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**LEGISLATIVE HEARING — PROMESA: DISCUSSION DRAFT (Day 2)
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Introduction

Chairman Grijalva, Ranking Member Bishop and members of the Committee, the Center for a New Economy (“CNE”) welcomes the opportunity to submit our comments on the draft legislation dated July 18, 2019 currently under consideration by the Natural Resources Committee of the U.S. House of Representatives to amend the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (“PROMESA”).

CNE is Puerto Rico’s think tank, an independent, nonpartisan group, that informs current debates based on hard data and robust empirical research of Puerto Rico’s most pressing and complex challenges. For over 20 years, CNE has carefully studied the issues affecting Puerto Rico and has been a front row witness to the effects of policies implemented by state and federal government officials.

CNE was among the first voices to alert of Puerto Rico’s impending economic and fiscal crisis. We testified before Puerto Rico’s legislative assembly and the U.S. Congress on the complexity of its debt structure; the possible economic fallout and the need to adopt policies to enable growth; and Puerto Rico’s inability to restructure its own debt as a result of mysterious, and still unexplained, amendments made to the U.S. Bankruptcy Code in 1984. At the time Puerto Rico’s fiscal crisis was actively being discussed in Washington DC, CNE argued that unless Congress provided Puerto Rico with effective tools to bolster its economy, little would change.¹

As Congress considers amendments to PROMESA, it is imperative to understand that PROMESA was the product of a flawed policy process. While the draft legislation being considered signals the need to make amendments to an imperfect law, it falls short of effectively correcting the course.

We have organized our analysis and recommendations by dividing this document into four main sections: **Section I** sheds light on the historical dynamics of U.S. policymaking with respect to Puerto Rico. **Section II** outlines the context behind the legislative process that resulted in PROMESA’s political compromise. **Section III** provides CNE’s analysis of two proposed amendments. Finally, **Section IV** lays out our recommendations and conclusions.

¹ Marxuach, Sergio. 2015. *Testimony Before the United States Senate Committee on Finance Public Hearing on Financial and Economic Challenges in Puerto Rico*, September 29. <https://grupocne.org/2015/09/29/testimony-before-the-us-senate-finance-committee/>

Section I

In Graham Greene's 1955 novel, *The Quiet American*, Thomas Fowler, a battle-hardened journalist, remarks about Alden Pyle, the young American intelligence operative and "quiet American" of the title, that he "never knew a man who had better motives for all the trouble he caused."² The same can be said about U.S. policymakers dealing with Puerto Rico since General Miles invaded the island in 1898 pledging to bestow the "advantages and blessings of enlightened civilization" on Puerto Ricans.³

The General may have had the best intentions, but Puerto Rico was not a blank slate in 1898; it had been a Spanish colony for over 400 hundred years and had its own cultural, political, economic, and social systems. Nevertheless, the new American administrators never really bothered to study and understand the place they had just conquered and proceeded to implement a series of American institutions on top of the Spanish system they found. This "Americanization" of Puerto Rico entailed numerous drastic measures, among them (1) changing the name of the island to Porto Rico; (2) introducing the U.S. dollar as the local currency; (3) forcing the teaching of English in public schools; and (4) imposing an American style of colonial government. Not surprisingly, this institutional mishmash did not work very well during the early 20th century and—withstanding some modifications—still doesn't work in 2019.

It is worth noting that these decisions were made by officers far away in Washington, with little or no knowledge or interest to learn about Puerto Rico and based on two unexamined assumptions: (1) what was good for the United States must be good for Puerto Rico; and (2) everybody admired and wanted to be like the United States. We can call this the "Alden Pyle Doctrine".

However, by the time of the New Deal the relationship between both polities had become strictly transactional. Washington gave up its ill-advised efforts to transform Puerto Rico into a slice of the Midwest in the tropics and focused instead in protecting its national interests and pursuing its strategic objectives in the Caribbean in exchange for federal transfers, better roads, tax breaks for U.S. companies, and public health programs. Initially, protecting the Eastern approach to the Panama Canal was the strategic objective. Then, during World War II, the objective was to use naval bases in Puerto Rico to deny the Axis powers access to the Caribbean Sea.

² Graham Greene, *The Quiet American*, (Penguin, 1977 [1955]), p. 60.

³ Quoted in Efren Rivera Ramos, *American Colonialism in Puerto Rico: The Judicial and Social Legacy*, (Markus Weiner, 2009), p. 192.

However, it is perhaps during the Cold War that the nature of the relationship became clear for all to see and none to misunderstand. Between 1945 and 1991 the United States pursued a two-pronged strategy in Puerto Rico: an overt strategy to make Puerto Rico the “showcase of the Caribbean”, promoting an export-led development strategy, based on U.S. capital, surplus labor from Puerto Rico, and duty-free access to the U.S. market; political home rule embedded in the 1952 Constitution; and generous federal transfers and tax breaks. The other side of the coin, was a covert strategy to prevent Soviet penetration in Latin America and the Caribbean; provide a counterweight to Fidel Castro’s Cuba; and expand American influence in the area.

The withdrawal of the U.S. from the Canal Zone and the end of the Cold War ushered an era of benign neglect with respect to Puerto Rico. The island had lost its geopolitical importance and the U.S. was busy with wars in other faraway places but Puerto Ricans were U.S. citizens and social and cultural ties between Puerto Rico and the mainland were thick and strong. So, because the U.S. couldn’t just walk away, the default policy became to benignly ignore the island and hope for the best.

By 2015, however, things were not going well in the island. The economy had been in a prolonged secular decline – a depression really, since 2006; net migration to the mainland was increasing, while the natural rate of population growth was decreasing, generating a significant reduction in the island’s population; the government was running chronic deficits; tax evasion was widespread, while government corruption proliferated. At the same time, the island’s government issued ever-growing amounts of public debt just to keep operating. Indeed, between 2000 and 2014 the island’s indebtedness increased at an average rate twice as fast as its income as measured by GNP. By the summer of 2015, it was obvious that Puerto Rico would not be able to postpone its day of reckoning much longer. It owed \$72 billion in bonded debt (an amount larger than its GNP) and another \$50 billion in unfunded pension liabilities.

The Governor’s announcement of Puerto Rico’s insolvency was the perfect moment for the United States to reassess its policy towards Puerto Rico: What is the U.S. doing in Puerto Rico? What are the U.S. current interests in the island? What strategic objectives are furthered by keeping the island as a permanent “unincorporated territory”? What does it mean at the beginning of the 21st century for the U.S. to keep 3.1 million people as second-class citizens?

But Washington had little interest in addressing these questions or in understanding the political and economic dynamics that led the island to bankruptcy. Instead, Washington’s answer was to analyze the problem from a purely financial perspective and craft a solution based on the political dynamics in

Washington and deemed to be the best from the Washington perspective, while ignoring the fundamental drivers of the crisis. The legacy of Alden Pyle clearly lived on.

At the core of that “solution” lies an ugly political compromise: Puerto Rico would be allowed to reorganize its debts in an orderly court proceeding as long as it submitted to the authority of an unelected oversight board, constituted of seven members appointed by the President from lists submitted by Congress. The outcome was a species of “dictatorship to save democracy” (the Orwellian phrase used by one of the eventual members of the board). To transfer the authority to make the “difficult” decisions to a body insulated from the pressures of democratic politics and eventually, it was hoped, balance the budget, restructure the debt to a sustainable level, and jumpstart economic growth.

In order to accomplish these objectives, the law created a complicated mechanism for interaction between the board and the government of Puerto Rico that essentially rendered the island ungovernable, ignored the long history of U.S. – Puerto Rico relations, and failed to consider the political and economic dynamics of the island.

Back in 2016, Washington had forgotten that after five centuries of colonial domination, Puerto Ricans have become masters at using what James C. Scott has called the “weapons of the weak”: namely, foot-dragging, dissimulation, sabotage, insubordination, and strategic disobedience, among other tactics, to make life hell for its colonial administrators. The drafters of PROMESA were warned about this, but chose to disregard this advice.

PROMESA was also drafted in complete disregard of the political economy of Puerto Rico. Half the population of the island lives with incomes under the federal poverty threshold; one-third of households qualify for nutritional assistance; and the labor force participation rate is the lowest in the United States. Economic elites are weak and in many cases depend on rent-seeking activities for their income; also, many in this group see themselves as mere intermediaries for American capital instead of true entrepreneurs.

At the same time, the political class is divided across complex and contending identity lines, that is, it is divided across preferences for the eventual solution of Puerto Rico’s political status, not along Democratic-Republican lines or along a liberal – conservative axis. These identity divisions, in turn, point to other more complex and contentious issues about what it means to be Puerto Rican; who is included in the Puerto Rican body-politic; and who is authorized to represent and speak for Puerto Rico. Furthermore, many

Puerto Rican politicians define their role in terms of their capacity to collaborate with the American regime instead of advocating for the welfare of the Puerto Rican people.

By ignoring these admittedly complex issues, the drafters of PROMESA could not integrate political and economic strategies into the solution to the debt crisis outlined in PROMESA. As such, PROMESA ignores the root causes of Puerto Rico's fiscal crisis and is therefore destined to fail.

Three years after its enactment, PROMESA's record is deficient, at best. It is true that a few debt restructuring transactions have been executed, but it remains unclear whether the residual debt level is sustainable over the long-term. In terms of balancing the budget, the board has made some progress but Puerto Rico still has a long way to go before it puts its fiscal house in order, without unduly sacrificing the provision of essential services. In terms of economic growth, PROMESA has done nothing for Puerto Rico.

PROMESA is an unwieldy mélange of legislative compromises, decisions made without adequate information, and a significant amount of wishful thinking, partisan ideology, and political expediency. Therefore, we doubt that resuming the same flawed policy process by introducing a set of superficial assorted amendments to PROMESA will do much to fix this legislative jumble, and given Puerto Rico's current economic and political context, may end up doing more harm than good.

Section II

Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act in June 2016.⁴ While the very name of the law alludes to economic stability, Congress failed to address limitations and restrictions in federal programs that adversely affect Puerto Rico's fiscal and economic situation, as well as the island's subordinated political status. Three years later, we find ourselves worse off than we were back then.

We understand that designing consensual public policy is a hard task even in the friendliest political environments — circumstances that cannot fairly characterize the current political environment, both in Puerto Rico and the United States. When imminent threats demand quick responses, and policymakers are confronted with time constraints, the legislative answers that emanate could ultimately render the

⁴ Public Law 114-187

solution worse than the original problem. That is precisely how the majority of Puerto Ricans view PROMESA now.

Thus, for the benefit of the newer members of Congress, we proceed to provide a brief legislative history of PROMESA.

In August 2013, *Barron's*, a respected magazine by financial analysts in Wall Street, highlighted the island's weak fiscal position and high public debt.⁵ Despite these concerns, on March 11, 2014, the government of Puerto Rico made one last offering of General Obligation bonds, rated below investment grade, for a grand sum of \$3.5 billion, providing enough runway to meet future short-term obligations.

Then, in June 2014, responding in part to increasing concerns about the unsustainable amount of public debt, Puerto Rico's legislature enacted its own debt restructuring legislation (the Recovery Act or Act 71 of 2014)⁶ to allow government-owned enterprises to file for debt restructuring through legal structures set up within Puerto Rico. Though the Recovery Act did not address the adjustment of general obligation debt, it was designed to provide enough breathing room for the Commonwealth government by allowing three of its major instrumentalities to restructure its debt: (1) the Puerto Rico Electric Power Authority ("PREPA") with about \$9 billion in debt; (2) the Puerto Rico Aqueduct and Sewer Authority ("PRASA") with about \$7 billion; and (3) the Puerto Rico Highways and Transportation Authority ("PRHTA") with nearly \$4 billion of indebtedness.

The Recovery Act, however, proved to be short-lived. A U.S. District Court struck down Act 71 in February 2015, holding that a provision in chapter 9 of the U.S. Bankruptcy Code preempted action by Puerto Rico, despite the fact Puerto Rico had already been prohibited from seeking relief under Chapter 9.⁷ As investors sounded the alarm of the adverse effects this could have on the municipal bond market, the

⁵ Bary, Andrew. 2013. "Troubling Winds." *Barron's*, August 26.

⁶ P. del S. 1164. 2014. Puerto Rico Law 71, <http://www.lexjuris.com/lexlex/Leyes2014/lexl2014071.htm>

⁷ In 1984 the U.S. Congress amended the definition of "State" to exclude Puerto Rico "for the purpose of defining who may be a debtor under chapter 9, 11 U.S.C. § 101(52).

White House, the U.S. Treasury, and the U.S. Federal Reserve dedicated resources to study the matter at hand.⁸

Then, in June 29, 2015, Governor García Padilla, in a televised address, affirmed “the debt is not payable.”⁹ This declaration destabilized the municipal bond market and forced the federal government to engage quickly. Both the House and Senate held public hearings on the matter and the Obama Administration weighed in by laying out a Roadmap for Congressional Action.¹⁰

The U.S. Congress responded in the summer of 2016 by enacting PROMESA, just a day prior to a massive \$2 billion default. That same month, the U.S. Supreme Court held that section 903 of the U.S. Bankruptcy Code pre-empted the Puerto Rico Recovery Act,¹¹ leaving little room for Puerto Rico to respond on its own were it not within the framework set forth in PROMESA.

As prescribed by the law, President Obama appointed the seven members of the Financial Management and Oversight Board (“FOMB”) on August 31, 2016, an action which has been challenged in federal courts based on different interpretations of the Appointments Clause of the U.S. Constitution. That issue is now pending before the Supreme Court of the United States.¹²

Section III

In its current form, the draft bill signals the need to make some amendments to PROMESA. Yet in our opinion, those edits don’t adequately address the fundamental weaknesses of that law. In fact, they do

⁸ Corkery, M. & Williams Walsh, M. 2015. “Treasury Officials Increase Efforts With Finances of Puerto Rico.” *New York Times Deal Book*, April 13. <https://www.nytimes.com/2015/04/14/business/dealbook/treasury-officials-increase-involvement-with-finances-of-puerto-rico.html>

⁹ 2016. Mensaje del Gobernador Alejandro García Padilla sobre situación fiscal de Puerto Rico.” *El Nuevo Día*, June 29. <https://www.elnuevodia.com/noticias/politica/nota/mensajedelgobernadoralejandrogarciapadillasobresituacionfiscaldepuertorico-2066574/>

¹⁰ 2015. “Addressing Puerto Rico’s Economic and Fiscal Crisis and Creating a Path to Recovery: Roadmap for Congressional Action.” *Administration of President Barack Obama*, October 21. https://obamawhitehouse.archives.gov/sites/default/files/roadmap_for_congressional_action___puerto_rico_final.pdf

¹¹ *Acosta-Febo v. Franklin California Tax-Free Trust*. *Scotus Blog*. <https://www.scotusblog.com/case-files/cases/acosta-febo-v-franklin-california-tax-free-trust/>

¹² Howe, A. 2019. “Argument analysis: Justices weigh appointments dispute – and nature of Puerto Rico oversight board”. *Scotus Blog*, October 15. <https://www.scotusblog.com/2019/10/argument-analysis-justices-weigh-appointments-dispute-and-nature-of-puerto-rico-oversight-board/>

quite the opposite, considering that making such changes at this stage of the game would do more harm than good.

When PROMESA was drafted, Puerto Rico was granted access to most provisions of a Chapter 9 bankruptcy process on the condition that the FOMB act as debtor in the restructuring process. In other words, while it was Puerto Rico's government the entity that declared a default, the FOMB was granted the authority to act as a proxy debtor in the bankruptcy proceedings.

In order for that representation to make sense, assuming it could ever make logical sense, the FOMB was established as an organism within, but not subject to, Puerto Rico's territorial government, and its funding stream was sourced accordingly. Changing the funding stream from the territorial government to the federal government could adversely affect the FOMB's designation as debtor for the Commonwealth and its agencies and instrumentalities. Had the Puerto Rican government been allowed to represent itself and its agencies in Title III proceedings *ab initio*, the issue of funding the FOMB would not be as important from a legal perspective. This issue is emblematic of the unwieldy *mélange* of legislative compromises that constitute PROMESA.

To be clear, CNE did not endorse PROMESA when it was enacted by Congress. After a thorough and careful evaluation of the law as drafted, CNE was explicit on the negative consequences this law would bear. First, giving up local governance in exchange for a chance at restructuring without an explicit assurance of debt relief was simply too much of a risk. Second, while CNE acknowledged a need for establishing fiscal controls, we also argued that increased federal intervention in the island's governance would not yield the intended results. Time has only proven us right.

That being the case, we limit our comments to only two of the amendments being proposed. This limited set of comments should not be interpreted in any way, manner or form as an explicit or implicit endorsement of any of the provisions of the proposed bill.

Section 5. Definition of Economic Growth

Ever since the days of Adam Smith, economists have struggled to understand the process of economic growth. While this effort has produced a better understanding of the sources of growth, the subject has proven elusive and many puzzles remain unsolved. At the beginning of the 21st century it has become clear that there is no “silver bullet” or “cookbook recipe” solution to the problem of economic growth. Rather, the process of growth is quite complex, involving the interplay of many factors and variables that must be present if a country is to succeed.

In this sense the language set forth in Section 5 of the proposed bill is deficient. The tools being proposed fall short of jumpstarting sustainable economic growth. If we take a look at official statistics from the Puerto Rican government, it could be argued that the FOMB and the local government have already accomplished some of these goals. They have invested in ventures that promise to generate new jobs (albeit without the proper monitoring instruments to measure the cost, benefits, and effectiveness of such incentives), the unemployment rate has been steadily decreasing, workforce development programs have been expanded, and tax collection has increased continuously. Moreover, this section does not include any new federal policies to help Puerto Rico achieve the objectives of increasing median household income, creating good-paying jobs, or reducing inequality and poverty levels.

Given Puerto Rico’s subordinated political status, many experts and policymakers have pointed to the need of federal support to stimulate economic growth in the territory. This section should require the federal government to implement in Puerto Rico specific programs that have proven to sustainably and effectively increase labor force participation and reduce inequality and poverty. At the top of the list are programs such as the Earned Income Tax Credit (“EITC”), the Child Tax Credit (“CTC”), Supplemental Security Income (“SSI”), and other federal programs, as set forth in 2016 Congressional Task Force Report on Puerto Rico. At a minimum, the Committee should consider including the federal reimbursement that maximizes Puerto Rico’s local EITC, which has already been approved by the House Ways and Means committee.¹³ Along with these programs, economic growth should be clearly articulated through a public

¹³ On June 20, 2019, the House Ways and Means Committee passed Chairman Richard Neal’s “Economic Mobility Act of 2019”, H.R. 3300. Tucked in the bill is a provision that would expand Puerto Rico’s local earned income tax credit (EITC) up to \$816 million annually, increasing the local EITC by \$612 million. Leveraging federal dollars to complement Puerto Rico’s \$204 million EITC would allow for a visible income boost

policy and institutional framework that allows for and promotes the necessary investments in public education, workforce training, transparency, and increased civic participation.

Section 11. Office of the Reconstruction Coordinator for Puerto Rico

The discontent with Puerto Rico’s political elite and public institutions has been used to justify increased federal intervention in Puerto Rico.¹⁴ And it may be convenient, not to say self-serving, to entertain the simplistic narrative that Puerto Rico’s current condition is solely due to its own misfeasance. However, while Puerto Rican politicians have made their share of mistakes and bad decisions, the blame for its current woes cannot be pinned on Puerto Rico alone.

As mentioned in Section I, for decades, the Congressional attitude towards Puerto Rico could be, at best, charitably described as one of benign neglect; and the ravages of hurricane Maria have laid bare many of the inequities faced by the residents of the island. Despite recognizing some of these imbalances, the prevailing narrative in mainland policymaking circles has focused on chronicles of clientelism, some colored with negative racial and cultural undertones—much like what occurred in New Orleans, in the aftermath of Hurricane Katrina.

In that same vein, it has become kind of a common practice to appoint recovery “czars” in the aftermath of disasters, most recently hurricanes Sandy and Katrina, but that is typically done soon after a disaster occurs and not after structures have been put in place and tasked with the same responsibilities. Even if the person selected to lead the Reconstruction Coordination Office for Puerto Rico had the necessary legitimacy in the island, it is highly unlikely this office would address the real problems affecting the reconstruction process, namely, coordination failures, lack of local participation, the slow disbursement of funding, and ineffective transparency.

for working low- and moderate-income families and improve the chances for a successful program. This federal contribution is still far less than what the federal government provides Mississippi, the poorest state, which in 2016 claimed nearly \$1.1 billion in federal EITC dollars.

¹⁴ HUD No. 19-115. 2019 “HUD To Appoint Federal Financial Monitor to Oversee Puerto Rico Disaster Funds.” *U.S. Department of Housing and Urban Development*, August 2. https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_115

CNE has strong reservations about appointing another unelected, congressionally-mandated neo-colonial body to manage the funding for the reconstruction of the island in the wake of the havoc wreaked by Hurricane Maria; especially in light of empirical evidence that indicates that locally-led reconstruction processes are the most effective and successful in achieving the goals of post-disaster reconstruction.

We specifically note the following shortcomings of the proposed bill. The discussion draft:

- creates a new bureaucratic layer to oversee the process of reconstruction and does not clearly define where the new office would be situated, whether it's a federal or local entity, and how it would interact with the already established Puerto Rico Office for Recovery, Reconstruction and Resiliency ("COR3");
- instructs the President of the U.S, who is not elected by Puerto Ricans and has shown personal hostility and animosity towards the people of Puerto Rico, to appoint the Reconstruction Coordinator;
- targets CDBG-DR money as the funding stream for the new office without setting any limitations on spending;
- fails to set forth accountability tools to measure effectiveness or progress in the reconstruction;
- does not provide priority to the procurement of local goods and services;
- fails to ensure local governance capacity is strengthened or improved; and
- fails to incorporate adequate public participation or oversight over reconstruction efforts.

The draft legislation aims for the role of the reconstruction coordinator to terminate upon the *obligation* of all funding for the reconstruction and recovery. That is, the role of the office would end when the U.S. government commits to ensure payment for goods and services related to the reconstruction effort. This is notable because if this body is not be held responsible for overseeing how reconstruction funds are spent once they are disbursed (when the U.S. Treasury releases the funds), then what is the underlying purpose of the Reconstruction Coordination Office? The allocation of CDBG funds is administered by the U.S. Housing and Urban Development ("HUD"); any pressure for the prompt allocation of these funds, therefore, should be properly directed at the bureaucrats at HUD.

Moreover, if additional appropriations for Puerto Rico end up being legislated in the medium- to long-term – NOAA estimates total damages caused by Maria at \$90 billion but only \$42 billion have been allocated thus far, therefore Congress will need to appropriate additional funds in the future – then it would be misleading to include a sunset provision when in fact new disaster appropriations would renew the need for the office.

The draft legislation proposes that operational expenses for the new office be funded from the “administrative portion of the estimated CDBG–DR disbursements for Puerto Rico.” A closer examination of the appropriation language suggests that nearly \$1 billion dollars could be made available for this purpose.

Congress has appropriated funds for the CDBG program and its use in Puerto Rico through different legislative vehicles, the two largest appropriations being set forth in [P.L. 115-56](#) and [P.L. 115-123](#). Both laws allow for [a State, unit of general local government] to “use up to 5 percent of its allocation for administrative costs.”^{15,16} At a time when the FOMB is imposing draconian budget cuts on the island’s government, it is insensitive to redirect dollars appropriated for the victims of hurricane Maria to set up a colonial Reconstruction Coordination Office.

According to data from the website of the FEMA Recovery Support Function Leadership Group, as of August 31, 2019, a total of \$19.95 billion have been allocated to HUD’s Community Development Block Grant-Disaster Recovery program for Puerto Rico. If we take 5 percent of that sum, the colonial Reconstruction Office could draw up to \$997.5 million to support its functions, a figure that is unconscionable given the thousands of families still living under temporary blue tarps.

That being said, it is certainly true that natural disasters stress-test the capacity of local governments and relief organizations to respond and advance reconstruction efforts in a prompt and equitable fashion. If the scale of the damage provoked by Hurricane Maria is considered, the complexities of Puerto Rico’s

¹⁵ Public Law 115–56

¹⁶ Public Law 115–123

disaster reconstruction process become evident. All three of the populated islands that make up Puerto Rico suffered massive damage. Rebuilding these communities under a compressed timeframe, often juggling competing demands and problems that arise on a daily basis, and which are equally urgent, can prove challenging even in the best prepared jurisdictions.

In response to this complicated scenario, in October 2017, the Governor of Puerto Rico established the Central Office of Recovery, Reconstruction and Resilience, or COR3, to oversee all disaster recovery efforts. The government set the expectation that this new agency would plan and administer all resources available to the island, assist individual recipients and manage large reconstruction activities.

Key to that role is its capacity to coordinate efforts among all relevant actors. This coordination effort involves a series of players: the Puerto Rico Housing Department and numerous other Puerto Rico government agencies with key responsibilities in reconstruction efforts; FEMA and several other agencies of the federal government; municipal governments; the FOMB; local and foreign non-governmental organizations; hundreds of thousands of residents affected by the hurricane; and myriad external consultants, many lacking even a basic knowledge of local conditions.

Based on multiple press reports and input from civic stakeholders, this coordination process has been flawed, at best. For example, there are three major plans (the Economic and Disaster Recovery Plan, the CDBG-DR Action Plan, and the Fiscal Plan for the Commonwealth of Puerto Rico) that include projects and courses of actions directly affecting reconstruction efforts, but it is unclear whether there is any correspondence between them or how inconsistencies regarding timetables, scales and sequencing of projects will be addressed.¹⁷

At this juncture of Puerto Rico's reconstruction, this ambiguity highlights the need to carefully define precise planning, coordination and implementation frameworks, and improve the flow of information.

¹⁷ Letter written April 10, 2018 to Congressional Appropriators on Hurricane Maria Recovery, <https://static1.squarespace.com/static/5b155afd506fbec1e69c2c61/t/5c41085abba223348466bda9/1547765851866/Puerto+Rico+Community-Driven+Rebuilding+Sign-On+%28April+10%2C+2018%29.pdf>

Undoubtedly, the reconstruction process has been plagued by a lack of coordination. However, instead of carefully analyzing and diagnosing the problem, suggestions to impose additional layers of federal oversight, without thinking through how they will interact with existing players involved in this massive reconstruction effort is not sound policy.

A similar scenario developed in the aftermath of Katrina. Congress pushed for “strict accountability and oversight”, while the publicly discredited response from the White House fueled distrust from local actors towards the federal government. Notwithstanding the politically symbolic action to prioritize reconstruction efforts, the addition of a czar was not met with local approval. One of the of lessons from Katrina is that outsiders without local legitimacy will not be able to lead a successful reconstruction process. Puerto Rico faces an opportunity to learn from past experiences and support a rebuilding and reconstruction process designed and led by the people and Government of Puerto Rico.

Experts agree that reconstruction efforts are most effective when they empower residents to participate and take pride in the design of policies that directly affect them. Residents are best suited to recall past experiences and reflect local needs. Yet, in Puerto Rico, residents, community leaders, and several non-governmental organizations have repeatedly expressed grave concerns over the poor quality of the public input process.^{18,19} For example, the government has published inaccurate translations of government-drafted documents for public commentary, the periods for receiving comments from the public have not been properly notified and have been too short to allow for adequate public participation, and some agencies have engaged in misleading practices, such as providing access to funds only after the prospective beneficiaries have agreed to accept unfavorable conditions (i.e. permanent relocations).

Therefore, while we agree that new coordination processes and institutional constructs need to be carefully thought out, designed, and proposed to adequately manage the reconstruction process, it is

¹⁸ Letter written May 25, 2018 to Puerto Rico CDBG-DR Program, Secretary's Office; Secretary of Housing and Urban Development, Ben Carson; Assistant Secretary of Housing and Urban Development for Community Planning and Development, Neal J. Rackleff; and Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity Anna Maria Farias requesting for an accurate translation of PR Hurricane Maria Action Plan, <https://nlihc.org/sites/default/files/CDBGDR5.25.18Letter.pdf>

¹⁹ Formal complaint published July 1, 2019 to HUD OIG from Ayuda Legal Puerto Rico condemning actions by the Puerto Rico Department of Housing in the disaster recovery process, <https://nlihc.org/sites/default/files/Complaint-OIG-HUD-ENG-002.pdf>

important to weigh the risks of imposing an additional federal bureaucratic layer or colonial body to oversee the recovery process at this time, as it could end up rendering Puerto Rico more vulnerable to external players controlling the reconstruction process, and further complicating coordination issues.

Instead, we emphasize the need for creating a distinct set of principles and processes that allow for reflection, flexibility, and adaptability. If properly designed and implemented these principles and processes would facilitate effective coordination among stakeholders at different levels of government, insure adequate public participation in the planning and oversight process, provide greater transparency and accountability in the project selection phase and in the use of funds, and speed up the outlay of recovery funds.

Effective oversight of the reconstruction process is crucial to avoid waste, fraud, and abuse in the allocation and disbursement of funds. Similarly, adequate oversight mechanisms are useful to monitor the planning process for the recovery; insure the integrity of government procurement and contracting practices; and guarantee the implementation of objective criteria for the selection of recovery projects, as well as for the sequencing of spending priorities and sectoral investments, for example the process for choosing between rebuilding or rehabilitating, housing, the electric grid, education, transport, water, health and education infrastructure, commercial or industrial facilities, and in which sequence.

In addition, effective oversight is important to make “explicit the inevitable tradeoffs between speed and quality”. According to post-disaster recovery experts Robert B. Olshansky and Laurie A. Johnson, this “trade-off between speed and quality is dynamic, and must be continually reassessed. With smaller, short-term projects, speed may be the paramount concern, but quality becomes more important for longer-term projects.”²⁰ Oversight that works would focus on monitoring this complex dynamic and serve to build public support for difficult decisions that must be made.

²⁰ Olshansky, R. B., & Johnson, L. A. 2016. “After Great Disasters: How Six Countries Managed Community Recovery”. Cambridge, MA: Lincoln Institute of Land Policy.

In short, oversight that works facilitates, rather than hinders, the disaster recovery process. That is the reason why oversight requirements should not be utilized to impose unnecessary bureaucratic requirements or processes, or to somehow “punish” local actors for alleged or perceived malfeasance.

We suggest a locally-driven process that embeds widely accepted best practices within Puerto Rico’s disaster recovery process. In particular, we urge: (1) a systematic practice of meaningful transparency, one that publicly discloses how contracts are selected and how policies are devised; (2) a governance structure that aligns its actions to specific indicators and permits continuous evaluation and evidence-based decisions; (3) the creation of a Puerto Rico monitoring and oversight board with the ability to evaluate and rapidly adapt to changing conditions; and (4) a central information and communication mechanism to inform of current conditions, thereby facilitating collective decision making.

In the case of Puerto Rico, the Government could take advantage of the wave of civic engagement unleashed over the summer to create a Civic Committee for Transparency and Reconstruction (“CCTR”). This Committee would be empowered to monitor and evaluate the work of the COR3; to provide regular, periodic reports on the progress of the reconstruction to the governor of Puerto Rico, Congress, and the relevant federal agencies; and to independently audit the COR3.

Members of the CCTR should have prior extensive experience in the fields of planning, project management, disaster recovery, and auditing of complicated ventures. In addition, none should have held public elected or appointed office in the Government of Puerto Rico during the prior five years to their appointment; nor should they have any contracts with or work for firms under contract by the Government of Puerto Rico or the FOMB. Finally, the CCTR should be provided with necessary resources, budget, and staff to carry out its functions for the duration of the reconstruction process.

Section IV

In light of the issues described above, CNE respectfully requests the Committee to discard insufficient and inadequate solutions to address Puerto Rico’s challenges. We recommend the careful consideration of policy decisions that will have lasting effects on the people of Puerto Rico instead of moving legislation for political expediency.

First, the proposed bill does nothing to foster economic growth. Given Puerto Rico’s subordinated political status, many experts and policymakers have pointed to the need of federal support to stimulate economic growth in the territory. Therefore, the Committee, should look to federal policies that increase median household income, create good-paying jobs, or reduce inequality and poverty levels. At a minimum, it should pursue the recommendations set forth in the 2016 report from the Congressional Task Force on Economic Growth for Puerto Rico.

Similarly, the idea of transferring the management of Puerto Rico’s reconstruction efforts to a colonial recovery “czar” or to a more powerful illegitimate FOMB fails to heed important lessons learned in the aftermath of other disasters. Imported boilerplate solutions limit the transfer of knowledge to local officers and erode Puerto Rico’s capacity for self-governance. The island’s governance framework will certainly need to be retooled to satisfy calls for greater transparency and better procedures, but suggesting that this objective can only be achieved by an external body oversimplifies the task at hand, and perhaps worse, disregards demands from the very people that are trying to get back on their feet. It also fails to recognize a future without an oversight board.

Therefore, CNE strongly recommends the creation of a local Civic Committee for Transparency and Reconstruction to provide the effective oversight of the reconstruction process that both the federal government and the people of Puerto Rico strongly demand and deserve.

Hurricane Maria laid bare many of Puerto Rico’s challenges and structural shortcomings. Since then, it has become a political pawn in Washington. While the discussion draft signals the need to make amendments to an imperfect law, it falls short of effectively correcting the course. It is time to put the Alden Pyle Doctrine to rest once and for all.

Finally, as the Committee considers how to help Puerto Rico as it embarks on its long reconstruction process, we stand ready to provide our advice, analysis, and recommendations to Committee members and staff alike.

Respectfully submitted,

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