April 11, 2016

U.S. House of Representatives
Washington, DC 20515

Re: Recommendations to the ‘‘Puerto Rico Oversight, Management, and Economic Stability Act” (PROMESA)

Dear Representative:

We, the undersigned organizations representing and serving millions of Puerto Ricans, Latinos and impacted Americans across the country, write to offer our recommendations to the “Puerto Rico Oversight, Management, and Economic Stability Act” (PROMESA).

After months of delay and inaction, we are pleased that the House of Representatives has begun to consider proposals to aid the more than 3 million U.S. citizens of Puerto Rico suffering as a result of the island’s fiscal crisis and are encouraged by the discussion draft that House Natural Resources Chairman Rob Bishop has put forward.

Although the discussion draft includes promising proposals to restructure Puerto Rico’s debt, several elements of PROMESA are problematic and, unfortunately, further undermine the already limited autonomy of U.S. citizens in Puerto Rico. Moreover, the legislation fails to address other urgent issues that will further exacerbate the island’s economic situation, including healthcare inequities and the need for progressive tax reforms. At the same time, PROMESA needlessly weakens environmental protections that would remove public review and input over land developments and jeopardize the Vieques National Wildlife Refuge.

As the bill moves forward in the process, we offer the following recommendations to the House Committee on Natural Resources to provide the island the necessary resources it needs to address its near-term challenges and promote long-term growth.

Establishment and Organization of the Oversight Board (Title I and II)

We are troubled with the broad powers assigned to the proposed Puerto Rico Financial Oversight and Management Board (Oversight Board). The Oversight Board would have almost absolute power over the island’s political and economic affairs and would weaken Puerto Rico’s democratic institutions and the rule of law. The economic crisis should not be used as an opportunity to infantilize the U.S. citizens of Puerto Rico by denying them their civil and democratic rights. Moreover, because of the serious risk that an Oversight Board could also be used as a backdoor for creditors to continue to strip out wealth from Puerto Rico, any legislation must include enforceable conflict of interest rules that apply to both appointees and their staff.

Specifically, the following provisions are of grave concern to our institutions and communities as they usurp the power of the democratically-elected Commonwealth government and thus **should be removed**:

- Removal of Local Officials: PROMESA grants the Oversight Board the authority to suspend without pay or remove from office any local officials that take any actions in violation of Board's orders.

- Enforcement of Strike & Lock-out Laws: PROMESA transfers power to the Oversight Board to enforce existing local laws prohibiting public employee strikes and lock-outs.

- Impose Fiscal & Management Recommendations: PROMESA grants the Oversight Board the authority to issue fiscal and management recommendations and, in the event of noncompliance, implement them.

- Review of Legislative Acts: PROMESA grants the Oversight Board the authority to review any Legislative Acts approved in a given year, and the power to void them if they are not consistent with the Fiscal Plan.

- Review of Contracts & Leases: PROMESA empowers the Oversight Board to approve contracts or leases of any size entered into by the central government.

- Permanent Life of the Board: PROMESA permits the Oversight Board to be reinstated, following sunset, in the future (without Congressional action) if Puerto Rico violates one of several fiscal parameters (default on debt, missed payroll, cash deficit in any given quarter, etc.).

In order to ensure the Oversight Board is transparent, uncompromised and accountable to an appeals process, **the following additions should be incorporated into PROMESA**:

- Conflicts of Interest: The establishment of any Oversight Board should include explicit cross-references to enforceable financial conflicts of interest rules that apply to both appointees and staff. Because section 101(a) explicitly states that "the Oversight Board is established as an entity within the Government of Puerto Rico, and is not established as a department, agency, establishment or instrumentality of the U.S. Government" and because section 109(a) then exempts the oversight board from any "control, supervision, oversight or review over the Oversight Board," it does not appear that the appointees or their staff would be subject to rules governing conflicts of interest and, even if the Oversight Board adopted such rules, that any outside entity would be in a position to enforce such rules.

- Public Disclosure: As a basic principle of democracy and good governance, the Oversight Board should be subject to public disclosure requirements, including the Freedom of Information Act.

- Appeals and Judicial Review: As the significant decisions of the Oversight Board would not be reviewable by an independent entity as proposed under PROMESA, we strongly recommend the legislation include a mechanism for the Commonwealth to appeal rulings and for a judicial review system to apply to Oversight Board actions.

- Island Representation: The composition of the Oversight Board, in requiring only one Puerto Rico-based resident or worker, is insufficient and not appropriate to make decisions about the Commonwealth's internal affairs. We recommend additional island representatives.

Adjustment of Debts (Title III)

The current and future livelihood of millions of American citizens living in Puerto Rico is in danger as a result of the island's economic crisis and the massive, unpayable $72 billion debt. While the average state in our nation spends roughly 5% of its budget on paying debts, today the government of Puerto Rico is spending an unprecedented and unsustainable 35% of its revenues on debt payments. This situation threatens the Puerto Rican's government ability to tend and provide for the basic education, health and safety needs of its people, and demands an immediate federal response, including a government-led plan to restructure the island's entire debt.

The Commonwealth previously had bankruptcy powers until being left out of early 1980s federal bankruptcy reform legislation. Therefore, any legislation addressing the Puerto Rico debt crisis must include robust debt restructuring powers for all public services, in order to renegotiate the debt and establish a fair repayment plan.

PROMESA includes several promising debt restructuring provisions giving the Commonwealth some needed tools to effectively negotiate with creditors, essentially encompassing the entire $72 billion debt. While additional powers would be helpful, the scope of the debtors and the automatic 18-month stay on litigation (under Title IV) are important provisions under PROMESA.

Vieques National Wildlife Refuge (Title IV)

Vieques National Wildlife Refuge is the largest and one of the most ecologically diverse refuges in the Caribbean, with thousands of tourists visiting each year. It is home to at least 14 endangered animals and plants and many other endemic species including several types of magnificent sea turtles, and provides an important habitat for 190 species of migratory and resident birds. PROMESA voids the cooperative agreement (between the Department of the Interior, the Conservation Trust of Puerto Rico, and the Municipality of Vieques) for 3,100 acres of protected conservation land in the Vieques National Wildlife Refuge, and permits its conveyance to the Municipality of Vieques without any assurances this valuable open space will be preserved and not sold to private interests for development. While local control of Puerto Rico is always a priority, in this case, this provision would jeopardize vital public lands, needed recreational space and precious ecosystems with no protections from sale or development. **This provision should be removed or amended to protect the land from development.**

Puerto Rico Revitalization Act (Title V)

PROMESA should foster cost-effective, clean energy generation and environmental cleanups. This will ensure the development of a comprehensive policy plan that addresses the energy, clean environment, safety and health needs of Puerto Rico, including the cleanup of remaining toxic sites within the island municipalities of Vieques and Culebra.

While we support efforts to provide Puerto Rico with the necessary resources to upgrade its energy infrastructure, we have serious concerns over proposals that would weaken or undermine the National Environmental Policy Act (NEPA). For many projects, NEPA is the only law that provides the Puerto Rican public a voice to inform, improve, or oppose projects that have a direct effect on their health and safety. By making sure that the public is informed and that alternatives are considered, NEPA has improved or stopped unwise and harmful projects like the solid waste incinerator in Arecibo, Puerto Rico. The incinerator would burn garbage and emit incredibly dangerous levels of toxic chemicals like lead, mercury, ammonia, and other toxic ashes into the air communities breathe. In its current form, PROMESA places limits on public involvement and the right of the Puerto Rican people to challenge harmful projects. It excludes the Puerto Rican voice from the Puerto Rican recovery. The Puerto Rican people should not be expected to be silenced in exchange for an economic recovery package. The economic recovery of the island will largely depend upon the strong will and character of its people and any recovery that undermines the Puerto Rican will is deemed to fail. **We strongly recommend the removal of Title V from PROMESA.**

Other Recommendations

The following issues should be addressed in PROMESA or timely, subsequent legislation aimed at aiding Puerto Rico during this debt and economic crisis:

- Healthcare Parity: Severe underfunding of Puerto Rico's healthcare system is pushing it to the brink of collapse and is already threatening patient care. Congress should bolster Puerto Rico's healthcare safety net by approving the Health and Human Services Administration's recommendation to eliminate the annual Medicaid/Mi Salud funding cap on Puerto Rico in favor of funding based on FMAP per-capita income.

  Puerto Rico receives half the rate of federal healthcare funding while the island's U.S. citizens pay the same Medicare tax as mainland residents. The severe federal funding cuts the island is currently facing could amount to $3 billion in the next two years. The Medicare Advantage program may no longer be viable next year if funding to insurers is not restored. The Medicare Advantage system's collapse will cause the migration of low-income seniors to Mi Salud, the island's Medicaid program. Mi Salud, which relies on both federal and commonwealth funds, is unprepared to absorb the Medicare Advantage transfers and is poised to run out of money as early as the end of 2016, resulting in 900,000 people being dropped from the program.

Meanwhile, a significant number of doctors are moving to the U.S. where they are paid more for their services simply because mainland reimbursement rates are far superior. In the last five years, over 3,000 medical professionals have left Puerto Rico. The healthcare industry represents 20 percent of Puerto Rico's GDP, amounting to $11 billion dollars, and employs approximately 100,000 people. A collapse will not only jeopardize care for millions of U.S. citizens, but could result in a dramatic blow to Puerto Rico's already weakened economy.

- Tax Reform: The Federal Government should institute tax policies that foster economically-diverse and living-wage job creation. We support local government implementation of an Earned Income Tax Credit (EITC) and an expanded Child Tax Credit that rewards work and supplements earnings to low-income workers in Puerto Rico.

  The EITC is already available to Americans living in the fifty states and the District of Columbia. At present, residents of Puerto Rico can qualify for the Child Tax Credit only if they have three or more children, in contrast to low-income workers in the States who can obtain benefits with one or more children. The Child Tax Credit should be extended to low-income all Puerto Rican parents with no added conditions.

  The EITC is a proven and effective anti-poverty measure to promote employment. An EITC would create incentives for work and increase participation in the formal economy. At forty percent, Puerto Rico has the lowest labor market participation in the United States and the territories, with participation rates are about two-thirds of the U.S. average. Low participation in the formal economy stunts economic growth and undermines Puerto Rico's economic reform efforts. While Puerto Rico's employment rates have somewhat improved recently, applying the EITC to the island will encourage the needed labor participation to grow the economy.

We appreciate PROMESA's intent to address this crisis, but we encourage Congress to carry out the aforementioned recommendations to create a legislative package that can truly begin to address the island's grave fiscal and health care problems, while respecting Puerto Rico's autonomy and protecting its environment.

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* Organizations listed above support the opinions expressed in the letter, but may not necessarily work on or have expertise on every provision