

Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

November 3, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Marc Alberts, Chris Fluhr, Andrew Vecera (x5-2761)

Hearing: *“Examining Challenges in Puerto Rico’s Recovery and the Role of the Financial Oversight and Management Board”*

The Committee on Natural Resources will hold an oversight hearing to receive testimony on **November 7, 2017, at 10:00 AM in 1324 Longworth House Office Building**. The hearing will focus on the Oversight Board’s role in the recovery of Puerto Rico from Hurricanes Irma and Maria, both in the immediate and long-term futures.

Policy Overview

- The "Puerto Rico Oversight, Management, and Economic Stability Act" (“PROMESA”), signed into law on June 30, 2016, created a Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) tasked with providing the U.S. territory fiscal responsibility and a return to the capital markets.
- The impacts of Hurricane Maria to Puerto Rico fundamentally transformed the mission of the Oversight Board by tying fiscal responsibility and a return to the capital markets with disaster recovery and response. With this transformation, there is concern about whether the tools the Oversight Board currently possesses will sufficiently allow for efficient, transparent and prudent reconstruction.
- Over a month has passed since Hurricane Maria, and the Oversight Board has begun to utilize the powers conveyed to it under PROMESA to ensure responsible and transparent recovery efforts are executed.
- The Oversight Board provides a nexus for Congress and the Administration to manage Federal dollars and territorial affairs relating to the reconstruction and rebuilding of Puerto Rico.
- With an overwhelming amount of Federal assistance provided to the island, the likelihood of fraud, waste, and abuse increases. Thus, congressional oversight must occur to ensure the integrity of contracts aimed at long-term recovery, and that resources, such as food and water, are reaching those in need.

Witnesses Invited

Panel 1

Ms. Natalie Jaresko

Executive Director

The Financial Oversight and Management Board for Puerto Rico

San Juan, PR

Mr. Noel Zamot

Revitalization Coordinator

The Financial Oversight and Management Board for Puerto Rico

San Juan, PR

Panel 2

Mr. Ricardo Ramos

Executive Director

Puerto Rico Electric Power Authority

San Juan, PR

The Honorable Yulin Cruz

Mayor of San Juan

San Juan, PR

The Honorable Angel Perez Otero

Mayor of Guaynabo

Guaynabo, PR

Background

In response to Puerto Rico's \$118 billion of combined debt in the form of bonds and unfunded pension liabilities, the Committee on Natural Resources ("Committee") drafted the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") in the 114th Congress. PROMESA established a Financial Oversight and Management Board for Puerto Rico ("Oversight Board") tasked with assisting Puerto Rico's government with achieving fiscal responsibility and a return to the capital markets.¹ Additionally, PROMESA intended the Oversight Board to serve as a revitalizing authority – fast-tracking needed infrastructure projects and trimming governmental waste.

In accordance with PROMESA, the Oversight Board has formulated fiscal plans and budgets for the territory and its instrumentalities since their appointment over a year ago. These overarching documents are intended to provide budgetary constraints and a fiscal path forward for Puerto Rico, and serve as a prerequisite before any debt may be restructured under the

¹ 48 U.S.C. 2121(a).

bankruptcy provisions found in Title III of the act.² To date, the Oversight Board has certified at least five Puerto Rican entities (including the Commonwealth itself) into Title III restructuring proceedings: the Puerto Rico Highway And Transportation Authority (“PRHTA”), the Employee’s Retirement System, Puerto Rico Sales Tax Financing Corporation (“COFINA”), and the Puerto Rico Electric Power Authority (“PREPA”).³ It is within this Title III structure that the Oversight Board seeks to assert much of its authority over the territorial entities.

With the devastation and humanitarian crisis brought on by Hurricanes Irma and Maria, the role of the Oversight Board must be reexamined and clarified as necessary. As the Oversight Board’s powers were constructed to address the fiscal crisis of Puerto Rico *and not* the humanitarian crisis caused by hurricanes, new powers may need to be legislated to maximize the Oversight Board’s response. This hearing aims to assess 1) what the Oversight Board is doing immediately in response to the hurricanes and whether the Board needs additional tools to ensure Puerto Rico’s successful recover; and 2) the strength of local entities in ensuring transparent and accountable use of Federal resources.

Oversight Board Actions in Response to the Hurricanes

Prior to Hurricane Irma, the Oversight Board had been focused on facilitating territorial instrumentalities, and the territory itself, into the debt restructuring proceedings of Title III. With the arrival of hurricanes Irma and Maria, however, the Oversight Board’s role transformed and became integrally connected to disaster recovery.

Initially, the Oversight Board took a conciliatory position with the territorial government, noting that it would “support Governor Roselló’s efforts to bring immediate relief to the island.”⁴ To this extent, the Oversight Board authorized an emergency budgetary expenditure of \$1 billion and withdrew the pending lawsuit against the Governor enforcing PROMESA’s envisioned furloughs.⁵ Furthermore, the Oversight Board sought Federal support in both the humanitarian and liquidity fronts to assist Puerto Rico with rebuilding the critical infrastructure it had lost – while also seeking the detail of Federal employees to assist the Oversight Board’s efforts.⁶

Yet, a month after Hurricane Maria, the relationship between the Oversight Board and the Governor has noticeably declined , with the Oversight Board beginning to exercise its powers under PROMESA to guarantee proper expenditure of funds and oversee the rebuilding of Puerto Rico, aligning immediate recovery actions with long-term rebuilding and the appropriate fiscal

² See 48 U.S.C. 2146.

³ See Financial Oversight and Management Board for Puerto Rico, Certifications of Resolutions Adopted by the Financial Oversight and Management Board for Puerto Rico by Unanimous Written Consent (for each entity listed), July 14, 2017, available at <https://juntasupervision.pr.gov/index.php/en/documents/>.

⁴ See Financial Oversight and Management Board for Puerto Rico, Press Release: Oversight Board Statement on the Aftermath of Hurricane Maria, Sept. 27, 2017, available at <https://juntasupervision.pr.gov/wp-content/uploads/wpfd/49/59cbba00bf1e8.pdf>.

⁵ See Financial Oversight and Management Board for Puerto Rico, Press Release: Oversight Board Statement on Hurricane Irma, Sept. 6, 2017, available at <https://juntasupervision.pr.gov/wp-content/uploads/wpfd/49/59aff0c3557b0.pdf>.

⁶ See Financial Oversight and Management Board for Puerto Rico, Press Release: Oversight Board Urges Maximum Support for Puerto Rico with Trump Administration Officials, Congress, Sept. 30, 2017, available at <https://juntasupervision.pr.gov/wp-content/uploads/wpfd/49/59d0144cf0009.pdf>.

plan.⁷ The two most significant actions taken by the Oversight Board are the appointment of Noel Zamot as Chief Transformation Officer of PREPA, and the implementation of a new contract review policy for all contracts over \$10 million.

On October 26, 2017, the Oversight Board filed, in the Title III restructuring case of PREPA, an “Urgent Motion” to appoint Noel Zamot, the current PROMESA Title V Revitalization Coordinator, as Chief Transformation Officer. With this filing, the Oversight Board seeks to convey upon Mr. Zamot the authority, among other duties, to “lead the development of a power restoration plan,” “lead and oversee the implementation of PREPA’s long and short term plans,” “oversee the application process for Federal funds,” and “manage Federal funds disbursed to PREPA to ensure funds are spent on intended sources and prevent waste.”⁸ Essentially, Mr. Zamot will act as Chief Executive Officer of PREPA, superseding the authority of PREPA’s current executive director and governing board. The Title III Judge will consider this filing the week of November 20, 2017. If the judge decides in favor of the Oversight Board, one may conclude the Oversight Board has the power to appoint a “Chief Transformation Officer” for each of the entities within Title III.

Secondly, the Oversight Board on October 31, 2017, implemented its contract review authority pursuant to Section 204(b) of PROMESA. This section allows the Oversight Board to “establish policies to require prior Oversight Board approval of certain contracts . . . to ensure such proposed contracts promote market competition and are not inconsistent with the approved Fiscal Plan.”⁹ Per unanimous vote, the Oversight Board required Puerto Rico to submit “all contracts or series of related contracts . . . with an aggregate expected value of \$10M or more” to the Oversight Board for review before such contracts may be executed.¹⁰ The Oversight Board justified this decision by arguing this policy will “maintain [the Oversight Board’s] focus on assuring fiscal responsibility” and will reiterate that “transparency is an intrinsic component of PROMESA and a guiding principle for the [Oversight] Board’s efforts towards Puerto Rico’s revitalization.”¹¹

In addition to these two controversial actions, the Oversight Board has announced an intent to update the Fiscal Plans to incorporate the fiscal consequences of the hurricanes for the following entities: the Commonwealth as a whole, PREPA, the Puerto Rico Aqueduct and Sewer Authority, the University of Puerto Rico systems, PRHTA, the Government Development Bank, and the Public Corporation for Supervision and Insurance of Cooperatives of Puerto Rico.¹² The

⁷ See Peter Behr, Tensions Build over Control of Puerto Rico Utility, E&E NEWS, Oct. 27, 2017, <https://www.eenews.net/stories/1060064867>.

⁸ Urgent Motion, *In re: The Financial Oversight and Management Board for Puerto Rico*, No. 17-04780, (Dist. P.R. 2017) https://drive.google.com/file/d/0BwUldNJ-sOg_QVBURDZzTVdMcnM/view.

⁹ 48 USC 2144(b).

¹⁰ Financial Oversight and Management Board for Puerto Rico, Contract Review Policy, Oct. 31, 2017, *available at* <https://juntasupervision.pr.gov/wp-content/uploads/wpdf/50/59f8936fa1993.pdf>.

¹¹ Financial Oversight and Management Board for Puerto Rico, Press Release: Oversight Board Announces Certification Process for Revised Fiscal Plans, Oct. 31, 2017, *available at* <https://juntasupervision.pr.gov/wp-content/uploads/wpdf/49/59f89d677482f.pdf>.

¹² Financial Oversight and Management Board for Puerto Rico, Fiscal Plan Revision Process, Oct. 31, 2017, *available at* <https://juntasupervision.pr.gov/wp-content/uploads/wpdf/50/59f892e3ce7f4.pdf>.

Oversight Board intends to finalize the updated Fiscal Plans between December and January, 2018.¹³

In the aftermath of the hurricanes, the Oversight Board's mandate to "achieve fiscal responsibility and access to the capital markets" became exponentially more difficult. There is concern about whether the tools the Oversight Board currently possesses will allow for efficient, transparent and prudent reconstruction. For instance, the Oversight Board currently has no power to prohibit territorial legislation adopted by Puerto Rico that may adversely impact the territory's fiscal future. Furthermore, the Title V process, which was intended to fast track privately funded infrastructure projects, has been hindered by municipalities preventing the construction of projects within their locales. However, with the Oversight Board finally utilizing the expansive powers of PROMESA, concern with these limitations may be premature.

The Oversight Board provides a nexus to Congress and the Administration allowing for greater transparency and accountability in the management of territorial affairs. Therefore, this structure provides a source of independent oversight – intended to be removed from the political affairs of the territory – that can be utilized to enforce proper oversight of Federal resources, and the successful reconstruction of Puerto Rico.

Ensuring Local Accountability over Federal Resources

Upon the passage of the hurricanes, the Federal government, operating through the Federal Emergency Management Agency ("FEMA") and the U.S. Army Corps of Engineers ("USACE") among other agencies, began responding to the disaster. To date, more than 19,000 Federal civilian personnel and military service members, including over 2,000 FEMA personnel, have been deployed to Puerto Rico and the U.S. Virgin Islands.¹⁴ Additionally, billions of Federal dollars have been and will be authorized in the coming months for the recovery and reconstruction of Puerto Rico. With such an influx of Federal resources, the likelihood of fraud, waste, and abuse increases. Thus, oversight must occur to ensure the integrity of contracts, and resources, such as food and water, are reaching those in need. To underscore this need for increased accountability, in recent reports released by the Office of Inspector General at the Department of Homeland Security, audits of FEMA's disaster relief funding programs revealed the agency does not have adequate management procedures in place to hold disaster relief grant recipients accountable for properly managing federal dollars received. The reports noted that the IG identified, "...persistent problems such as improper contact costs, and ineligible and unsupported expenditures as examples of this continued failure," with FEMA's management over the reviewed disaster relief funding programs.¹⁵¹⁶

¹³ *Id.*

¹⁴ Federal Emergency Management Agency, Hurricane Maria, <https://www.fema.gov/news-release/2017/10/11/coordinated-federal-support-continues-us-virgin-islands-and-puerto-rico>

¹⁵Office of Inspector General, "Management Alert – FEMA Should Recover \$6.2 Million in Public Assistance Funds for Disaster Repairs That Are Not the Legal Responsibility of Richland County, ND." <https://www.oig.dhs.gov/sites/default/files/assets/2017-11/OIG-18-09-Oct17.pdf>

¹⁶Office of Inspector General, "DHS OIG Audit Determines FEMA Lacked Control over Mississippi's Coastal Retrofit Program." 10/13/2017. <https://www.oig.dhs.gov/news/press-releases/2017/10132017/dhs-oig-audit-determines-fema-lacked-control-over-mississippi>

Already, questionable contracts have occurred demanding both Congressional and Federal oversight. The most notable to date was between PREPA and a previously unknown energy contractor, Whitefish Energy, for \$300 million.¹⁷ This contract imposed exorbitant contract fees, was approved under suspicious circumstances, and was used as justification for why PREPA did not activate the mutual assistance program offered by the American Public Power Association (“APPA”).¹⁸ Despite this contract receiving near universal criticism from the press, Congressional Committees, and the Federal government, the executive director of PREPA, Ricardo Ramos (a Gov. Roselló appointee), continued to defend his utility’s actions.¹⁹ On Sunday, October 29, Gov. Roselló cancelled the contract – 3 days after Federal funding for the contract was to kick in – citing that “no wrongdoing had been discovered, but . . . the contract had become a ‘distraction.’”

The recent Whitefish contract highlights the need for supervision of the funds that will be made available to Puerto Rico in the upcoming months. Contracts of a certain magnitude need to be properly vetted by responsible actors through a transparent and accountable process, rather than utility managers in an ill-advised moment of desperation. Furthermore, the Committee has an interest in ensuring that the process for long-term recovery and the rebuilding efforts are coordinated and harmonized with the overall goals set forth under PROMESA. The recovery process must be as efficient and effective as possible. Through strong cooperation amongst all local, state and federal agencies, the Governor and ultimately the Oversight Board, the process of rebuilding Puerto Rico’s infrastructure in a more resilient and responsible manner may be achieved.

¹⁷ Nick Brown, *Puerto Rico and Whitefish Energy defend controversial \$300 million power contract*, BUSINESS INSIDER, Oct. 25, 2017, <http://www.businessinsider.com/puerto-rico-whitefish-energy-contract-hurricane-maria-2017-10>.

¹⁸ See October 26, 2017 Letter from Chairman Rob Bishop and Chairman Bruce Westerman to Ricardo Ramox, Executive Director of PREPA, *available at*

¹⁹ See Frances Robles and Deborah Acosta, *Puerto Rico Cancels Whitefish Energy Contract to Rebuild Power Lines*, NYTIMES, Oct. 29, 2017, *available at* <https://www.nytimes.com/2017/10/29/us/whitefish-cancel-puerto-rico.html>.