

**GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO**

Administrative Bulletin No. OE-2018-012

**EXECUTIVE ORDER ISSUED BY THE GOVERNOR OF PUERTO RICO, HONORABLE
RICARDO A. ROSSELLÓ NEVARES, TO EXERCISE THE POWERS ESTABLISHED
UNDER ACT 5-2017, AS AMENDED, REGARDING THE EMPLOYEE RETIREMENT
SYSTEM OF THE PUERTO RICO ELECTRICITY POWER AUTHORITY, TO DELEGATE
CERTAIN POWERS TO THE PUERTO RICO FISCAL AGENCY AND FINANCIAL
ADVISORY AUTHORITY AND FOR OTHER RELATED PURPOSES**

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- WHEREAS: Puerto Rico is currently facing the greatest financial and economic crisis in its modern history. This situation led the Federal Congress to enact the law entitled Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). Said statute, in turn, established a Financial Oversight and Management Board for the Government of Puerto Rico (FOMB).
- WHEREAS: As established in PROMESA's legislative history, when establishing the FOMB in Puerto Rico, federal Congress considered, among other things, the limited supervision and transparency in the actions of the Government of Puerto Rico, such as the failure of Puerto Rico's government to provide any audited financials since 2014 (H. Rep. No. 114-602 (I), at 41 (2016)).
- WHEREAS: On September 30, 2016, the FOMB designated the Puerto Rico Electric Power Authority (PREPA) and its components as covered entities under PROMESA.
- WHEREAS: PREPA is currently in the process of restructuring its debt under Title III of PROMESA. Likewise, PREPA is in the process of developing an amended Fiscal Plan which will be submitted to the FOMB for certification.
- WHEREAS: On the other hand, in light of PREPA's current circumstances, this administration has announced the beginning of a process for the transformation of our energy system into a modern, sustainable, reliable, efficient and cost-effective one.
- WHEREAS: In order to carry out these tasks responsibly, it is necessary to have the most recent, accurate, updated and audited financial information for PREPA and all of its components.
- WHEREAS: PREPA has a retirement system, known as the Employees' Retirement System of the Puerto Rico Electric Power Authority (the Retirement System).
- WHEREAS: As a component of PREPA, the Retirement System was also designated as a covered entity under PROMESA on September 30, 2016.
- WHEREAS: The Regulation of the Employees' Retirement System of the Puerto Rico Electric Power Authority (Regulation) imposes on the Board of Trustees of said system (Board of Trustees) the obligation to approve

annually the actuarial reports and financial statements of the Retirement System. However, the most recent actuarial reports corresponding to fiscal years 2014 and 2015, and the audited financial statements corresponding to fiscal year 2015, which were reviewed with updated data, have not yet been approved by the Board of Trustees, therefore, it has not complied with the annual obligation imposed by the Regulation.

WHEREAS:

During the past months, PREPA's senior management, some members of the Board of Trustees, representatives of the Department of the Treasury and representatives of the Puerto Rico Fiscal Agency and Financial Advisory Authority (FAFAA) have urgently requested on multiple occasions to the Board of Trustees the delivery and approval of the actuarial reports and the financial statements of the Retirement System that are due. However, these efforts have been unsuccessful, as certain members of the Board of Trustees have opted, without reasonable justification, not to act, with the result of continuing to delay the annual approval process of said reports and placing their obligations towards the retirees of the Retirement System in a precarious position.

WHEREAS:

PREPA's financial statements for fiscal years 2015, 2016 and 2017 have to be completed, but are subject to PREPA receiving the Retirement System's actuarial reports, financial statements, the representation letter from the Retirement System's management, and other pertinent information, since such information is part of PREPA's financial statements. Therefore, the Retirement System's delay directly impacts PREPA's ability to complete its own financial statements.

WHEREAS:

Likewise, the Government of Puerto Rico also needs PREPA's audited financial statements to finalize its own financial statements, since PREPA's financial statements form part of the financial statements of the Government of Puerto Rico.

WHEREAS:

It is of obvious importance to finalize the financial statements of the Retirement System, so that PREPA can complete its own financial statements and, therefore, have the necessary information to complete the revised Fiscal Plan, which must happen during this month of March 2018, as requested by the FOMB. Further, this information is required to be able to finalize PREPA's budget for fiscal year 2019, direct the processes to improve PREPA's finances and operations, advance the transformation of our energy system and establish fiscal discipline at PREPA.

WHEREAS:

Additionally, as it is known, our administration is committed to guaranteeing greater transparency with respect to the finances of the Government of Puerto Rico and its instrumentalities. In order to guarantee such transparency, it is necessary and a priority of this administration to finalize and publish the audited financial statements of

the Government of Puerto Rico and, with the greatest urgency, those audited financial statements that were not finalized before the beginning of this administration. This is also essential to fully comply with the processes established under PROMESA, in order to be able to direct our Island towards economic recovery.

WHEREAS:

The unjustified delay of the Retirement System in the approval of the actuarial reports, financial statements and the representation letter of the Retirement System's management, has delayed the issuance of the financial statements of PREPA, which in turn, has delayed the issuance of the financial statements of the Government of Puerto Rico. This delay limits the ability of the Government to comply with the existing Fiscal Plan, hinders the process of supervision and compliance with the existing budget and hinders the process for the preparation of the Government's budget for fiscal year 2019, among other drawbacks.

WHEREAS:

For the reasons outlined above, it is incumbent upon us to urgently take the necessary measures to ensure the immediate approval of the actuarial reports and the overdue financial statements of the Retirement System. It is essential to avoid further delays of such approvals and to avoid the worsening of the financial emergency that prevents progress in the economic, fiscal and social recovery of our Island.

WHEREAS:

Act 5-2017, as amended, known as the Puerto Rico Financial Emergency and Fiscal Responsibility Act (Act 5), provides that, during the Emergency Period, the Governor shall exercise general oversight control over the functions and activities of all government entities within the Executive Branch. Likewise, Section 206 (a) of Act 5 grants the Governor broad receivership powers to rectify the financial emergency declared by said law. In addition, said section authorizes the Governor, together with FAFAA, to take all necessary measures to correct and rectify the financial emergency.

WHEREAS:

Article 209 of Act 5 authorizes the Governor to delegate to FAFAA, through an Executive Order, any power or responsibility included in said statute.

WHEREAS:

Given PREPA's dire situation, which was aggravated by the destruction caused by Hurricanes Irma and María, in addition to the deteriorated situation of the Retirement System and the negative implications of not approving the actuarial reports and financial statements of the Retirement System, it is of the utmost importance to exercise such powers conferred by Act 5 in order to ensure the immediate approval of the actuarial reports and financial statements of the Retirement System.

WHEREFORE:

I, RICARDO A. ROSSELLÓ NEVARES, Governor of Puerto Rico, by virtue of the powers vested in me by the Constitution and the laws of the Government of Puerto Rico, hereby decree and order the following:

SECTION 1

Pursuant to Section 206 (a) of Act 5, the Governing Board of PREPA (Governing Board) is hereby appointed as receiver of the Retirement System for the following purposes: (i) to take those actions and decisions that are necessary to immediately finalize, evaluate, approve and/or sign the necessary documents (including the representation letter from the Retirement System's management) for the final publication of the actuarial reports and audited financial statements of the Retirement System for the corresponding fiscal years, up to and including fiscal year 2017; and (ii) to deliver, or cause the delivery to FAFAA, of any information of the Retirement System necessary or convenient for the elaboration of PREPA's revised Fiscal Plan or PREPA's budget for fiscal year 2019. Such designation shall be in effect until the following requirements are met: (i) actuarial reports and audited financial statements of the Retirement System are issued for the corresponding fiscal years, up to and including fiscal year 2017, (ii) the FOMB certifies a revised Fiscal Plan for PREPA and (iii) the FOMB certifies a budget for PREPA for fiscal year 2019.

SECTION 2

The Governing Board may exercise any power or function of the Board of Trustees that is necessary or convenient to carry out the aforementioned urgent purposes. The Board of Trustees will continue to exercise all other functions that correspond to it in the daily administration of the Retirement System, provided that, in no way may it directly or indirectly prevent, or allow the prevention through third parties, including contractors, of the approval and/or publication by the Governing Board of the actuarial reports and financial statements of the Retirement System.

SECTION 3

Pursuant to Article 209 of Act 5, those other powers and faculties conferred upon the Governor pursuant to Section 206(a) of said statute, which are required for the implementation of this Executive Order, are hereby delegated to FAFAA.

SECTION 4

Unless gross negligence is shown, no person will incur in civil, criminal or other liability towards any entity or person, and without the need for further notice or order, they shall be exonerated for actions or omissions in their official capacity and within their authority in connection with, regarding, or arising under, or as allowed by this Executive Order. The members of the Governing Board and the FAFAA personnel will be defended and indemnified by PREPA and exonerated from all civil liability for good-faith actions while in their official capacities and within their authority.

SECTION 5

NON-CREATION OF ENFORCEABLE RIGHTS. This Executive Order is not aimed at creating substantive or procedural rights enforceable before judicial, administrative, or any other forum, in favor of third

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parties against the Government of Puerto Rico or its agencies, instrumentalities, public corporations, or any of its officers, employees or any other person.

SECTION 6 REPEAL. This Executive Order leaves without effect any other Executive Order which may be incompatible with this one, in whole or in part, to the extent of such incompatibility.

SECTION 7 EFFECTIVENESS. This Executive Order shall become effective immediately and shall remain in force as provided in Section 1 hereof or until it is amended, revoked by a subsequent executive order or by operation of law, whichever takes place first.

SECTION 8 SEVERABILITY. The provisions of this Executive Order are independent and separate from each other, and in the event a court of competent jurisdiction were to declare any part, section, provision or sentence of this Executive Order unconstitutional, null, or void, the decision to that effect shall not affect the validity of the remaining provisions, which shall remain in full force and effect.

SECTION 9 DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have the meanings provided in Act 5.

SECTION 10 PUBLICATION. This Executive Order shall be immediately filed with the Department of State and published generally.



IN WITNESS WHEREOF, I hereby issue the present Executive Order under my signature and cause the great seal of the Government of Puerto Rico to be stamped hereunto, in San Juan, Puerto Rico, this 22 day of March, 2018.

A blue ink signature of Ricardo A. Roselló Nevares, written in a stylized cursive script.

RICARDO A. ROSSELLÓ NEVARES
GOVERNOR

Enacted pursuant to Law, this 22 day of the month of March, 2018.

A blue ink signature of Luis Gerardo Rivera Marín, written in a stylized cursive script.

LUIS GERARDO RIVERA MARÍN
SECRETARY OF STATE