Department of Economic Development and Commerce
San Juan, Puerto Rico

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Approved . Hon. Luis G. Rivera Marín
Secretary of State

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REGULATION FOR IMPLEMENTING THE PROVISIONS OF THE SPECIAL FUND UNDER ARTICLE 14 OF ACT NO. 20-2012

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GOVERNMENT OF PUERTO RICO
Department of Economic Development and Commerce
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REGULATION FOR IMPLEMENTING THE PROVISIONS OF THE SPECIAL FUND UNDER ARTICLE 14 OF ACT NO. 20-2012

I. PURPOSE

Since the approval of Act No. 20 of January 17, 2012, multiple regulations have been enacted, amended and repealed for its implementation. However, there are currently no regulations that address the "Special Fund for the Development of Services for Export and Promotion" (hereinafter, "Special Fund"), created in Article 14 of the Act, save for the use of the Special Fund in relation to promotional services. The purpose of this Regulation is to establish the purpose, criteria and procedures for the use of the Special Fund outside the context of promotional services.

II. TITLE

This Regulation shall be known as the "Regulation for Implementing the Provisions of the Special Fund under Article 14 of Act No. 20-2012."

III. LEGAL BASIS

This regulation is adopted by virtue of subsections (a), (b), (d), (e), (f) and (g) of Article 14 and Article 15 of Act No. 20-2012, and Act No. 38-2017, as amended, known as the "Administrative Procedure Act of the Government of Puerto Rico".

IV. DEFINITIONS

Terms defined by the Act shall have the meaning assigned to them by the Act. Where the meaning of a term defined in the Act is clarified herein, such term shall have the meaning to it by the Act, as clarified by this Regulation.

A. Best Economic and Social Interests of Puerto Rico – In determining what constitutes the Best Economic and Social Interests of Puerto Rico, the Secretary shall take into account the intent of the Act, as expressed in its Article 2, and may consider such factors as the compliance of a business with Puerto Rico laws in general, the special nature of the business receiving or seeking to receive the benefits under the Act, the

technology and intellectual property generated or used, the planned employment level in Puerto Rico of the business receiving or seeking to receive the benefits under the Act and the nature of the jobs it provides, including the number of new jobs generated, the average salary, and the total payroll attributable to the business, the location of the business, the potential for the business to acquire resources needed for its operations from local suppliers, the potential for future growth and expansion of the business, with a particular focus on the creation and maintenance of high-paying professional and technical jobs, the ability of the business to attract new businesses and economic opportunities to Puerto Rico, or other factors that in the judgment of the Secretary merit said determination, as well as the recommendations of the agencies that render reports and recommendations on applications for a Grant under the Act. None of these factors are conclusive; each is merely a factor for the Secretary to consider.

B. Other terms – For the purposes of this Regulation, "Secretary" means the Secretary of the Department of Economic Development and Commerce; "Executive Director" means the Executive Director of the Puerto Rico Industrial Development Company; "Board of Directors" means the Board of Directors of the Puerto Rico Industrial Development Company; "Secretary of the Treasury" means the Secretary of the Department of the Treasury; "Special Fund" means the "Special Fund for the Development of Services for Export and Promotion" created by Article 14 of the Act.

V. PROCEDURE FOR THE APPLICATION OF INCENTIVES FROM THE SPECIAL FUND FOR THE DEVELOPMENT OF SERVICE FOR EXPORT AND PROMOTION

This Regulation establishes the rules for the administration of the Special Fund, outside of the context of promotional services.

A. General Incentives of the Special Fund

1. The Special Fund shall only be used for the following purposes:

   a. Providing special incentives to encourage and promote investment and training of eligible businesses;

   b. Providing special incentives that facilitate the establishment of new businesses in Puerto Rico;

   c. Providing special incentives to promoters, in lieu of or in addition to the benefits of a Grant under the Act;

d. Providing special incentives for education and training in areas related to services for exportation;

e. Hiring professionals from the private sector to help the Secretary comply with his/her duty to promote this Act or any other act related to economic development as determined by the Secretary through regulations;

f. Defraying administrative expenses related to the inspections and audits of this program. This shall include trainings, equipment and the hiring of trained personnel to ensure compliance with this Act.

g. Defraying expenses related to campaigns to promote within the United States and internationally the incentives and activities of the Puerto Rico International Insurance Center, created by Act No. 399-2004, as amended, and the Puerto Rico International Financial Center, created by Act No. 273-2012, as amended, known as "Puerto Rico Financial Center Regulatory Act".

2. Notwithstanding the above, this Regulation shall only apply to the management and distributions of the Special Fund under subsections (a), (b), (d), (e), (f) and (g) of Section (V)(A)(1) of this Regulation and subsections (a), (b), (d), (e), (f) and (g) of Article 14 of the Act. The management and distribution of the Special Fund incentives for promotional services contemplated and established in subsection (c) of Section (V)(A)(1) of this Regulation and subsection (c) of Article 14 of the Act shall be regulated through separate regulations.

3. For use of the Special Fund and disbursement of moneys from the same, the Secretary, the Executive Director and the Board of Directors will consider the purposes described herein as well as whether such use will be in the Best Economic and Social Interests of Puerto Rico.

4. The Special Fund will be administrated by the Secretary and any disbursement of funds will require the authorization of the Secretary, the Executive Director and the Board of Directors.

B. Application for General Incentives

1. With the exception of the Incentives for Promotional Services, any other proposed use of the Special Fund, including for programs or initiatives created by the Department of Economic Development and Commerce as set forth in Article 14 of

the Act, shall be submitted by the Secretary to the Executive Director and the Board of Directors.

2. The Secretary may submit for consideration and approval of the Executive Director and the Board of Directors a proposal on behalf of the Department of Economic Development and Commerce and/or any of its divisions, subdivisions, subsidiaries, offices, components or other affiliated entities for incentives under the Special Fund to finance any program that meets the purposes of the Special Fund as set forth in Article 14 of the Act.

3. A Private Entity or an individual can apply for the Incentives of the Special Fund by submitting before the Secretary the following:

   a. A proposal signed under penalty of perjury which must include the person's or Entity's contact information, a detailed description of the program or initiative for which the Incentives are being requested, how that use corresponds to the purposes established in Article 14 of the Act, the amount of the Incentives requested, and any other information the applicant deems pertinent to establish that its application is in the Best Economic and Social Interests of Puerto Rico.

   b. Once a proposal for the Special Fund Incentives has been submitted, the Secretary will review and determine whether to submit the proposal with a favorable recommendation to the Executive Director and the Board of Directors or to deny the proposal outright. Only the proposals that, as per the discretion of the Secretary, meet the purpose requirements of Article 14 of the Act and are in the Best Economic and Social interests of Puerto Rico, will receive from the Secretary a favorable recommendation and be submitted to the Executive Director and the Board of Directors.

   c. Once a favorable recommendation has been made by the Secretary to the Executive Director and the Board of Directors, a final determination must be made by the Executive Director and the Board of Directors.

4. Section 3.1(a) of Act 38-2017 applies to this Regulation insofar as the incentives under Special Fund are an adjudication of a subsidy and/or subvention, and therefore not subject to Act 38-2017, except as otherwise specified.

5. Pursuant to Section 3.15 of Act 38-2017, a party that is adversely affected by a determination denying incentives under the Special Fund can, within twenty (20) days from the date of service of the determination, file before the Secretary a motion for reconsideration of the resolution. The Secretary must consider the motion for reconsideration within fifteen (15) days of filing. If the Secretary denies the motion outright or fails to act within fifteen (15) days, the term to appeal the determination will begin to run again on the day of service of the resolution denying the reconsideration or the day the fifteen (15) day period expires, as applicable. If a determination on reconsideration is made, the term to appeal will begin to run again on the date of service of the determination on the motion for reconsideration. Said determination must be served and archived within ninety (90) days of filing of the motion for reconsideration. If the Secretary accepts the motion for reconsideration but fails to take action on it within ninety (90) days of filing, the Secretary will lose jurisdiction over it and the term to appeal the determination will begin to run again once the ninety (90) day period expires, except if the Secretary, with just cause and within the ninety (90) day period extends the period to address the motion for reconsideration for a period not to exceed an additional thirty (30) days. If the date of service is different from the date of mailing, the date to be used to calculate the terms will be the date of mailing.

6. Pursuant to Section 4.2 of Act No. 38-2017, a party that is adversely affected by a determination denying incentives under the Special Fund and that has exhausted all available administrative remedies can file an administrative review before the Court of Appeals of Puerto Rico within thirty (30) days of service of the final determination of the Secretary or the applicable date under Section 3.15 of Act No. 38-2017. The party will give notice of filing the administrative review to the Secretary and all other parties of record within the period for filing the administrative review. The notice can be served by mail. If the date of service is different from the date of mailing, the date to be used to calculate the terms will be the date of mailing.

VI. DISCLAIMER CAUSE

Any matter not covered by this Regulation shall be decided by the Secretary in accordance with the laws, regulations, executive orders and resolutions mentioned above in all matters not provided therein, and shall be governed by the rules of sound public administration.

VII. SEVERABILITY

If a court with jurisdiction declares invalid or unconstitutional any item, part, paragraph or provision of the Regulations, the decision to this effect shall not affect or invalidate the remainder thereof, and the effect will be limited to the article, part, paragraph or clause so declared, unless said declaration shall make it impossible to effectuate the intent of this Regulation.

VIII. EFFECTIVENESS

This Regulation shall enter into force 30 days after the date of its submission to the Department of State and after compliance with the provisions of Act No. 38-2017, as amended, entitled "Uniform Administrative Procedure Act of the Government of Puerto Rico."

RECOMMENDED FOR APPROVAL BY THE BOARD OF DIRECTORS

Julio Benítez Torres
Deputy Executive Director

Date: 3/13/2018

Gabriel Maldonado González
General Counsel and Advisor
for Legislative Affairs

Date: 3/13/2018

APPROVAL

Manuel Laboy Rivera
Secretary

Date: 3/13/2018

Approved by the Board of Directors by vote by consent on February 28, 2018. (See attached certification).