

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



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Executive Director

**BY ELECTRONIC MAIL**

September 3, 2019

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:

On August 19, 2019, the Senate of Puerto Rico approved Senate Joint Resolution 399 (“RCS 399”), which assigns \$123 million from funds outside the Certified Budget to the Puerto Rico Department of Education (“PRDE”) to cover the costs associated with therapies and evaluations of students of PRDE’s Special Education Program (“SEP”).

The Certified Budget for the fiscal year 2019-2020 provides over \$2.4 billion for PRDE. The budget certified by FOMB does include a certain level of granularity, such as personnel and non-personnel, with some detail within those categories. The specific use, or allocation, of these funds by program within PRDE, however, is determined solely by PRDE in conjunction with the Office of Management of Budget and FOMB has not had visibility on such allocations.<sup>1</sup> To date, the Oversight Board has not defined how much funding any specific PRDE program, including SEP, receives from PRDE’s Certified Budget appropriation. Thus, any reduction made to the SEP program budget was determined solely by PRDE and Office of Management and Budget, not by FOMB. Moreover, it is hard to understand how such a significant portion of the savings expected to be achieved by PRDE could ever fall to that single program, rather than in the areas defined in the Certified Fiscal Plan, including procurement.

Furthermore, funds granted to PRDE by the Federal Government for the current fiscal year amount to approximately \$1.5 billion. We are aware that some of the Federal funding has not been fully utilized and, if not spent before the federal deadline, may be permanently lost. Taken together,

<sup>1</sup> The fiscal year 2019-2010 Certified Budget defines expenditures at concepts of spend level, but not at a programmatic level.

*cc*  
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The Honorable Wanda Vázquez Garced  
The Honorable Thomas Rivera Schatz  
The Honorable Carlos J. Méndez Núñez  
September 3, 2019  
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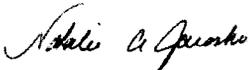
PRDE's total operational budget for the fiscal year 2019-2020 is approximately \$4.0 billion, of the total Commonwealth spending of \$20.9 billion.

Critically, because RCS 399 assigns and expends funds that are not appropriated in the Certified Budget, the purported assignment of \$123 million to PRDE by RCS 399 is inconsistent with the Certified Budget and the Fiscal Plan. As Judge Swain recently reiterated in the FOMB's lawsuit challenging Act 29:

It beggars reason, and would run contrary to the reliability and transparency mandates of PROMESA, to suppose that a budget for a fiscal year could be designed to do anything less than comprehend all projected revenues and financial resources, and all expenditures, for the fiscal year. Since a certified budget is in full effect as of the first day of the covered period, means and sources of government spending are necessarily rendered unavailable if they are not provided for within the budget.

Moreover, Judge Swain concluded that "Congress expected the Governor and the relevant territorial entity to comply with [PROMESA] in good faith," including in certifications for new laws pursuant to Section 204(a), and that the FOMB has the "ability to question and, if necessary, bring before the Court challenges to the sufficiency and accuracy of documents" required by Section 204(a). Accordingly, enacting RCS 399 into law would violate multiple sections of PROMESA, and the FOMB will uphold PROMESA's mandates.

Sincerely,



Natalie A. Jaresko

CC: Mr. Omar J. Marrero Díaz  
Mr. Elí Díaz Atienza