

STATEMENT

Of

Carmen Yulín Cruz Soto

before the

COMMITTEE ON NATURAL RESOURCES

Of the

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

* * *

OCTOBER 22, 2019

* * *

OVERSIGHT HEARING ON

“DISCUSSION DRAFT OF AMENMENDTS TO THE PUERTO RICO OVERSIGHT,
MANAGEMENT, AND ECONOMIC SUSTAINABILITY ACT (PROMESA)”

Chairman Grijalva, Vice Chair Haaland, Ranking Member Bishop and members of the committee:

My name is Carmen Yulín Cruz Soto, and I am the Mayor of San Juan. Firstly, I thank you for the opportunity to express our views and opinions before this honorable Committee regarding a *Discussion Draft* provided by Chairman Grijalva about a series of proposed amendments to the Puerto Rico Oversight, Management, and Economic Sustainability Act (“PROMESA”).

We have been invited today to discuss said amendments and their potential impact on the debt restructuring process that the Commonwealth of Puerto Rico currently faces. PROMESA has provided the parameters of the restructuring process amid great objection and criticism from publicly elected officials, trade unions, and the general population for establishing policy measures that erode basic principles of democracy and self-determination. Nevertheless, the current political landscape has presented new opportunities for improvement and it is within this context that we express our views today.

From the outset, it is imperative to state that I firmly believe that PROMESA should be repealed. We must remember the road traveled in order to arrive at our current situation. A legislative gap prevented Puerto Rico from having access to the dispositions and protections set forth in Chapter 9, of the U.S. Bankruptcy Code. Because of the preemptive nature of federal bankruptcy laws, the Commonwealth was precluded from enacting a statute of its own that would allow for public debt restructuring, whilst excluding Puerto Rico from the definition of “state” for purposes of Chapter 9.¹ These mutually conflicting realities put the Commonwealth in a very precarious position at a time where its fiscal and economic situation had reached a tipping point.

Yet, in the absence of Congressional interest towards repealing PROMESA, there are definitive areas of improvement that have been addressed in the *Discussion Draft*.

¹ See, *Puerto Rico v. Franklin Cal. Tax-Free Trust*, et al. 136 S. Ct. 1938 (2016).

A Clear Definition of Essential Public Services

At the core of every controversy surrounding the application of PROMESA, there has been an issue with the lack of a clear definition for *Essential Public Services*. In its conception, PROMESA did not include a definition that would serve the purpose of outlining government services which warranted protection during the debt restructuring process. Furthermore, it is our contention, that after the law became affective, the Financial Oversight and Management Board (“FOMB”) has evaded the responsibility of defining such concept.

With the purpose of avoiding a capricious design or vague parameters, Section 201 of PROMESA establishes in detail the fundamental requirements that all fiscal plans should meet as it pertains to *Covered Entities*. Regarding this matter, the law states that all Fiscal Plans shall “provide a method to achieve fiscal responsibility and access to the capital markets, and [...] ensure the funding of essential public services”.² This makes establishing a clear definition an inescapable duty for the FOMB, which has been avoided to the detriment of the people of Puerto Rico.

Moreover, in clear defiance of the legislative mandate set forth in PROMESA, the FOMB has jeopardized the already limited budget of the government of Puerto Rico for the payment of its public debt without much consideration of the severe impact that these policy measures have produced over areas that are universally considered essential for our people.

The conduct exhibited by the FOMB so far, has been in clear conflict with Section 201 of PROMESA. The intentions of the FOMB are clear; by avoiding a clear definition of *Essential Public Services*, the Board also avoids being hamstrung by strict parameters that require the allocation of funds for specific purposes not related to the repayment of debt. Instead, what we currently have in place, is a more esoteric or philosophical concept which can be easily neglected.

² Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2141(b) (2016)

In short, the test to determine the viability of Fiscal Plans and policy measures cannot be oblivious to the obligations that the government of Puerto Rico has of providing essential services. Once the letter of the law provides a clear definition, we can make sure that services in the areas of Health, Education (especially the University of Puerto Rico), Law Enforcement, Government Pensions, and Municipal Financing can be safeguarded from excessive austerity measures. Puerto Rico's financial recovery cannot come at the expense of providing basic services for its people.

The Need for Transparency and Accountability

The proposed amendments in the *Discussion Draft* bring significant changes in the area of transparency and access to information that are very important for promoting public trust. The unprecedented nature of the proceedings brought forth by PROMESA have placed the people of Puerto Rico in a very difficult position. The design of primary public policy objectives concerning debt restructuring, is being devised by individuals that were not elected by the people. The decisions made by the members of the FOMB will have repercussions for decades that will affect the lives of future generations. Naturally, this fact has particular relevance when it comes to the subject of transparency. The restructuring process must provide a minimum of confidence to the people of Puerto Rico. It is imperative that investigative journalists and public interest groups have access, not just to the information related to the restructuring process itself, but to each member of the Board and any sub-contracted entity that renders professional services. Congressional oversight and public scrutiny are fundamental elements for a successful restructuring process.

In the same vein, the *Discussion Draft* establishes dispositions geared towards auditing Puerto Rico's public debt. Specifically, the creation of a comprehensive audit commission. Historically, public corporations have financed their deficits by relying on capital market financings or the central government, which in turn provided loans through the now defunct Government Development Bank or private sector banks.

This practice has placed a shroud of controversy surrounding the legality of the billions of dollars in debt issued by the Puerto Rican Government. Therefore, a specific disposition in PROMESA that regulates an audit of public debt would go a long way towards restoring public trust and promoting accountability.

The Figures of Reconstruction and Revitalization Coordinator

One critical component of achieving fiscal recovery is ensuring that Puerto Rico's governmental instrumentalities are sufficiently funded. As you already know, in Puerto Rico, public services including water, electric power, and transportation are provided by state-owned public corporations. Such is the case of the Puerto Rico Electric Power Authority ("PREPA"). PREPA essentially provides all the electric power directly to consumers which includes residents, businesses and government entities. PREPA is currently under the provisions

In the *Discussion Draft*, there are two dispositions that we respectfully oppose. Specifically, Sections 11 and 12 call for the creation of a reconstruction coordinator for the Commonwealth and a revitalization coordinator for the Puerto Rico Electric Power Authority (PREPA).

Legal figures such as these would further destabilize the democratic structure of our local government by taking more power from democratically elected officials and giving such powers to entities or individuals appointed by Congress or the FOMB. In the specific case of PREPA, we are concerned that the proposed structure would concede incalculable authority to a revitalization coordinator, essentially placing a single individual in an authoritative position similar to the entire FOMB.

Puerto Rico's Municipalities as Covered Entities

Finally, we wish to express our sincere discontent with the Financial Oversight Management Board's (FOMB) decision to declare Puerto Rico's 78 Municipalities as *Covered Entities* under the Puerto Rico Oversight, Management, and Economic Sustainability Act (PROMESA). On May 9, 2019, the FOMB held a meeting in which it voted unanimously in favor of establishing a Pilot Program

for ten (10) municipalities³, that essentially requires them to operate under fiscal plans approved by the Board. *Covered entities* under PROMESA are subject to the development, implementation, oversight and evaluation of fiscal plans and budgets. As we stated before, each Fiscal Plan shall provide Puerto Rico with a “method to achieve fiscal responsibility and access to the capital markets”.⁴

In the past, we have expressed our growing concern with the FOMB’s austerity-based approach and have warned of its pernicious effects on the island’s post-hurricane economy. In the same vein, we worry about the effects that this decision will have on both municipal governments, and the citizens of the island.

It is immensely important to understand the key role that municipalities play in the wellbeing of the island’s citizens. In its organic law, municipalities are described as the sociopolitical entities closest, and with the most knowledge of the needs of the people. In essence, Municipalities are *creatures of statute*, tasked with the responsibility of providing essential services in the areas of health, waste management, education and law enforcement, among others. They also serve as the main source of aid for natural disasters, which becomes even more relevant as we face the dire consequences of climate change. Although Municipalities have the capability to generate independent revenue, much of the economic support came from periodic disbursements made by the central government. Naturally, Puerto Rico’s financial crisis has weakened the central government’s ability to transfer money from the general fund to Municipalities. This is evidenced by the Commonwealth’s most recent certified fiscal plan, which reduces allocations to municipalities by 80% over a period of four years.

Coupled with the devastation caused by hurricane Maria, Puerto Rico’s stifled economy has caused lower wages, a reduction in fringe benefits for employees in the private and public sector, and an increase in prices for basic goods. It is therefore imperative that the citizens of Puerto Rico don’t suffer another

³ The list of Municipalities includes Quebradillas, Camuy, Isabela, San Sebastián, Orocovis, Barranquitas, Villalba, Aibonito, Comerio, and Cidra.

⁴ *Id.*

setback in the form of diminished essential services provided by municipalities. This would be an egregious result that would negatively affect the health, safety and overall wellbeing of the people of Puerto Rico.

We strongly urge you to adhere to the congressional mandate set forth in PROMESA, of devising strategies geared towards promoting economic growth and a sustainable debt burden. It is important to find recurring sources of revenue for municipalities, so that any interruption in the provision of essential services can be avoided.

In its bicameral letter dated December 6, 2018, a group of representatives expressed their concern with the FOMB's debt restructuring plans, which facilitate high recovery rates for creditors and significantly cuts funding for healthcare, education and public safety in Puerto Rico. It is our contention, that if the same policy approach that has been applied to covered entities is also applied to municipalities, the results can be disastrous.

Regarding this specific matter, we urge you to include a disposition in the law that creates an advisory committee composed of representatives from Puerto Rico's municipal governments. To that end, it is imperative that you establish a consulting body protected by PROMESA that can contribute with a very necessary perspective. Municipalities are tasked with the responsibility of providing essential services in the areas of health, education, law enforcement and waste management, among others. This unique perspective will help Congress and the FOMB understand the practical effects that the imposed austerity measures have had on our people.

* * *

In conclusion, I believe that most of the proposed amendments contained in the *Discussion Draft* are a step in the right direction and we should focus our attention towards learning and correcting the mistakes that have been made so far. There is widespread consensus on the fact that certain critical changes must be implemented in the law in order to guarantee the long-term financial recovery of the commonwealth of Puerto Rico.