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PUERTO RICO

## Challenges to Puerto Rico Plan of Adjustment face uphill battle

By [Robert Slavin](#) February 04, 2022, 2:59 p.m. EST 3 Min Read

Parties filing appeals of the Puerto Rico Plan of Adjustment face an uphill battle as the bankruptcy judge who approved the plan would need to grant a stay of it for appeals to proceed, lawyers said.

Four notices of appeal had been filed in the U.S. District Court for Puerto Rico concerning the plan as of 2:30 p.m. EST Friday, with the most recent from Asociación Puertorriqueña de la Judicatura, an association representing Puerto Rico judges, filed Friday afternoon, and from Suiza Dairy Corp. that filed a notice Thursday.

They followed [two notices filed last Friday](#) by three Puerto Rico teachers' associations and six Puerto Rico credit unions.



**Puerto Rico bankruptcy Judge Laura Taylor Swain plans to decide on a request to stay her approved Plan of Adjustment in the second half of February.**

Earlier this week, the law firm for the teachers, Bufete Emmanuelli, filed a motion for a stay on the plan with the U.S. District Court for Puerto Rico. They are asking bankruptcy Judge Laura Taylor Swain to stay the effective date on the plan. In U.S. bankruptcy law, to get a stay one must first request it from the judge who approved the adjustment plan. The Puerto Rico Oversight Board is hoping [the plan](#) will be effective by March 15.

Swain has set 5 p.m. Wednesday as the deadline for responses to the teachers' request for a stay. She set 5 p.m. Feb. 15 as the deadline for replies to the responses. She currently plans to rule on the petition for a stay without a hearing.

Asked how common it was for judges to approve a stay of their own adjustment order, Puerto Rico Attorney John Mudd said, "Seldom. The standard to grant is very steep in plans of adjustment."

Attorneys disagree as to how long parties had to file notices of appeal for the [Puerto Rico's central government Plan of Adjustment](#). Bufete Partner Jessica Méndez Colberg said the notices had to be filed within 14 days of Swain's approval of the Plan of Adjustment, which occurred Jan. 18.

Mudd said the deadline was either 14 or 30 days, depending on interpretation of the law. The attorneys for Suiza filed on the 16th day and the attorneys for the judiciary filed on the 17th day.

Previous appeals of the Puerto Rico Sales Tax Finance Corp. (COFINA) restructuring [were rejected by the Court of Appeals for the First Circuit](#) just a little more than a year ago, largely because they were filed long after the decision and after new bonds had been issued. The appeals judges told the [litigants they should have asked for a stay](#).

If Swain were to reject the request for a stay in this case, the teachers could seek a stay from the First Circuit court, Mudd and Méndez Colberg said.

“If the First Circuit denies the stay, as a last resort we can request for an expedite process at the Court of Appeals. The decision of the Court of Appeals in the COFINA case is precisely why we are requesting the stay now,” Méndez Colberg said.

Wilk Auslander Partner Jay Auslander said appellants can file appeals with the First Circuit but, as a practical matter, unless they get a stay their appeals will not yield anything.

He said the judge is supposed to consider four factors in deciding whether to grant a stay. First, is there a likelihood appellants will win on the merits? Second, would appellants be irreparably injured in a way that money could not compensate? Third, would a stay harm other parties? And fourth, what is the public interest?

Auslander said he was unsure how Swain will deal with the stay petition but he was inclined to say she would reject it. Swain has been working with stakeholders on the plan for almost five years, she has already ruled on the points the teachers are appealing, and the plan affects many other groups, he said.

For these and other reasons she will likely deny the stay, he said.