

**Expediting the Recovery Process:
A Proposal to Create a Puerto Rico Development
Authority**

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Introduction

Puerto Rico is at a critical junction in the disaster recovery process after Hurricane María. Relief efforts, while still ongoing in certain parts of the island, are slowly winding down and soon will give way to recovery activities and the rebuilding of the island. It is, therefore, “a time of desperate loss, yet also a time of distinct possibility.”¹

The commencement of the recovery process is crucial to making the most of that “time of distinct possibility”, as research carried out after similar disasters has found that the time between the beginning of the relief efforts and the beginning of the recovery process is highly correlated with the length of the recovery, as well as with the severity and duration of public health and economic impacts of the disaster on the population as a whole.² So, it is in the best interest of all stakeholders to move the recovery efforts forward as soon as possible.

Statement of the Problem

Unfortunately, disaster recovery efforts are usually fraught with uncertainty and complexity at every level—economic, political, and emotional—which sets up “inevitable conflicts as public officials work assiduously to implement plans for rebuilding.”³ In the case of Puerto Rico, we are already witnessing the beginning of those conflicts as different stakeholders lay down claims for ownership of the process.

On one side, there is the Governor of Puerto Rico, who as the democratically elected head of government, naturally seeks to claim the leadership of the recovery and rebuilding effort. He has already set up, by executive order, the Central Recovery and Reconstruction Office of Puerto Rico (“CRRO”) as a division of the Puerto Rico Public Private Partnerships Authority (“PPPA”).⁴

In our view, creating the CRRO as a division of a relatively small government agency of the Commonwealth—according to the Commonwealth’s FY2018 budget it had only three employees and a budget of \$32 million, mostly to pay for outside legal and financial advisors—will probably result in a significant delay of the recovery process.

First, the PPPA was created to fulfill a different mission, namely, to negotiate and manage public-private partnership agreements and not to oversee the disbursement of billions of

¹ Lynne B. Sagalyn, *Power at Ground Zero: Politics, Money, and the Remaking of Lower Manhattan*, (Oxford, 2016), p. 5.

² R.W. Kates, C.E. Colten, S.Laska, et.al., (2006) “Reconstruction of New Orleans after Hurricane Katrina: A research perspective”, *Proceedings of the National Academy of Sciences*. 3:40, 14653-14660; S Lin, Y. Lu, J. Justino, et. al., (2016) “What Happened to our Environment and Mental Health as a Result of Hurricane Sandy?”, *Disaster Medicine and Public Health Preparedness*. 10:3, 314-319.

³ Sagalyn, p. xii.

⁴ See Executive Order No. 2017-065, dated October 23, 2017, as amended by Executive Order No. 2017-069, dated November 10, 2017.

dollars of federal disaster recovery funding. Second, it doesn't have any expertise in disaster management. Third, the risk of bureaucratic mission creep and its attendant adverse consequences are significant, as the mission of the CRRO will probably overwhelm the resources of its putative parent agency, the PPPA. Finally, this structure, in our view *is unlikely to satisfactorily address the Congressional concerns* set forth below.

In sum, the CRRO is singularly unfit for the role it has been chosen and is likely to become a bottleneck instead of a facilitator of the flow of recovery funds to Puerto Rico.

On the other side, several members of Congress, including Rep. Rob Bishop, Chairman of the House Committee on Natural Resources, and Sen. Lisa Murkowski, Chairwoman of the Senate Committee on Energy and Natural Resources, have expressed grave concerns or have strong reservations regarding the ability of the Governor and his executive team to disburse billions of federal disaster assistance dollars over a period of several years. The main concerns expressed by these members are:

- **Accountability:** It is extremely important for members of Congress that Puerto Rico's government be willing and able to provide a clear and robust accounting of the use of federal dollars in the island.
- **Effectiveness:** Other members have expressed concerns about the capability of the Puerto Rican government to use federal funds effectively. Effectiveness, in this context, means that federal funding is prioritized and used to directly address the needs of the people who have suffered losses due to the disaster, instead of being spent on other projects, which may be politically attractive but fail to address the immediate needs of the residents of the island.
- **Efficiency:** Another theme that surfaced during the public hearings held in recent weeks is the efficiency with which the government of Puerto Rico, given its Byzantine bureaucracy, will be able to manage and coordinate the spending of federal funds assigned to different state agencies for different purposes.
- **Avoiding Misuse, Fraud, and Waste of Federal Funds:** The Whitefish scandal raised serious concerns about the territorial government's ability to avoid the misuse, fraud, and waste of federal funds.

By and large, the Representatives and Senators that expressed these concerns are proposing to use the Fiscal Oversight and Management Board (the "FOMB") set up by the Puerto Rico Oversight, Management, and Economic Stability Act or "PROMESA", as the vehicle to implement the recovery process and manage, disburse, and account for the use of federal funds in this effort.

We at the Center for a New Economy ("CNE") also favor strong accountability, as well as effectiveness and efficiency, in the use of federal funds and obviously desire to avoid any kind of malfeasance in the use of disaster recovery funding. In our view, however, the

mechanism Congress is considering to address those concerns, namely the FOMB, *is also unlikely to be effective* in achieving the stated Congressional objectives.

The reason is simple: the FOMB was created to achieve other objectives. The FOMB, specifically, was created to (1) eliminate Puerto Rico’s structural deficits; (2) oversee the debt restructuring process under Title III of PROMESA; and (3) ensure that Puerto Rico is able eventually to return to the capital markets and borrow again at reasonable rates. In fact, right now the FOMB has a full agenda just managing the Commonwealth’s and its affiliated agencies respective bankruptcy processes.

Furthermore, the FOMB’s objectives are not related to, and in some instances, may be in direct opposition to the successful implementation of a recovery program for Puerto Rico. The FOMB simply does not have the legal mandate, political legitimacy, operational capabilities, trained staff, organizational structure, or the necessary resources to expeditiously plan, effectively and efficiently administer, and robustly account for, the use of billions of federal dollars over several years.

This nascent conflict between the government of Puerto Rico and the FOMB needs to be addressed soon, as it is likely to become increasingly contentious with the passage of time, and as Judge Laura Taylor Swain recently reminded us in her recent OPINION AND ORDER DENYING URGENT MOTION OF FOMB TO CONFIRM APPOINTMENT OF A CHIEF TRANSFORMATION OFFICER, “the power sharing structure created by PROMESA is...fraught with the potential for mutual sabotage”, while “every moment spent in complicated and expensive litigation is a moment lost for attention to the future of Puerto Rico and her people.”⁵

Precedents

Struggles of a similar nature have been observed in previous post-disaster contexts. In the aftermath of the 9/11 terrorist attacks, the Lower Manhattan Development Corporation (LMDC) was created as a subsidiary of the New York State Urban Development Corporation to oversee the planning and construction of the World Trade Center Site.

Given the number of political actors and administrative entities that lay claim to the site’s reconstruction, the LMDC had a Board of Directors whose members were respected members of the community, named by both the Governor of New York and the Mayor of New York City. The LMDC organized a series of working groups to gain input from diverse stakeholders and also worked closely with the Port Authority of New York and New Jersey, which owned the Trade Center land, and the New York State Department of Transportation on reconstruction planning and implementation efforts.

This structural arrangement “allowed the LMDC to become a ‘creative dispenser of discretionary money’” and “gave the development agency financial leverage in rebuilding

⁵ Judge Laura Taylor Swain, OPINION AND ORDER, at p. 20, (Docket Entry No. 361)

lower Manhattan.”⁶ In addition, according to some accounts federal agencies such as HUD and the DOT preferred this arrangement, rather than sending money directly to the city or the state for accountability reasons.⁷

The LMDC, in turn, served as a guiding example for the creation of the Louisiana Redevelopment Authority (LRA), which was created by the governor of Louisiana “to represent the state’s funding needs to the federal government, by providing documentation of those needs and demonstrating transparency and accountability in funding decisions”.⁸ Shortly after its creation, the LRA was subsequently codified by the state legislature, which led to the creation of several ex-officio seats for elected officers.

The governor-appointed LRA board members were not elected officials at the time of their appointment but a group of former government officers and other notable professionals who represented diverse political persuasions and geographic communities. The LRA created a long-range planning task force and was successful in adopting principles and policies that guided local redevelopment. Their policy guidance allowed for a transparent and efficient use of billions of federal dollars.

In the case of Puerto Rico, the Department of Homeland Security (“DHS”) appears to support the creation of a special Commonwealth entity to channel federal disaster relief funding to the island. Specifically, the Federal Emergency Management Agency (“FEMA”) has ordered the government of Puerto Rico, through *Amendment No. 5 to the Notice of a Major Disaster Declaration*, to “establish a Commonwealth grant oversight authority, supported by third-party experts, to perform as the grant recipient for Public Assistance and Hazard Mitigation funding to ensure sound project management and enhanced, centralized control and oversight over the distribution of FEMA grant funds”.⁹

Furthermore, *Amendment No. 5* requires that “all large project funding for Public Assistance Categories C-G be obligated by FEMA only through alternative procedures as FEMA shall establish under Section 428 of the Stafford Act, including third-party independent expert validation of estimates for projects exceeding a threshold FEMA shall establish consistent with law.”¹⁰ Both the PPPA and the FOMB lack the capabilities and resources to successfully execute this role.

However, in our opinion, a newly-created Commonwealth entity, if properly designed could effectively manage recovery efforts and address Congressional concerns, limit

⁶ Sagalyn, p. 84.

⁷ *Id.* at p. 82.

⁸ Robert B. Olshansky, Laurie A. Johnson, Jedidah Horne & Brendan Nee, (2008) “Longer View: Planning for the Rebuilding of New Orleans”, *Journal of the American Planning Association*, 74:3, 273-287.

⁹ Department of Homeland Security, Federal Emergency Management Agency, *Amendment No. 5 to Notice of a Major Disaster Declaration*, section 1, issued on November 2, 2017.

¹⁰ *Id.* at section 2.

political conflict between the government of the Commonwealth and the FOMB, and preserve and protect the authority of Puerto Rico’s duly elected government.

Statement of Principles

CNE believes that any entity designed to manage the recovery process and address the potential conflict between the government of Puerto Rico and the FOMB should comply with the following principles:

- **Legitimacy—Provide a Forum for the Participation of the Democratically Elected Government of Puerto Rico:** Any solution to this conflict has to provide a space for the effective and meaningful participation of the duly elected government of Puerto Rico. Otherwise, the reconstruction effort will be perceived as illegitimate and lack support from key political stakeholders in the island.
- **Subsidiarity:** This principle essentially requires that decisions that affect a certain community be taken at the government level closest to that community. According to the Compendium of the Social Doctrine of the Catholic Church, the principle of subsidiarity is one of the most important principles of social philosophy:

“Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.”

Furthermore, “on the basis of this principle, all societies of a superior order must adopt attitudes of help (“subsidium”)—therefore of support, promotion, development—with respect to lower-order societies. In this way, intermediate social entities can properly perform the functions that fall to them without being required to hand them over unjustly to other social entities of a higher level, *by which they will end up being absorbed and substituted, in the end seeing themselves denied their dignity and essential place.*”¹¹

The principle of subsidiarity is also defined in Article 5 of the Treaty on European Union. “It aims to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at the EU level is justified in light of the possibilities available at the national, regional, or local level. Specifically, it is the principle whereby the EU does not take action (except in the

¹¹ *Compendium of the Social Doctrine of the Catholic Church*, 186; see also, Leo XIII, Encyclical Letter *Rerum Novarum* (1892); Pius XI Encyclical Letter *Quadragesimo Anno* (1931); John Paul II Encyclical Letter *Centesimus Annus* (1991); and *Catechism of the Catholic Church*, 1882 and 1883.

areas that fall within its exclusive competence) unless it is more effective than action taken at the national, state, or local level.”¹²

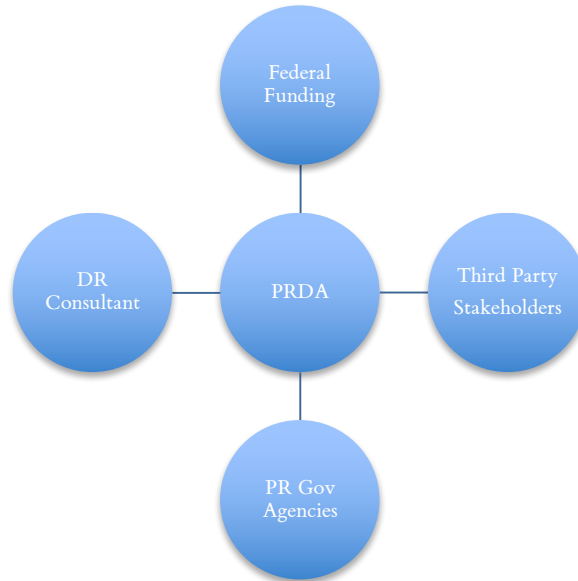
- **Inclusiveness—Provide for the Participation of Stakeholders from the Private and the NGO Sector:** Puerto Rico’s private sector and non-governmental organizations should be provided with a platform to express their visions and make their own proposals for a new Puerto Rico when the time comes to translate the rhetoric of resilience into concrete plans, architectural realities, political decisions, building priorities, and economic and financial costs. Otherwise, the whole effort will be bound to fail as the “new Puerto Rico” will inevitably not satisfy the expectations of the private sector and civil society and the net result will be increased migration to the mainland.
- **Economic Impact—Strengthen the Local Economy:** The entity (ies) in charge of rebuilding Puerto Rico should hire residents of Puerto Rico and local organizations on a priority basis to ensure that disaster survivors participate in recovery activities and directly benefit from recovery funds. This is especially important given Puerto Rico’s high unemployment rate and low labor force participation.
- **Cooperation and Coordination:** The structure of the recovery effort should serve as a channel for *all federal recovery funding* allocated to Puerto Rico, not only FEMA funds, and to promote cooperation between the federal and Puerto Rican governments, as well as among and between different stakeholders in Puerto Rico. It should also allow for the effective coordination of the work to be done by a plurality of groups working with different visions for the new Puerto Rico.

Proposal

In order to address Congressional concerns and satisfy the principles set forth above, the Puerto Rico Development Authority (“PRDA”) could be structured as follows:

- The Commonwealth of Puerto Rico, in accordance with *Amendment No. 5*, would create and establish the “Puerto Rico Development Authority” (“PRDA”) to be the grant recipient of all federal disaster assistance funding.
- The PRDA will be governed by a board of directors composed of persons with unimpeachable reputations. There are several options for choosing the members of the board. For example, the Governor of Puerto Rico could appoint half the members and the other half could be appointed by the federal agencies directly involved in the recovery process, namely DHS, FEMA, HUD, DOT, etc. Another option would be to split the appointments between the Governor of Puerto Rico and Congress.

¹² See Lisbon Treaty, Article 5, (2007) (ratified 2009) and <http://eur-lex.europa.eu/summary/glossary/subsidiarity.html>



- The PRDA should provide a space to engage with representatives of local communities, NGOs, philanthropies, the private sector, government, academia, members of the Puerto Rican diaspora, and other stakeholders to identify concrete projects and develop recommendations to make the island stronger—physically, economically, and socially—and better prepared to confront future challenges. The idea is for the PRDA to leverage the work being undertaken by other groups already working in planning a more resilient Puerto Rico and avoid the unnecessary, and wasteful, duplication of efforts.
- In order to maintain a lean staff and its focus on oversight and accountability, the PRDA could enter into a contract with a professional disaster recovery management firm. This consultant will provide the PRDA with the “nuts and bolts” expertise necessary to coordinate and expedite the recovery effort, while maintaining a close eye on what happening on the ground as the recovery process moves along to avoid cost overruns as well as fraud and misuse of recovery funds.
- Finally, the PRDA working with the resources described above would (1) establish, through an open, transparent process subject to public scrutiny, the priority areas for funding; (2) choose the sequence in which recovery projects will be funded; and (3) channel federal funding to the relevant Puerto Rico government agencies in charge of those projects.

Conclusion

The creation of a Puerto Rico Development Authority is a reasonable solution to the conflict between the government of Puerto Rico and the FOMB over control of the recovery process. This type of entity, which has proven to be effective in other contexts, would also (1) satisfy Congressional concerns regarding accountability in the use of funds;

(2) provide a space for the legitimately elected officials of the government of Puerto Rico, as well as other local stakeholders, to participate effectively in the reconstruction effort; (3) reduce the need for wasteful litigation between the island's government and the FOMB; and (4) accelerate the recovery process by minimizing pointless political conflict and coordinating reconstruction activities among and between federal, state, and local stakeholders.

The Center for a New Economy (CNE) is an independent, non-partisan think-tank. Founded in 1998, it produces rigorous public policy research and analysis and is one of the most credible and influential voices in Puerto Rico and the United States on Puerto Rico's economy. Since 2014, CNE has been recognized as one of the Top Think-Tanks to Watch by the Global Think Tank Report of the University of Pennsylvania. CNE's analysis is sought-out by officials in the US Treasury, the Federal Reserve Bank of New York, the White House, and the US Congress intent on receiving balanced expertise and policy counsel on Puerto Rico and finding bipartisan options to the island's fiscal predicament. Its reports and analyses are regularly covered by media from the United States, Latin America, Europe and Asia and are cited by numerous academic and policy publications.
