

# FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



David A. Skeel, Jr.  
Chair

Members  
Andrew G. Biggs  
Arthur J. González  
Antonio L. Medina  
John E. Nixon  
Justin M. Peterson  
Betty A. Rosa

## **BY ELECTRONIC MAIL**

May 24, 2022

Hon. Omar J. Marrero Díaz  
Executive Director  
Fiscal Agency and Financial Advisory Authority (“AAFAF”)

Dear Hon. Marrero Díaz,

We write to you to request the necessary documentation required under the *2022 Certified Commonwealth Fiscal Plan* and the Commonwealth Amended FY2022 Budget Resolution certified on February 21, 2022, related to the employer contributions to the Puerto Rico Electric Power Authority Employees’ Retirement System (“PREPA ERS”) for employees that transferred to the Commonwealth by way of the PREPA Mobility Plan.

As you are aware, in June 2021, the Commonwealth and PREPA commenced a mobilization plan to reassign approximately 2,300 employees from PREPA’s grid operations to various public corporations and central government agencies across the Commonwealth in connection with PREPA’s transfer of responsibilities to LUMA to operate and maintain PREPA’s Transmission and Distribution System.

As part of the *2022 Certified Commonwealth Fiscal Plan*, the Commonwealth projected payroll costs related to these mobilized employees that include assumptions for salaries, adjustments for healthcare, Social Security, and other benefits related to the mobilized employees. Included within these payroll cost assumptions, is the assumption that each agency to which former PREPA employees were mobilized would make a contribution on behalf of its mobilized employees to the PREPA ERS, in addition to the individual employee contributions currently being withheld from the earnings of such employees.

For reference, the employer contribution amount is assumed to be equal to fifteen percent (15%) of payroll for the mobilized employees, based on the average estimated cost of additional PREPA ERS pensions that mobilized employees earn in each pay cycle. These funds would be held in a custodial account until the Commonwealth provided the below documentation, to the satisfaction of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”).

As stated in the *2022 Certified Commonwealth Fiscal Plan*, in order to distribute the funds held in the custodial account for the benefit of PREPA mobilized employees, the Commonwealth had but failed to provide to the Oversight Board the following documentation:

- a. A formal written legal opinion from the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) or internal or outside counsel to AAFAF or the Government of Puerto Rico identifying the legal basis on which former PREPA employees transferred to the Commonwealth may continue to participate in the PREPA ERS, as opposed to being enrolled in the Commonwealth Act 106 Defined Contribution plan, including the Government’s ability or obligation to assume the PREPA ERS employer contributions for mobilized employees. The legal opinion must also identify whether a distinction should be made between employees with ten (10) or more years of PREPA service and employees with less than ten (10) years of PREPA service for purposes of determining eligibility to continue participating in the PREPA ERS after mobilization, including identifying whether continuing participation in the PREPA ERS is a vested right under Act 120-2018, as amended by Act 17-2019, and whether such right also applies to employees with less than ten (10) years of PREPA service (who would not have been vested in their PREPA ERS pension benefit prior to the mobilization date).
- b. Identification of the point in time at which these contributions will be made and how these contributions will be transferred to and accepted by PREPA ERS.
- c. A financial model with the basis for the calculation of such contributions (with supporting source documentation) and an estimate of the approximate cost.
- d. Confirmation that any pension reform measures applied to PREPA ERS would also be applied to mobilized employees.

Your prompt attention to the above matter is essential to ensure adequate funding of the PREPA ERS and appropriate usage of the payroll withholdings of active employees now mobilized across the Commonwealth. Therefore, the Oversight Board directs you to provide the required documentation listed above by no later than June 6, 2022.

We look forward to continuing to work together for the benefit of the people of Puerto Rico and to ensure that the pension benefits are adequately funded.

Sincerely,



Jaime A. El Koury  
General Counsel