



GOVERNING BOARD
UNIVERSITY OF PUERTO RICO

Tuesday, April 21, 2020

By email

Mr. José B. Carrión III
President
Financial Oversight and
Management Board for Puerto Rico (“FOMB”)
San Juan, Puerto Rico

RE: UPR’s Retirement System (“System”)

Dear Mr. Carrión:

Upon learning the contents of the letter sent to you by Mr. Eduardo Berríos, President of the Retirement Advisory Board (“RAB”), dated April 20, 2020, we feel compelled to write to the FOMB in an effort to maintain a straight and truthful record.

We understand that the FOMB is well aware as to the System’s actuarial debt, its funding ratio, and the financial and fiscal condition of both the University of Puerto Rico (“UPR”) and the Central Government. The RAB’s interpretations and conclusions are refuted by the financial data itself, including audited financial reports and actuarial reports, analyzed by the UPR and the FOMB. Hence, we find no need to expand on that aspect at this moment. Nevertheless, it is our duty to correct their statements regarding Act 219-2012 and local courts rulings on Retirement System’s operations, since they are misleading and, in some instances, plainly wrong.

As the FOMB knows, the assets used to fund the System’s participants’ benefits, current and future, are deposited in a trust fund, as per UPR’s Retirement System Regulation, Certification Num. 27 (1973-1974), as amended. In 2016, in compliance with Act 219-2012, also known as the “*Trust Act*”, a deed was enacted to provide protection to those funds, in accordance to that body of law (the “Deed”).¹

The RAB’s letter states that the financial projections included in the proposed Fiscal Plan for the UPR, as approved and submitted by the UPR’s Governing Board to FOMB on March 30, 2020, “violates” said Deed. Such a statement is both misleading and incorrect. On one hand, noticeably the letter fails to articulate the alleged violation, making their conclusion an unsubstantiated one.

¹ See Certification Num. 118 (2015-2016).
<http://www.vcertifica.upr.edu/PDF/CERTIFICACION/2015-2016/118%202015-2016.pdf>.



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On the other hand, any actions by the UPR's Governing Board to protect the sustainability and solvency of the System by implementing a reform, not only have been validated and recognized by Puerto Rico Supreme Court rulings,² but as shown below the Deed expressly contemplates the possibility of changes to the pension plan.

Section 2.1 of the Deed states that the disposition of assets from the trust shall be made subject to the terms and conditions set forth in Certification No. 27 (Retirement System Regulations). This sections also states that said terms and conditions may be amended in the future by the UPR's Governing Board. Sections 3.1 and 3.2 reiterate such powers.³ Moreover, the UPR reserved the right to amend the Deed in accordance with the provisions of the "*Trust Act*".⁴

Regarding the rulings by the Court lightly mentioned in the letter, may we provide the complete picture and extent of their determinations.

In the case of *Retirement Board v. Governing Board*, Case No. SJ2018CV09660, the RAB failed to mention that in the referenced resolution the judge not only dismissed plaintiff's request for a preliminary injunction, but also recognized that the UPR's current fiscal condition may prevent the Governing Board to execute the Retirement Board's recommendations.⁵ In that case plaintiffs petitioned the removal of the Governing Board as the fiduciary of the Trust and the appointment of the Retirement Board as the fiduciary substitute. The Court concluded that the plaintiffs failed to provide any evidence as to any substantial breach of the fiduciary duties by the Governing Board that could justify said removal.⁶ The resolution was appealed by plaintiffs (Case No. KLAN201900304), and its resolution still pending.

In *Retirement Board v. Governing Board*, Case No. SJ2017CV02589, the same Court dismissed plaintiff's claim of breach of fiduciary duties by the Governing Board because certain resolutions passed by plaintiff had not been answered or implemented by defendant.⁷ In its judgement, the Court concluded that the role of the Retirement Board is to render advice to the Governing Board, and that the manner and form in which the governing body executes its fiduciary duty is at its sole discretion. In that sense, the Retirement Board's proposals should have been presented to the Governing Board, as it has been formally and informally requested in the past, in several occasions and through various means, including via formal certification approved during the ordinary meeting

² Bayrón Toro y otros v. Serra, 119 D.P.R. 605 (1987).

³ See Certification No. 118 (2015-2016).

⁴ See Article 64 of Act 219-2012. 32 L.P.R.A., sec. 3354b.

⁵ See page 23 of the Resolution by Judge Lauracelis Roques-Arroyo, San Juan Superior Court, dated February 22, 2019.

⁶ *Id.*, pages 28-29.

⁷ See pages 15-17 of the Judgement by Judge Lauracelis Roques-Arroyo, San Juan Superior Court, dated April 27, 2018.



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held in August of 2019, when the decision to freeze the current defined benefits plan was held back to allow for additional time to receive more recommendations.

In a third case filed by the advisory body (*Retirement Board v. Governing Board*, Case No. SJ2018CV10382), the Retirement Board challenged the Governing Board's prerogative to amend the Retirement System Regulation. That case was dismissed in its entirety.⁸ The judgement which was issued by the same judge that had ruled in the other two cases reiterated the Governing Board's power to amend said Regulation, as authorized by Act No. 1, *supra*; held that Act 38-2017 procedures aren't required to amend the Regulation; and concluded that the specific amendments that had been challenged didn't violate Acts 219-2012 or the Trust.⁹

Summarizing, despite all the obstacles encountered, and all the time and resources consumed in the process, the UPR's Governing Board has methodically and diligently worked since 2017 in assessing the real fiscal situation of both the Retirement System and the University of Puerto Rico, and devising a road map for realistic short and long term sustainability for the pension system, in compliance with State law and for the benefit of present and future participants. All this, as the Governing Board fulfills its fiduciary duty and adequately balances all interests at stake, while advancing the University's educational, social and developmental mission pursuant to Act No. 1, *supra*.¹⁰

We are willing and able to expand on the above at a virtual meeting (given the peculiar pandemic related circumstances at present), at a date and time of mutual convenience.

Sincerely,

Walter O. Alomar Jiménez
President

Cc; UPR's Retirement Board
Members of the UPR Governing Board
Governor of Puerto Rico

⁸ See page 15 of the Judgement by the Hon. Lauracelis Roques-Arroyo, San Juan Superior Court, dated February 22, 2019.

⁹ *Id.*, pages 13-14.

¹⁰ See Article 2 of Act Num. 1, *supra*. 18 L.P.R.A., sec. 601.