



PUERTO RICO  
**BUILDERS**  
ASSOCIATION

September 19, 2018

Honorable Donald J Trump  
President  
United States of America  
1600 Pennsylvania Ave NW  
Washington, DC 20500

RE: Puerto Rico Issued Executive Order 2018-033  
Minimum Wage for Construction Workers & Project Labor Agreements

Dear Mr President,

Reference is made to our letter dated July 23 2018. On said letter we requested that President Obama Era Executive order 13502 be replaced with Executive orders 13202 and 13208.

On Monday July 30,2018, based on Executive Order 13502, Puerto Rico Governor Ricardo Rosselló signed Executive Order 2018-033 (EO-33). Said order requires government-sponsored construction contractors to do the following:

1. Raise minimum wage of workers to \$15/hr
2. Enter into "project labor agreements"
3. Buy locally produced cement.

These measures are mandatory for publicly financed projects.

Background

We recognize the need to improve salary conditions. However, this mandated and disproportionate increase will have an effect of increasing labor costs throughout the entire private sector. For example: Why would an employee work for a private project that pays \$ 7.25 when he or she can earn \$15 in a public project? The consequence for private projects will be to be forced to offer a higher salary to be able to attract the workers needed to complete a job, including existing and in-process work. Likewise, assuming salaries go up through the entire industry, sectors such as restaurants, manufacturing and retail will receive pressure to raise their salaries due to the unavailability of laborers seeking opportunities for non-skilled construction jobs at a much higher salary.

The free market was already in the process of adjusting salaries upwards given the offers of jobs with federal assistance, but it was different for each project, staggered and manageable, contrary to a forced, immediate and substantial increase that abruptly derails private sector projects. In short, it will cause shortages of employees to other industries when employees decide to move to jobs that pay twice as much. We have already seen the example of workforce hiring for FEMA work after the hurricanes. In the current environment of labor scarcity, the immediate effect will be the increase in costs to private projects as well.

The cost of benefits and mandatory payments associated with the construction salaries add about 40% to the hourly labor costs. In other words, if an employee earned \$ 8.25 per hour, the employer incurs in \$3.30 additional costs per hour for mandatory benefits and payments (for a total of \$ 11.55 per hour). Therefore, we estimate that the mandated \$15.00 per hour salary rate will cause a total hourly rate expense, including these additional costs, of \$21.00 per hour.





The PR Planning Board itself, in its 2017 Economic Report to the Governor, cites a study by Hernández, et. al. (2016), where it concludes that an increase to the minimum wage above \$ 10.00 per hour will result in 128,000 jobs being lost. In addition, if the minimum wage is increased, the manufacturing, finance, services and public administration sectors would also sustain job reductions (Hernández, 2016).

The proposed increase of the minimum wage of construction workers is even higher than the current salaries of workers at federally funded projects. These workers are already covered by mandated wages substantially higher than the federal minimum wage, by virtue of the mandate of Federal Executive Order 13658, signed by President Obama.

EO 33 imposes an insurmountable burden on the construction sector. We do not know of any jurisdiction in the US that has doubled the minimum wage in an industry overnight. Also, please consider that EO 33 was never discussed with any of the construction-related associations in Puerto Rico (or with anyone in the industry, for that matter), most of which learned of its consideration and approval through the press, after the Governor had approved it.

In addition, there is no basis to support the magnitude of 81.82% increase in labor costs that impacts the private sector. Labor costs represent approximately 35% of total construction costs. In fact, the Report to the Governor of 2017 tends to contradict, specifically, a mandated increase in salaries as expressed in EO 033. This increase represents increases in direct construction costs that would exceed 35% of a project. For example, a hospital with construction costs of \$ 90 million dollars, would suffer an increase of approximately \$22 million, without including financing costs, insurance and other costs tied to the increase in construction costs. This unsustainable increase derails plans for billions of dollars in investment in private projects that were about to begin including hotels, hospitals, distribution centers, retail stores and others, after years of hard work and effort.

Additionally, increases in wages must be in consideration of the increase in the cost of living. According to the study by José Caraballo Cueto (2016), also cited in the PR Planning Board report, the minimum wage should be \$ 8.16 per hour.

In a study by the Society of Labor Economics ("Arising from the Ruins: The Impact of Natural Disasters on Reconstruction Labor Wages"), which analyzed 9,009 catastrophe regions in the United States, it was found that wages increase after a natural disaster, in a cycle of around 18 months. Those increases were directly proportional to the strength of the construction sector, but up to 50%. They also found that a "restraining effect can be observed for regions with higher unemployment rates. Thus, it seems that at least part of the additional labor demand can be satisfied by unemployed". This is the case of Puerto Rico where unemployment last May was at 9.6% (national rate was 3.8%) with a labor participation of around 40%.

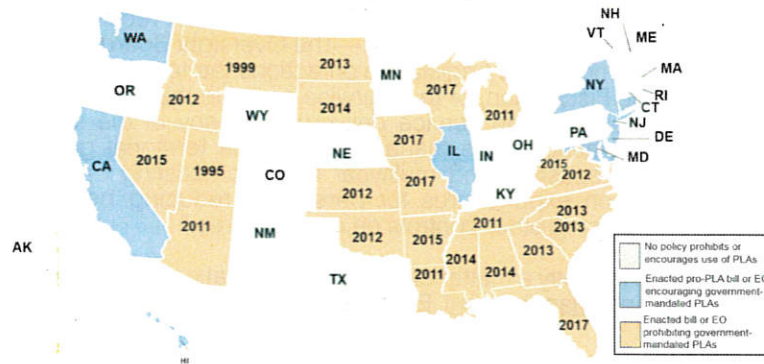
Finally, following the Obama-era Executive Order 13502, EO 33 creates an unprecedented element in Puerto Rico by introducing Mandatory Project Labor Agreements ("PLAs") in public construction contracts. It also requires all subcontractors to incorporate PLAs into their sub-contracts. EO 33 indicates that these PLAs be prepared and negotiated by each government entity. Other jurisdictions that have experimented with the mandated implementation of PLAs have experienced that, in order to comply with these mandated requirements, the only practical solution was to unionize construction employees in addition to closing shop requirements. Impracticalities in the negotiation and implementation of these agreements, forcing an individual negotiation, have required the intervention of a labor union.

According to an article presented at the annual meeting of the "American Bar Association" of 2013, "Working with Project Labor Agreements – Construction Labor's Latest Answer to Decreasing Market Share" (Robert R. Roginson, et. Al., 2013), such agreements have traditionally been promoted by unions to maintain their ranks due to the decrease in their labor market share. According to the Federal Bureau of Labor and Statistics ("BLS"), the rate of participation of unions in the construction industry has decreased from 19.5% in 1997 to 14.0% in 2017. Now PLAs can be seen as a way to assure their survival through the achievement of a closed workshop.

As of today, 24 states of the Union have enacted legislation or executive orders prohibiting government mandated PLA's, while only eight have enacted a pro-PLA policy, as shown in the following graphic:



## 24 States Restrict Government-Mandated Project Labor Agreements, Ensure Fair and Open Competition



Source: <https://thetruthaboutplas.com/2018/07/24/u-s-house-lawmakers-ask-president-trump-to-eliminate-obama-policy-promoting-project-labor-agreements/>

Moreover, many projects in pro-PLA states have experienced delays, increased costs, reduced competition, safety issues, and poor local hiring outcomes, amongst other problems. These reported outcomes contradict the goals stated on OE33.

The National Association of Home Builders joined a diverse group coalition of construction and business associations in asking President Donald J Trump to rescind both Obama Era Executive Orders 13202 and 13208. Latest letter was written on July 23 2018.

### PROMESA

The Puerto Rico Oversight, Management and Economic Stability Act (PROMESA) gives the Oversight Board (FOMBPR) review rights over certain government actions, as stated herein:

- o Section 204 establishes the rights of the Oversight Board to review activities to ensure compliance with the Fiscal Plan.
- o Section 204(a): Requires the Submission of Legislative Acts to the Oversight Board.
- o Section 204(b): Establishes the Effect of Approved Fiscal Plan on Contract Rules and Regulations, including but not limited to executive orders.
- o Section 204(b)(2) establishes the Oversight Board's authority to review government contracts to ensure such proposed contracts promote market competition and are not inconsistent with the approved Fiscal Plan: "AUTHORITY TO REVIEW CERTAIN CONTRACTS.—The Oversight Board may establish policies to require prior Oversight Board approval of certain contracts, including leases and contracts to a governmental entity or government-owned corporations rather than private enterprises that are proposed to be executed by the territorial government, to ensure such proposed contracts promote market competition and are not inconsistent with the approved Fiscal Plan."
- o Section 204(b)(4) establishes the Oversight Board's authority to review rules, regulations, and executive orders: "AUTHORITY TO REVIEW CERTAIN RULES, REGULATIONS, AND EXECUTIVE ORDERS.—The provisions of this paragraph shall apply with respect to a rule, regulation, or executive order proposed to be issued by the Governor (or the head of any department or agency of the territorial government) in the same manner as such provisions apply to a contract."
- o Section 204(b)(5) establishes the Oversight Board's authority to prevent the execution or enforcement of a contract, rule or executive order or regulation that will adversely affect the government's compliance with the Fiscal Plan: "FAILURE TO COMPLY.—If a contract, rule, regulation, or executive order fails to comply with policies established by the Oversight Board under this subsection, the Oversight Board may take such actions as it considers necessary to ensure that such contract, rule, executive order or regulation will not adversely



affect the territorial government's compliance with the Fiscal Plan, including by preventing the execution or enforcement of the contract, rule, executive order or regulation."

Section 205(a)(1) establishes the right of the Oversight Board to make recommendations relating to "reforming procurement practices": (a) IN GENERAL.—The Oversight Board may at any time submit recommendations to the Governor or the Legislature on actions the territorial government may take to ensure compliance with the Fiscal Plan, or to otherwise promote the financial stability, economic growth, management responsibility, and service delivery efficiency of the territorial government, including recommendations relating to the management of the territorial government's financial affairs, including economic forecasting and multiyear fiscal forecasting capabilities, information technology, placing controls on expenditures for personnel, reducing benefit costs, reforming procurement practices, and placing other controls on expenditures;"

PROMESA's section 204 was recently a matter of judicial interpretation in case Adv. 18-080, Rosselló v The Financial Oversight and Management Board of PR, Judge Swain's Opinion and Order of August 7, 2018, states:

"The power bestowed on the Oversight Board by Section 201(b)(1)(K) of PROMESA allows the Oversight Board to make binding policy choices for the Commonwealth, notwithstanding the Governor's rejection of Section 205 recommendations."

It is important to note that Section 201 provides the Requirements of the Approval of the Fiscal Plan; pursuant to the Opinion and Order, the Oversight Board can make binding policy choices as part of the Fiscal Plan, whether the Government accepted their recommendations under Section 205 or not.

We feel the ruling only confirms what PROMESA clearly states.

Consistent with Judge Swain's ruling, this Board enacted a Policy, effective August 6, 2018 Titled: FOMB POLICY: REVIEW OF RULES, REGULATIONS, AND ORDERS. Under this Policy it is specifically ordered that all Executive Orders-such as EO 33- be submitted for review of the FOMB, to determine their consistency with the approved Fiscal Plan.

The Policy states that the FOMB can apply this Policy to previously enacted rules, regulations and executive orders. It states that enacted executive orders, in connection with or that concerns rightsizing of the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality, including without limitation any rule, regulation, administrative order, or executive order related to procurement, contracting policy, or employee compensation or benefits, must be submitted for review. In as much as EO 33 creates an automatic twofold increase in the minimum wage of construction works at government projects, it will necessarily increase the budgetary committed funds for construction works at government facilities and projects. Such increase has a direct and substantial effect on government spending and the approved Fiscal Plan for Puerto Rico. Therefore, the determination if the approval of EO-33 is a sound government measure, falls within the purview of this FOMB.

On August 24 2018, the FOMB wrote a letter to PR Governor Ricardo Rosselló recommending he rescind EO 2018-033 pursuant to Section 205 (a) of PROMESA. Governor has 90 days from that date to either adopt the recommendation or write a letter to the President and Congress explaining the reasons why he rejects the recommendation. It is imperative that both Congress and the White House persuade the FOMB to rescind this Executive Order should the Governor not adopt the recommendation.

#### Covered Entities Fiscal Plans

Under PROMESA, this FOMB requires the approval of Fiscal Plans and budgets for government units within the Commonwealth. The Department of Transportation and Public Works, the Puerto Rico Housing Department and the Public Works Authority, all fall within the purview of such review. Under EO33 all projects to be performed for such government units will require the increase in labor costs.

Also, because of the covered entities' lack of access to financing, any capital expenditures for improvements will have to come from its approved budget. This increase in costs will impact each covered entity budget and the number of projects that each one of them can perform. Also, as in the case of at least PRASA, an increase of costs and a decrease of number of projects that can be awarded and performed could have an impact on its consent decree with EPA or other regulatory requirements. Therefore, we feel that such action is contrary to covered entities fiscal plans.



## Conclusion

The Puerto Rico Builders Association strongly understands that EO-33 will not accomplish the stated goals. While its purpose may be condemnable – to increase the wealth of resources of workers- on the contrary, it will increase costs and uncertainties to initiatives that could spur economic activity, which are so necessary for Puerto Rico to return to the path of prosperity. Private initiative projects will not be able to absorb such a significant increase in costs, on top of increases in material costs in the aftermath of Hurricane María. Also, extending the requirements to all government financed projects will have a significant fiscal impact of an average of 35% of originally determined construction costs. This is specified without any training and certification requirement for would be construction workers.

Executive Order 2018-033 could further distort the market by adding inflationary pressures and causing a general rise in price levels across the Island's business sectors. Since Hurricane Maria impacted Puerto Rico, the demand for labor and certain construction materials has increased considerably, thus impacting costs. In the case of labor, the increase has been up to 20 percent. In addition, the 25 percent tariff imposed by the Federal Government on imported materials, such as steel and aluminum, has also affected the costs of these materials and cement has increased by 8 percent. In general, materials have increased in cost between 30 and 40 percent. If we add to this an increase in the minimum wage to almost double, it not only generates dislocation in the private labor market vs. the public, but it will have an inevitable inflationary effect on the prices of the construction works-in-progress and future projects. The private sector is convinced that this situation will cause a lower return on funds from insurers and the federal government for repairs and new construction in Puerto Rico after the hurricane.

Because of the stated negative impacts to our economy, recovery and fiscal position of covered government entities under PROMESA, we respectfully request that the Fiscal Oversight and Management Board for Puerto Rico be urged to rescind Executive Order 2018-033. Also, that Executive Order 13502 be replaced with Executive Orders 13202 and 13208.

Respectfully,

Emilio Colón-Zavala, PE  
PRBA Chairman (2018-2019)



ASOCIACIÓN DE  
**CONSTRUCTORES**  
DE PUERTO RICO

July 23, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW Washington, DC 20500

Dear Mr. President:

The Puerto Rico Builders Association (ACPR) is the local chapter for the National Association of Home Builders (NAHB) and the Urban Land Institute (ULI). In the aftermath of hurricanes Irma and María, we continue to push for the reconstruction of our infrastructure and housing in our communities impacted in a resilient and code compliant way. In such efforts it is important to enact critical procurement and regulatory reforms to build a stronger America together. Currently, it is estimated the construction industry faces a skilled labor shortage of almost 45,000 people.

As you are aware, on February 6 2009, President Obama signed Executive Order 13502, which encourages federal agencies, on a case-by-case basis, to require project labor agreements (PLAs) on federal construction projects exceeding \$25 million in total value, and permits states and localities to mandate PLAs on federally assisted projects.

A PLA is a jobsite-specific collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union programs, follow union work rules and pay into union benefit and multi-employer pension plans that nonunion employees will be unlikely to access. This forces employers to pay "double benefits" into existing plans and union plans and places firms opposed to these costly provisions at a significant competitive disadvantage. In addition, PLAs typically force construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project.

Unions have historically advocated for mandatory PLAs as a way to mitigate their market share losses. According to the Bureau of Labor and Statistics, market share for construction industry unions have dropped from 19.5% in 1997 to 14.0% in 2017. That's a loss of 28.21% in market share in 20 years.

When mandated by government agencies, PLAs can interfere with existing union collective bargaining agreements. In addition, they unfairly discourage competition from quality nonunion contractors and their employees, who comprise 86 percent of the U.S. private construction industry, according to the most recent U.S. Bureau of Labor Statistics data.

Multiple studies have found that PLA mandates increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects. In addition, recent government-mandated PLAs on federal and federally assisted projects have resulted in litigation, reduced competition, increased costs, needless delays and poor local hiring outcomes.





In the Twenty First Century, it makes little sense to continue a policy that artificially discourages the majority of skilled American labor and qualified contractors from competing to deliver to taxpayers the best possible product at the best possible price.

At a time when American taxpayers and private enterprise must find efficiency and value in every dollar invested in infrastructure to meet our country's projected 10-year \$2 trillion infrastructure investment gap, it would be prudent to eliminate the current pro-PLA executive order and replace it with a policy that will foster vigorous competition, reduce costs, provide value for taxpayers and ensure all Americans have the opportunity to rebuild their communities.

We respectfully request that you rescind President Obama's Executive Order 13502 and replace it with Executive Orders 13202 and 13208.<sup>2</sup> This critical reform will prevent federal agencies and state and local government recipients of federal assistance from requiring contractors to sign an anti-competitive and costly PLA as a condition of winning a federal or federally assisted construction contract. Executive Orders 13202 and 13208 and similar policies have already been upheld in the highest courts of the land and would allow federal agencies to award contracts to contractors that voluntarily enter into PLAs without government interference, an industry practice permitted by the National Labor Relations Act. A total of 24 states—23 since 2011—have passed similar measures allowing the free market—not the government—to determine if a PLA is appropriate for a construction project.

Simply put, this crucial regulatory reform will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, curb construction costs and spread the job-creating benefits of federally funded contracts throughout the entire construction industry.

The Trump administration can create the conditions to make America great again by rescinding President Obama's failed policy and replacing it with a common-sense approach that encourages fair, market solutions, and robust competition and benefits all Americans.

Sincerely,

Emilio Colón-Zavala, PE  
Chairman

July 23, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

The diverse group of undersigned construction and business associations looks forward to working with your administration and Congress as we continue to push for an infrastructure bill and enact critical procurement and regulatory reforms to build a stronger America together.

Currently, it is estimated the construction industry faces a skilled labor shortage of almost 500,000 people. If the construction industry grows at a modest two to three percent rate over the next few years and an infrastructure bill resulting in an additional \$1 trillion worth of construction spending is added into the equation, the industry could need to fill an additional one million more jobs as early as 2020.

This is a serious challenge for the industry and the country, which is why it is imperative to cut regulations that stand in the way of creating career pathways into the construction industry and discourage all qualified contractors and their existing skilled employees from competing for taxpayer-funded construction projects.

As you are aware, on Feb. 6, 2009, President Obama signed Executive Order 13502, which encourages federal agencies, on a case-by-case basis, to require project labor agreements (PLAs) on federal construction projects exceeding \$25 million in total value, and permits states and localities to mandate PLAs on federally assisted projects.<sup>1</sup>

A PLA is a jobsite-specific collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union programs, follow union work rules and pay into union benefit and multi-employer pension plans that nonunion employees will be unlikely to access. This forces employers to pay "double benefits" into existing plans and union plans and places firms opposed to these costly provisions at a significant competitive disadvantage. In addition, PLAs typically force construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project.

When mandated by government agencies, PLAs can interfere with existing union collective bargaining agreements. In addition, they unfairly discourage competition from quality nonunion contractors and their employees, who comprise 86 percent of the U.S. private construction industry, according to the most recent U.S. Bureau of Labor Statistics data.

Multiple studies of hundreds of taxpayer-funded school construction projects found PLA mandates increase the cost of construction between 12 percent and 18 percent compared to similar non-PLA projects. In addition, recent government-mandated PLAs on federal and federally assisted projects have resulted in litigation, reduced competition, increased costs, needless delays and poor local hiring outcomes.

Therefore, it makes little sense to continue a policy that artificially discourages the majority of skilled American labor and qualified contractors from competing to deliver to taxpayers the best possible product at the best possible price.

At a time when American taxpayers and private enterprise must find efficiency and value in every dollar invested in infrastructure to meet our country's projected 10-year \$2 trillion infrastructure investment gap, it would be prudent to eliminate the current pro-PLA executive order and replace it with a policy that will foster vigorous competition, reduce costs, provide value for taxpayers and ensure all Americans have the opportunity to rebuild their communities.

We respectfully request that you rescind President Obama's Executive Order 13502 and replace it with Executive Orders 13202 and 13208.<sup>2</sup> This critical reform will prevent federal agencies and state and local government recipients of federal

<sup>1</sup> Executive Order 13502, *Use of Project Labor Agreements for Federal Construction Projects*, signed Feb. 6, 2009 (<https://www.gpo.gov/fdsys/pkg/FR-2009-02-11/pdf/E9-3113.pdf>) and related FAR Case 2009-005, effective May 13, 2010 (<https://www.regulations.gov/docket?D=FAR-2009-0024>).

<sup>2</sup> Executive Order 13202, *Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects*, signed Feb. 17, 2001 (<https://www.gpo.gov/fdsys/pkg/FR-2001-02-22/pdf/01-4622.pdf>) and Executive Order 13208, *Amendment to*



assistance from requiring contractors to sign an anti-competitive and costly PLA as a condition of winning a federal or federally assisted construction contract. Executive Orders 13202 and 13208 and similar policies have already been upheld in the highest courts of the land and would allow federal agencies to award contracts to contractors that voluntarily enter into PLAs without government interference, an industry practice permitted by the National Labor Relations Act. A total of 24 states—23 since 2011—have passed similar measures allowing the free market—not the government—to determine if a PLA is appropriate for a construction project.

Simply put, this crucial regulatory reform will create a level playing field in the procurement of government construction contracts, increase competition, help small businesses grow, curb construction costs and spread the job-creating benefits of federally funded contracts throughout the entire construction industry.

The Trump administration can create the conditions to make America great again by rescinding President Obama’s failed policy and replacing it with a common-sense approach that encourages fair and robust competition and benefits all Americans.

Sincerely,

- American Fire Sprinkler Association (AFSA)
- American Road & Transportation Builders Association (ARTBA)
- Associated Builders and Contractors (ABC)
- Business Coalition for Fair Competition (BCFC)
- Construction Industry Round Table (CIRT)
- Independent Electrical Contractors Association (IEC)
- National Association of Home Builders (NAHB)
- National Black Chamber of Commerce (NBCC)
- NFIB
- National Ready Mixed Concrete Association (NRMCA)
- Small Business and Entrepreneurship Council (SBEC)

- cc: Vice President Mike Pence  
U.S. Department of Commerce Secretary Wilbur Ross  
U.S. Department of Labor Secretary Alex Acosta  
U.S. Department of Transportation Secretary Elaine Chao  
U.S. Department of Treasury Secretary Steven Mnuchin  
Office of Management and Budget Director Mick Mulvaney

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*Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.* signed April 6, 2011 (<https://www.gpo.gov/fdsys/pkg/WCPD-2001-04-09/pdf/WCPD-2001-04-09-Pg584-2.pdf>).

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



*José B. Carrión III*  
Chair

Members

*Andrew G. Biggs*  
*Carlos M. García*  
*Arthur J. González*  
*José R. González*  
*Ana J. Matosantos*  
*David A. Skeel, Jr.*

*Natalie A. Jaresko*  
Executive Director

BY ELECTRONIC MAIL

August 24, 2018

The Honorable Ricardo A. Rosselló Nevares  
Governor of Puerto Rico  
La Fortaleza  
P.O. Box 9020082  
San Juan, PR 00902-0082

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 Rosselló Nevares, President Rivera Schatz, and Speaker Méndez Núñez:

Pursuant to Section 205(a) of PROMESA, we write to recommend that the Governor rescind Executive Order 2018-033 (the "Executive Order"), which sets a minimum wage of \$15 per hour for those performing work for federally-funded construction projects. Specifically, based on a preliminary analysis of the available information and research, the Oversight Board is concerned about the impact that the Executive Order will have on private sector employment, particularly in construction, but with the potential to leak into the broader economy. We make this recommendation to ensure compliance with the certified Fiscal Plan for the Commonwealth and to promote economic growth for Puerto Rico.

According to the federal Bureau of Labor Statistics, the median wage for construction laborers in Puerto Rico is \$8.69 per hour. Thus, the Executive Order could be expected to directly impact labor costs for a large number of construction workers. In addition, research by the Congressional Budget Office indicates that increases in minimum wages tend to affect even those wages that are above the new minimum. Thus, the Executive Order is likely to increase labor costs substantially for federally-funded construction projects because it will increase the costs not just for minimum wage earners, but for workers making more than \$15 per hour as well.

Given the large number of federally-funded construction projects that will take place over the next several years, it seems very likely that the Executive Order will have a similar effect on costs for non-federally-funded construction in Puerto Rico, making it more costly to undertake the vast amount of private reconstruction required on the island and likely reducing employment of construction workers for private projects. Even if federal funds can pay for the increased costs for those projects to which the Executive Order applies, doubling the minimum wage for construction workers may have significant, unexpected, and counterproductive economic effects that would dampen future revenues for the Commonwealth.

An immediate doubling of the minimum wage for construction work also does not appear consistent with the Puerto Rico Planning Board's recent comprehensive study of the minimum wage in Puerto Rico. That study made a series of reasonable recommendations with regard to minimum wage policy: first, do nothing and wait to see how federal policy may evolve; second, if an increase in the Puerto Rico minimum wage is desired, wait until the local economy has sufficiently recovered to handle such a wage increase; third, enact any minimum wage increases in small increments, such as 25 cents per year over three years; and finally, include provisions to cushion smaller employers from the impact of a minimum wage increase.

Even prior to Hurricane Maria, Puerto Rico's employment-to-population ratio of only 38% was ranked 227<sup>th</sup> out of 233 countries or territories surveyed by the World Bank. Even modest increases in the employment rate in Puerto Rico would go a long way to narrowing the income gap between Puerto Rico and the mainland and slowing the outmigration that saps the island of its current and future economic strength. It is the Oversight Board's view that policies to increase the rate of employment should be foremost in the Government's mind as it crafts economic policies for Puerto Rico. In this context, the more prudent course would be to let the market dictate wages for federally funded construction projects, and as demand rises for workers, we would expect wages to increase accordingly.

Accordingly, pursuant to Section 205(a) of PROMESA, the Oversight Board submits this recommendation that the Executive Order be rescinded as described herein. We look forward to your response within 90 days.

Sincerely,



José B. Carrión

Andrew G. Biggs  
Carlos M. García  
Arthur J. González  
José R. González  
Ana J. Matosantos  
David A. Skeel, Jr.

CC: Natalie A. Jaresko  
Christian Sobrino Vega

GOVERNMENT OF PUERTO RICO  
LA FORTALEZA  
SAN JUAN, PUERTO RICO

Administrative Bulletin Number: OE-2018-033

**EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. RICARDO  
ROSSELLÓ-NEVARES, TO INCREASE THE MINIMUM WAGE OF CONSTRUCTION  
WORKERS, TO BRING INTO FORCE THE LAWS REQUIRING THE USE OF  
CEMENT PRODUCED IN PUERTO RICO, AND TO REQUIRE THE USE OF LABOR  
AGREEMENTS IN PUBLICLY FUNDED CONSTRUCTION PROJECTS**

WHEREAS: The purchase and procurement of goods and services from private entities is one of the primary governmental functions. These functions include the contracting of construction work for the Government of Puerto Rico.

WHEREAS: The Government of Puerto Rico is Puerto Rico's main employer and contractor. Therefore, it is the responsibility of the Government of Puerto Rico to execute efficient contracts leading to the economic development of the Island. This includes the establishment of public policy that promote the economic well-being of workers and that will foster labor peace in the companies that enter into contracts with the Government.

WHEREAS: The recovery and reconstruction of Puerto Rico after the strike of Hurricanes Irma and María will constitute a challenge that will require a massive investment of federal and state funds. This investment will result in an increase in activity in the building sector, which has been severely affected in recent years.

WHEREAS: The construction industry is a major source of employment in Puerto Rico, especially for the working class, which has been the most affected by the economic and fiscal crisis of the past four (4) years. In calendar year 2012, 17 million cement bags were produced in Puerto Rico. In calendar year 2014, this figure fell to 7 million; a 60% reduction. Construction accounted for 3.2 billion dollars of economic activity in 2015, as compared to 6 billion in 2005. Therefore, it is a ministerial duty of the government to ensure the well-being of construction workers who work every day from sunrise to sunset for the economic development of Puerto Rico.

WHEREAS: The salaries of construction workers in Puerto Rico are well below what they deserve based on the risks and sacrifices they face in their work. In the United States, it is typical for construction workers to earn over \$70.00 per hour, while a worker doing the same job in Puerto Rico earns \$7.25. The nearly 36,000 construction workers laboring in Puerto Rico are suffering the consequences of this wage injustice.

CERTIFIED TRANSLATION

WHEREAS: The wage and labor inequalities facing the construction industry threaten to reduce the available workforce for the reconstruction of Puerto Rico, while intensifying the migration that leads to a decline in Puerto Rico's economic activity and taxpayer base.

WHEREAS: Economic studies show that paying good salaries to workers in this industry is good public policy to boost the economy. Paying extremely low wages to workers in this industry results in less income and resources for the Government, reduces the quality of the services rendered, and promotes worker migration.

WHEREAS: In order to foster Puerto Rico's economic development, it is also necessary to establish a public policy of support for local production. The use of materials produced in Puerto Rico protects local businesses that create jobs and invest locally. Cement is one of Puerto Rico's main products and an economic indicator for the Island.

WHEREAS: Law No. 109 of July 12, 1985, as amended, provides that all cement used in construction projects of the Government of Puerto Rico must have been produced in Puerto Rico.

WHEREAS: Article IV, Section 4 of the Constitution of Puerto Rico provides that the Governor shall have the duty to obey and enforce the laws. In the compliance of his constitutional obligation, and as Head of Government, the Governor has full authority to order to instruct Government agencies and instrumentalities, through an Executive Order, on how existing laws should be applied and enforced.

WHEREAS: Article 5 of Reorganization Plan No. 3-2011, as amended, provides that the General Services Administrator must implement the public policy concerning government procurement. Furthermore, Article 6 of said Reorganization Plan provides that the Administrator shall act as representative for the Governor in these functions and, therefore, shall be accountable to the Governor for his/her actions.

WHEREAS: The use of project labor agreements that promote work stability and peace in businesses shall be necessary to further the professionalization of construction workers in Puerto Rico. Construction companies usually lack a steady workforce, which makes the execution of works and legal and Human Resources regulatory compliance even more complicated. The lack of coordination between contractors, subcontractors, and workers gives rise to challenges that reduce government procurement efficiency.

WHEREAS: The use of labor agreements in construction work projects in the United States has allowed for coordination between employers and workers



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to avoid labor conflicts in the workplace and promote the efficient and timely execution of construction projects, especially larger scale projects.

WHEREAS: This administration is committed to workers' rights protected under Article II, Section 17 of the Constitution of Puerto Rico.

WHEREAS: It is the duty of the Secretary of the Puerto Rico Department of Labor and Human Resources to implement the public policy concerning Puerto Rico's human resources under Article 1 of Law No. 15 of April 14, 1931, as amended, known as the "Organic Act of the Department of Labor and Human Resources of Puerto Rico."

WHEREAS: In the United States, using the President's power to implement public policy in favor of workers has historically been common practice as a requirement to obtain contracts with the United States Government. This includes requiring higher minimum wages as a condition to obtain federal contracts (Executive Order No. 13658) and to require labor agreements for federally funded public works projects (Executive Order No. 13502).

WHEREAS: State governments have full powers to establish adequate requirements for their private contractors as a condition to sign such contracts.

THEREFORE: I, RICARDO A. ROSSELLÓ-NEVARES, Governor of Puerto Rico, by virtue of the inherent powers of my position and the authority vested in me by the Constitution and the Laws of Puerto Rico, hereby DECLARE and ORDER the following:

SECTION 1: For the purposes of this Executive Order:

"Project Labor Agreement" shall mean an agreement with one or more employers covered under 29 U.S.C. 158(f) and independent contractors employing construction workers.

"Employee" shall mean any person who must be paid a minimum wage in accordance with the provisions of the Fair Labor Standards Act passed by the United States Congress on June 25, 1938, as it has been amended or as it may be subsequently amended. It shall also include persons who are paid a minimum wage in accordance with the provisions of Law No. 180-1998, known as the "Puerto Rico Minimum Wage, Vacation, and Sick Leave Act," as amended, as well as any Mandatory Decree that may be applicable to the Construction Industry.

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"Construction Project" shall mean the construction of any work, building, or facility using materials such as asphalt, cement, concrete, or other construction products as may be interpreted by the agency. This shall include the construction of buildings, roads, permanent public transportation facilities, and major repairs of existing structures and roads.

"Subcontractor" shall include, but shall not be limited to, all persons who would be subject to the decennial liability established under Article 1483 of the Puerto Rico Civil Code, as interpreted by the Supreme Court of Puerto Rico.

SECTION 2: As a condition to award a contract, any construction project funded in full or in part by the Government of Puerto Rico, its agencies, instrumentalities, and public corporations, shall require contractors to pay a minimum wage of fifteen dollars (\$15.00) per hour to employees working on said project. This requirement shall also apply to subcontractors. Any other aspect of the federal legislation and the regulations concerning how to pay the minimum wage, working hours, employees and occupations that are exempt from minimum wage, and what constitutes work time or working hours, shall also apply.

SECTION 3: If the sum of the contract is greater than two (2) million dollars, any construction project funded in full or in part by the Government of Puerto Rico, its agencies, instrumentalities, and public corporations must have a Project Labor Agreement in place for its employees.

SECTION 4: Any Project Labor Agreement concluded under the provisions hereof, must:

- a) Be binding for all contractors and subcontractors in the construction project. These agreements must be made a part of the contract and must be included in the proposal or bid for the construction project;
- b) Contain guarantees against strikes, stoppages, and other labor problems;
- c) Establish efficient processes to avoid and resolve any labor disputes that may arise; and
- d) Provide other mechanisms to encourage cooperation between workers and management in matters related to work productivity and occupational safety.

SECTION 5: As a requirement to award a contract for a construction project, all agency heads shall require a certification that all the cement to be used in the project was produced in Puerto Rico in accordance with the

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provisions of Law No. 109 of July 12, 1985, including the cement used by the project's subcontractors. No construction project shall be exempt from the requirements established herein.

SECTION 6: The provisions of this Executive Order shall be part of the communications issued by the agencies when requesting proposals or bids for the procurement of any matter subject to the provisions of this Executive Order. All contracts entered into between the Government and its contractors must include the requirement that subcontractors must also fulfill the requirements of this Executive Order.

SECTION 7: This Executive Order shall be given the broadest possible interpretation within the provisions of law applicable to the procurement of non-professional services. It is further provided that, for the purposes of this Executive Order, a construction project commissioned by the Government to meet the operational needs, functions, services or duties of an agency, instrumentality, or public corporation of the Government of Puerto Rico, or for the design, development, financing, maintenance, or operation of its facilities, shall be considered as a construction project partially funded by said Government.

SECTION 8: Any contracts that have already been signed, as well as any procurement processes that have been initiated or which were published prior to the approval of this Executive Order, shall not be subject to the provisions hereof. It is also provided that the provisions of the "THIRD" paragraph of the "WHEREAS" section above shall not apply to projects when a federal requirement prohibits the use of project labor agreements.

SECTION 9: The use of the provisions of this Executive Order to require the use of a specific labor organization as opposing party in a project labor agreement is prohibited.

SECTION 10: It shall be the duty of the Secretary of the Puerto Rico Department of Labor and Human Resources to oversee and enforce compliance of this Executive Order. To this end, the authority of the Government to implement the provisions of this Executive Order is delegated to the Secretary. All agencies, instrumentalities, and public corporations covered by this Executive Order are given sixty (60) days from the enactment of this Executive Order to negotiate the Project Labor Agreements that will govern working conditions in the construction contracts executed by said agencies.

SECTION 11: This Executive Order shall be implemented in accordance with the Laws and Regulations of Puerto Rico and shall not apply where expressly prohibited by any Law or Regulation. Furthermore, this Executive Order shall revoke any executive order, administrative



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Decision, guideline document, or any other public policy determination that may be incompatible. If any of the provisions hereof are declared unconstitutional or unlawful, all other provisions shall prevail.

SECTION 12: All agencies, instrumentalities, and public corporations of the Government of Puerto Rico are hereby ordered to adapt their rules and public policies to the provisions of this Executive Order.

SECTION 13: DEFINITION OF THE TERM "AGENCY." For the purposes of this Executive Order, the term "agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, including public corporations, regardless of their names.

SECTION 13: ANNULMENT AND VALIDITY. This order shall prevail over any other Executive Order that may, in whole or in part, be inconsistent with this Executive Order, to the extent of such incompatibility. This Executive Order shall enter into force immediately and shall remain in force until it is amended or revoked by a subsequent executive order or by law.

SECTION 13: SEVERABILITY. The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void, or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

SECTION 16: PUBLICATION. This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the Government of Puerto Rico to be affixed, in San Juan, Puerto Rico, on this 30<sup>th</sup> day of July of 2018.

  
RICARDO ROSSELLO NEVARES  
GOVERNOR

Enacted in accordance with the law, on this 30<sup>th</sup> day of July of 2018.

  
LUIS GERARDO RIVERA-MARÍN  
SECRETARY OF STATE

