs regulated by the NTSP as he understands he does not have to (and will not) comply with our request to also submit the Administrative Order to the Oversight Board in compliance with the Policy. Furthermore, he did not, as the Oversight Board requested, confirm the NTSP will not promulgate the Draft Regulations prior to Oversight Board approval.

We initially planned to contact you regarding our concerns after the holiday. However, Mr. García did not wait for the Oversight Board's response to his latest communication. Last night at 10:53 PM AST, the Oversight Board received an email from Mr. García confirming the enactment of Circular Letter No. 35-2020, titled "The Adoption of Temporary Tariffs," and attaching the Circular Letter in question. *See Exhibits 5 and 6.* The Circular Letter effectively enacts the Administrative Order discussed above which, again, has not been submitted to or approved by the Oversight Board.

The NTSP's actions directly contradict the Fiscal Plan and the mandate to achieve fiscal responsibility. The Fiscal Plan includes certain structural reforms, including improving the ease of doing business on the island. One of the specific measures to advance this reform is "an administrative order eliminating the minimum land freight charge across Puerto Rico."² This measure is intended to improve the ease of doing business in the Commonwealth, thereby encouraging economic growth, broadening and deepening the tax base, and increasing corresponding tax revenues, thereby helping the Commonwealth "achieve fiscal responsibility." *See PROMESA § 101(a).* By increasing the same tariffs the Fiscal Plan seeks to eliminate, the Administrative Order is directly inconsistent with the Fiscal Plan.

Based on the foregoing, it is clear that the Administrative Order impairs or defeats PROMESA's purposes, especially by increasing transportation costs, contrary to the Fiscal Plan and contrary to the need to attract business for economic growth by lowering the cost of commerce and doing business.

We are concerned by Mr. García's statements and alarmed by the NTSP's choice to move forward with these measures despite our prior correspondence which alerted him to PROMESA's requirements with respect to issuing new rules and regulations on tariffs. Even if such measures complied with the Fiscal Plan, their enactment prior to Oversight Board review and approval

² 2020 Commonwealth Fiscal Plan (May 27, 2020), at 126.

violate the Policy and section 204(b) of PROMESA, and also impair the purposes of PROMESA in violation of section 108(a).

There appears to be an impasse, yet it does not have to be this way. We believe the NTSP, through the Draft Regulations, seeks to implement policies it believes will benefit the Commonwealth. The Oversight Board does not seek to interfere unnecessarily in the NTSP's work; it simply wishes to work together, consistent with its statutory mandate and PROMESA's requirements, to ensure the NTSP can accomplish its goals in a manner consistent with the certified Fiscal Plan and PROMESA's purposes.

However, the current impasse requires your immediate intervention. The NTSP, despite our numerous letters and warnings, has enacted measures in direct contravention of the Fiscal Plan. As you are aware, Section 5(b) of Act 2-2017, known as the Puerto Rico Fiscal Agency and Financial Advisory Authority Act, provides that AAFAF is the government entity charged with supervising, executing, and administering the Fiscal Plan and must ensure that all the entities of the Government of Puerto Rico comply with the Fiscal Plan. We therefore request you intercede to repeal the Administrative Order and prevent the NTSP from implementing the Draft Regulations until the Oversight Board has reviewed and approved them. Please confirm you will do so and a timeline for the reinstallation of the prior tariff regime as soon as possible.

As we have directly advised the NTSP, the Oversight Board reserves the right to take such actions as it deems necessary, consistent with PROMESA sections 104(k), 108(a), and 204(b), including seeking remedies to prevent the implementation and enforcement of the Draft Regulations and Administrative Order and sanctions if they are implemented contrary to section 108(a)(2). We hope that such action will be unnecessary and we are grateful for your assistance in this regard.

Sincerely,



Natalie A. Jaresko

CC. Hon. Wanda Vázquez Garced
Mr. Edison Avilés Delíz, Esq.
Mr. Antonio Torres, Esq.
Mr. Luis D. García Fraga, Esq.
Ms. Iris Guilloty Ortiz
Ms. Frances Vallejo