Federal Shutdown halting CDBG Funds

Headline Story

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Federal Government Shutdown is halting Housing Funds for PR

The Government of Puerto Rico, who in December of last year submitted and amendment to the Action Plan of the Community Development Block Grant ("CDBG") funds approved by Congress almost a year ago, expected the Department of Housing and Urban Development ("HUD") to start disbursing billions of CDBG funds this month, but the Federal Government shutdown has halted the process.

HUD approved a total of $20 billion in aid through the CDBG Disaster Recovery Program, the largest single amount of disaster recovery assistance awarded in the agency's history, to rebuild hurricane-damaged housing, for infrastructure and economic development. While the local government determines where the funds will be used, HUD provides technical assistance and guidelines and needs to approve the CDBG action plan submitted by the Puerto Rico Housing Department.

According to the Puerto Rico Housing Secretary, Fernando Gil-Enseñat, last month, HUD asked the local government to submit an amendment to its action plan on how Puerto Rico is planning to use the funds, in order to proceed with the disbursement. The requested amendment was submitted by the Government of Puerto Rico on December 18 but unfortunately, four days later, on December 22, the Federal Government partially ceased operations due to the shutdown. The HUD offices in charge of reviewing and approving the amendments to the action plan are closed and therefore, the agency has not been able to review them.

Even though HUD's "Contingency Plan for Possible Lapse in Appropriations", which was set forth in 2013 and reaffirmed in 2018, states that disaster recovery assistance programs cannot be halted during a shutdown, since the amendment had not yet been approved when the shutdown started on December 22, Puerto Rico's CDBG funds disbursement program was technically not underway at the time of the shutdown.

A Washington Post article, dated January 16, reported that HUD's Deputy Secretary, Pam Patenaude, an important Puerto Rico ally, submitted her resignation in December, following disagreements with other members of the Trump administration over housing policy and the White House's attempt to block disaster-recovery funds for Puerto Rico.

According to the article, in late September, Trump told then White House Chief of Staff, John Kelly, and then Office of Management and Budget Director, Mick Mulvaney, that he did not want a single dollar going to Puerto Rico after hearing, erroneously, that Puerto Rico was using the funds to pay off its debt. However, Patenaude advocated for Puerto Rico and assured them that Puerto Rico had sufficient financial controls in place and had put together a thoughtful housing and economic development action plan.

Nevertheless, as long as the Federal Government is stalled, so will be the disbursement to Puerto Rico.

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Puerto Rico's Dairy Industry is facing challenges with reduction in milk consumption

Puerto Rico's sale and consumption of milk has decreased by 22%, which would represent a loss of around $32 million for local dairy farmers. Dairy farmers are the biggest single part of Puerto Rico's agricultural economy, accounting for about a third of the island's total agricultural production.

Consumers trends show a continually shrinking per capita consumption of milk, fresh milk and Ultra High-Temperature Pasteurized ("UHT"), for the past ten years, with a decrease from 96.6 quarts of milk to 72.1 quarts of milk. In the year 2016, the dairy industry sold around 240 million quarts of milk per year, decreasing to approximately 190 million quarts of milk since July of 2018.

The decrease in milk consumption that the Puerto Rico dairy industry is facing can be attributed to several factors. Among them, changes in consumer consumption patterns, the effects of Hurricane María, which also affected consumer patterns since many people migrated to other dairy products due to the lack of electricity, and the steep decrease in population that has affected the island for the past ten years. Milk import is also a significant challenge that the dairy farmers are facing. Dairy farmers have argued that there is enough local milk supply to meet the market demand so there is no need for milk imports.

Last year the dairy industry was still recovering from the aftermath of Hurricane María. Many farms had to shut down due to high operating costs as a result of powering the farm with generators due to lack of electricity. Even though the dairy farmers had access to financial help and the Federal Department of Agriculture approved up to $12 million to help dairy farmers feed their animals for a period of time, the effects of the hurricane on the industry as a whole were substantial as a result of the lack of electric power in the island and the closing of around 15 farms.

The production of raw milk is 3% is higher than the fiscal year 2016-2017, however, the sale of fresh milk has decreased by 17%. Even though the sale of UHT milk, increased, this growth did not compensate for the loss resulting from the reduction in the sale of fresh milk. Dairy farmers have also argued that the new plant owned by Suiza Dairy in Aguadilla, has pushed for UHT milk instead of fresh milk, resulting in a reduction in milk consumption.

Dairy farmers believe that a new agreement has to be reached with the big dairy plants to use to excess milk in other products and with the Department of Agriculture, to redirect the government incentives to the products, in order to weather the challenges that the dairy industry is facing in the coming years.

Democratic Congressional delegation visits Puerto Rico

The largest ever congressional delegation to visit Puerto Rico arrived on the island the second week of January to have briefings on the continuing effects of Hurricane María and to enjoy a charity performance of Lin-Manuel Miranda's Broadway hit "Hamilton", which was going have a two-week run in Puerto Rico, starting on January 11, the proceeds of which are earmarked for an arts fund. It was reported that members of Congress paid $500 for their own "Hamilton" tickets.

The main trip was organized by the Bold PAC, the electoral arm of the Congressional Hispanic Caucus, which flew members to Puerto Rico for two days of meetings, receptions, "Hamilton", and a little down time on the beach. The congressional visit featured informational sessions on the damage from Hurricane María, meetings with Governor Ricardo Rosselló, presentations on Puerto Rico's Fiscal Oversight and Management Board ("FOMB") created to deal with Puerto Rico's fiscal debt crisis, and information on the lack of government services for the residents of the territory compared to the residents of the the states.

Organizers of the trip to Puerto Rico mentioned that one goal was to educate members on the questions their new House Democratic majority, with oversight power, could ask about the hurricane's recovery effort.

Former Housing and Urban Development ("HUD") Secretary, Julián Castro, made the summit the first stop of his 2020 presidential campaign. On January 23, on a separate trip, Democratic Senator Elizabeth Warren, who is also campaigning, made a quick visit to Puerto Rico.

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COFINA's Debt Restructuring Deal under U.S. District Judge Swain's Consideration

U.S. District Judge Laura Taylor Swain, who presides over the island's bankruptcy cases under PROMESA's Court, is hearing arguments on the restructuring of the $18 billion debt of the territory of Puerto Rico Sales and Use Tax Corp. ("COFINA", for its acronym in Spanish), which make up 40% of the territory's core government debt. First issued in 2007, COFINA bonds are backed by the territory's sales and and use tax.

As part of the COFINA restructuring deal, holders of general obligation bonds issued by the territory of Puerto Rico and COFINA bondholders settled their dispute over ownership of the territory's sales and use tax when agreeing to divide the 5.5% portion of the 11.5% sales and use tax. From the 5.5% portion, COFINA will keep 53.6% and the territory will take the rest. The split will result in the territory receiving about $400 million from sales and use tax revenue each year over the next 40 years.

The debt restructuring agreement also provides for COFINA bondholders to exchange their current bonds for new ones whose value is being cut. Senior COFINA bondholders will recover 93% of the value of the original bonds, while junior bondholders will recover 53%. Since the sales and use tax will be used to guarantee the bonds, future legislatures will be prevented from changing it. According to the Government of Puerto Rico, it will be able to obtain 30% in savings, as part of the deal.

The Executive Director of the Fiscal Oversight and Management Board ("FOMB"), Natalie Jaresko, filed a statement in support of the split of the 5.5% portion of the sales and use tax between the territory and COFINA. Jaresko stated that ending the COFINA dispute would help avoid a long and costly litigation in which the territory would probably lose.

Judge Swain has asked whether the FOMB's intent, in seeking the confirmation of the COFINA debt restructuring deal, was to rewrite the territory's Constitution, and asked that the FOMB provide the legal basis supporting the validity of the deal. The judge had expressed concern that the deal may result in an unprecedented rewriting of the Constitution because, besides binding future Legislative assemblies to the deal, it would also rewrite the Constitution's definition of "available resources" because through the deal, COFINA will own its portion of the sales and use tax.

Plan proponents argued that it was federal law and that its ancillary documents also had the force of law and added that since the Constitution's Supremacy Clause establishes that federal laws preclude state laws, the judge should act, noting that PROMESA already overrides all territory law that is consistent with it.

Judge Swain's ruling on the debt restructuring agreement is pending.