



May 24, 2016

## **An Open Letter to the House Natural Resources Committee: Coming Together on a Pro-Taxpayer Solution for Puerto Rico**

Dear Chairman Bishop, Ranking Member Grijalva, and Members of the Committee:

As the Committee prepares to mark-up H.R. 5278, a new version of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), I write to offer the views of National Taxpayers Union (NTU) on constructive steps forward. Throughout this legislation's evolution, NTU has proudly served as an advocate for taxpayers in Puerto Rico and the rest of the United States.

NTU's communication from last week reiterated our support for Speaker Ryan's call upon the House to arrive at a bill capable of passing in the near term. We continue to have great admiration for the work of the Committee as well as Leadership in fashioning legislation that attempts to accommodate a variety of perspectives. This process has already significantly improved PROMESA's potential for success, as well as its ability to protect taxpayers.

We understand that during the next two days, several amendments may be offered by Committee Members to further refine H.R. 5278. NTU applauds this deliberative approach, and, accordingly, we recommend the following course as amendments are deliberated. Many of our opinions are prospective, since the nature and number of amendments to be considered are not fully known to us.

1) **Oversight Board.** H.R. 5278 provides greater detail over how the new federal oversight entity would certify voluntary debt restructuring agreements, and would modify the selection and confirmation process for members of the body. The entity is also empowered to take certain actions relating to privatization and commercialization of government assets, a welcome addition to the bill that must be a priority for the island's economic well-being. NTU would support amendments to further equip the oversight entity with the capacity to quickly reestablish financial transparency and spending restraint in the Commonwealth, but would caution the Committee against adopting further amendments to expand the entity's powers over Qualifying Modifications to debts.

2) **Debt Restructuring.** The current draft has made important progress on respecting the balance of rights between creditors and debtors ... and, as a result, taxpayers. H.R. 5278 helpfully works to prevent inter-debtor transfers, and now requires the court to consider in a restructuring proceeding whether remedies available under other laws might offer a better recovery for creditors than whatever was being initially proposed. For its part, the oversight entity must also "respect lawful priorities or lawful liens" as outlined in Puerto Rico's constitution. NTU would oppose any amendments to reverse these gains and would urge enactment of amendments to augment them. One major improvement would be to clarify, in distinct language, that in any restructuring action resulting from PROMESA's new authorities, pension debt is subordinate to constitutional obligations. Furthermore, the stay on litigation envisioned in H.R. 5278 could be altered to reflect an exemption for constitutionally prioritized bonds. The former step could help to ensure that taxpayers are not unfairly burdened (as they were in recent municipal bankruptcies) by inordinate fiscal demands from government retirement plans. The latter could afford taxpayers a safeguard against liabilities they might otherwise incur if a court were to later issue an adverse Takings Clause ruling against an unmodified stay on litigation.

3) **Economic Reforms.** This version of PROMESA would provide for a new Congressional Task Force on Economic Growth in Puerto Rico. The Committee's addition of this language is most commendable, but we would hope that the Task Force's report, issued at the end of 2016, would not simply be shelved by the next Congress. NTU would support any amendments that strengthen the likelihood these findings will receive expedited consideration from House and Senate

Committees and on the floor of both chambers. NTU's members are likewise pleased to note that H.R. 5278 suspends implementation of the Department of Labor's recently-finalized and highly flawed overtime rule, pending completion of a GAO impact report and a determination from the Secretary of Labor that the rule would not have a negative effect on the island's economy. This provision, too, could be upgraded through requiring prior congressional approval for implementation. Finally, NTU would wholeheartedly urge a "Yes" vote on amendments that would allow Puerto Rico's government to grant employer relief from all federal current minimum wage edicts, as well as amendments to ease the burden of shipping restrictions such as the Jones Act on maritime commerce between the island and the mainland.

4) **Tax Reforms.** NTU has often stressed the need for pro-growth revisions of the Tax Code toward Puerto Rico that would emulate the concepts of territoriality currently under discussion for the entire corporate tax system. Although the Task Force mentioned above could make recommendations for tax reform, the House still has an opportunity to make a more affirmative statement on behalf of such policies. As we noted in a memo to the Committee two weeks ago, Congressman Tom MacArthur offered a Sense of Congress Amendment to the previous PROMESA draft stating that "any durable solution for Puerto Rico's fiscal and economic crisis should include permanent, pro-growth tax relief which features, among other elements, a free flow of capital between possessions of the United States and the rest of the United States." As legislation advances to help Puerto Rico regain its fiscal and economic vitality, Congress must make a commitment to overhauling federal tax laws affecting the island. Congressman MacArthur's amendment would give a clearer voice to that commitment. It would also provide a timely expression of solidarity with the Senate as well as taxpayers on both sides of the Caribbean that tax reform is a top priority.

We agree with the many public officials on all points of the ideological spectrum that the elements of legislation to address Puerto Rico's plight must work together. For example, if debt restructuring mechanisms function properly, past fiscally irresponsible behavior will not be rewarded and future investment in the Commonwealth will not be deterred. If strong financial oversight is reestablished, government can function effectively and accountably in Puerto Rico. With robust economic performance, standards of living as well as long-term revenue collections will be returned to health. The Committee's markup process can uphold and reflect these connections, which, fortunately for taxpayers, have become increasingly resilient through successive drafts.

We hope the Committee will find this guidance (along with previous communications available online [here](#), [here](#), and [here](#)) useful in the coming days. NTU looks forward to continuing our work with Members as PROMESA nears House floor action and the development of legislation takes place in the upper chamber. Thank you for all of your efforts!

Sincerely,



Pete Sepp  
President