

FAFFA Approves Regulation On Procedures For Compliance With PROMESA-Certified Fiscal Plans and Budgets

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PRACTICE AREAS

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On April 28, 2017, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“FAFAA”) published Regulation 8941, known as “Regulations for Oversight of Compliance with the Fiscal Plans and the Budgets of the Government of Puerto Rico under Act No. 2-2017” (the “Regulation”).

FAFAA enacted the Regulation in order to establish the procedures necessary to ensure that government entities comply with the fiscal plans and budgets approved by the Financial Oversight Board (“Oversight Board”) established by the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”). It requires government entities designated as “covered territorial instrumentalities” under PROMESA, or that receive funds pursuant to an Oversight Board approved fiscal plan, to submit quarterly and annual reports showing collections, expenditures and cash flow statements, and their progress of compliance with the fiscal plan. FAFAA may also request any of the covered government entities to provide additional information or reports.

Pursuant to the Regulation, FAFAA is authorized to audit, examine and inspect documents and order investigative hearings for any of the covered government entities for the purpose of evaluating and overseeing compliance with the corresponding Oversight Board approved fiscal plan and budget. FAFAA is also empowered to repeal regulations, administrative orders and guides deemed inconsistent with the FAFAA Enabling Act or the Oversight Board-approved fiscal plan and budget.

The Regulation orders covered entities to designate a “Person of Contact” and a “Compliance Officer”. The Person of Contact will be in charge of delivering the information FAFAA requests from the covered entity in order to ensure compliance with the Oversight Board’s approved fiscal plan and budget, the Regulation, the FAFAA Enabling Act, PROMESA and any other applicable law.

The Compliance Officer will oversee the compliance and execution of the Oversight Board-approved fiscal plan and budget. In addition, the Compliance Officer will be responsible for submitting to FAFAA the quarterly and annual

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reports required under the Regulation and to respond to inquiries by FAFAA related to the government entity's compliance with the approved fiscal plan and budget. The Compliance Officer is authorized to take any necessary action required by FAFAA to ensure compliance with the approved fiscal plan and budget, the Regulation, the FAFAA Enabling Act, PROMESA and any other applicable law

If a covered entity fails to comply with the Regulation, the FAFAA Enabling Act or the Oversight Board-approved Fiscal Plan and Budget, FAFAA may (i) impose a hiring freeze; (ii) order specific cost reductions; (iii) require prior approval of FAFAA to grant contracts; (iv) carry out banking transactions on behalf of such entity; (v) order the restructure of the entity's internal organization; (vi) reallocate the use or distribution of funds; (vii) dismiss or recommend the dismissal of one or more executive officers; (viii) require the establishment of a trust; or (ix) take control the entity's accounting and/or finance department. FAFAA may also place any covered government entity into a receivership. The receiver, which can be FAFAA itself or any other public or private named by FAFAA, would assume the authority of the executives and directors of such government entity.

The Regulation became effective on May 10, 2017.

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