



Volume 2, Issue 15



Global▷eyes

An exclusive publication by Globalize

Federal Court of Appeals Resolves FOMB was Illegally Appointed

The U.S. Court of Appeals for the First Circuit in Boston ruled on February 15, 2019, that members of the Fiscal Oversight Management Board ("FOMB") in Puerto Rico, the federally created oversight board, were unconstitutionally appointed, since the board members were not appointed according to the U.S. Constitution's appointments clause, which calls for the President to seek Senate advice and consent to confirm a U.S. officer. Puerto Rican-born, U.S. Court of Appeals Judge Juan R. Torruella, said in his opinion that FOMB members must be selected in a manner consistent with the appointments clause and gave the U.S. President and the Senate 90 days to make new appointments to the panel.

Nevertheless, the Court of Appeals declined to dismiss the bankruptcy cases filed for the FOMB for the U.S. territory of Puerto Rico, seeking to restructure about \$120 billion of debt and pension obligations to continue, and also leaving court-approved restructuring deals in place. On February 4, the U.S. District Court Judge Laura Taylor Swain, who is hearing Puerto Rico's bankruptcy, approved a plan of adjustment restructuring about \$17 billion of Puerto Rico's Sales and Use Tax Corp.-backed debt ("COFINA", for its acronym in Spanish).

The ruling was made in an appeal brought by bondholders and creditors of Puerto Rico, including Aurelius Investment LLC, bond insurer Assured Guaranty Corp. and the Irrigation and Electric Workers Union ("UTIER", for its acronym in Spanish), who had filed had filed suit in federal court, claiming a violation of the U.S. Constitution's Appointments Clause and seeking a dismissal of the territory's Title III bankruptcy cases.

On July of 2018, Judge Laura Taylor Swain ruled that the 2016 creation by the U.S. Congress of the FOMB, by the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"), and the appointments of the board's members, did not violate the U.S. Constitution.

However, the U.S. Court of Appeals in Boston disagreed with the Federal District Court in Puerto Rico, ruling that the board members are principal U.S. officers and should have been appointed by the President of the United States with the advice and consent of the Senate, but affirmed the lower court's ruling against petitioners Aurelius and UTIER, rejecting their motions to dismiss the FOMB's bankruptcy-like petitions under Title III of PROMESA, and ratified all of the FOMB's past actions.

Under PROMESA, then President Barack Obama appointed six board members from lists of candidates recommended by Congress, as well as a seventh member. The appointments were not subject to Senate confirmation. The U.S. Court of Appeals in Boston was cautious about voiding the FOMB's actions, taking into consideration "innocent third parties" who have relied on them.

The current seven members of the FOMB can continue in that role for up to 90 days while the President names their successors or chooses to reappoint them.



HUD approves initial \$1.5 billion in CDBG-DR Federal Recovery Funds for Puerto Rico

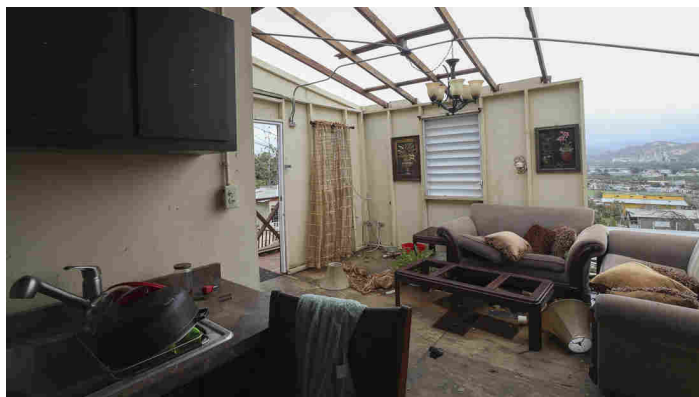
On February 2, 2019, the U.S. Department of Housing and Urban Development ("HUD") authorized the disbursement and use of \$1.5 billion in federal disaster recovery funds approved through the first Action Plan of the Community Development Block Grant – Disaster Recovery ("CDBG-DR") program. These funds will be mainly used for reconstruction, housing restoration and rehabilitation, and communities relocation in high risk areas.

The CDBG-DR program requires grantees to develop recovery plans. The grants support such disaster recovery activities as housing redevelopment and rebuilding, business assistance, economic revitalization, and infrastructure repair. Grantees are required to spend the majority of these funds in "most impacted" areas as identified by HUD. To address its needs, the Government of Puerto Rico identified in its disaster recovery Action Plan several housing, infrastructure and economic development recovery needs arising from Hurricanes Irma and María.

With respect to housing, and to restore Puerto Rico's severely damaged housing stock, the Government is investing more than \$1 billion. As part of the plan, the Government intends to provide up to \$120,000 to rebuild destroyed homes for each qualified homeowner and up to \$48,000 to repair each eligible damaged property. Additional housing investments include \$10,000,000 in funding for rental assistance, specifically for properties serving the elderly and other vulnerable households. The local Government has also proposed a \$36 million Home Emergency Resilience Program that provides up to \$6,000 per household for individual solar appliances to help families.

The approval of the initial \$1.5 billion in CDBG-DR funds comes sixteen months after Hurricane María hit the U.S. territory of Puerto Rico and almost five months after U.S. Housing Secretary Ben Carson and Puerto Rico's Governor, Ricardo Rosselló, announced the formal execution of the \$1.5 billion grant agreement for the CDBG-DR program in September of last year. Puerto Rico's Department of Housing Secretary, Fernando Gil-Enseñat, mentioned that three notifications were received from HUD, releasing 80% of the funds, after the local Housing Department met the conditions established in the Grant Agreement.

The initial \$1.5 billion in CDBG-DR funds is the first of two federal disaster recovery CDBG-DR packages, for a total allocation of \$20 billion.



The second package totals \$18.5 billion but due to its significant amount, that second allocation will be divided in two parts. HUD is currently evaluating the Action Plan submitted by the Puerto Rico Housing Department over the use of the first portion of the \$18.5 billion package in CDBG-DR funds.

CDBG-DR Funds should boost Puerto Rico's economy in 2020

According to new estimates made by private economic research and consulting firm Estudios Técnicos, Inc., Puerto Rico's economy should grow 4.2% for fiscal year 2020 and remain in positive territory until 2022, with the release by the federal government of \$1.5 billion in Community Development Block Grant – Disaster Recovery ("CDBG-DR") Program funds.

The economic research and consulting firm mentioned that by looking at the Action Plan submitted by the local housing department and approved by the U.S. Department of Housing and Urban Development ("HUD"), about \$1 billion of these funds will be destined to the construction and restoration of housing, so by the second half of the year, the territory of Puerto Rico should expect an increase in housing construction investment, and with it, an increase in cement sales, as well as in construction employment. The local economy should also expect increases in the retail sale of construction materials and home supplies.

Economy experts have said that the arrival of these CDBG-DR funds point towards an increase in economic activity of 4.2% in fiscal year 2020 and 2.1% in 2021, with a 20.2% and 15.2% rise in investments during those years, respectively. According to the firm's estimates, the positive impact of the federal recovery funds on the local economy would run through 2022 when it is estimated that growth would be 1.7%. For current fiscal 2019, Puerto Rico's economic growth will be 3.1%, according to their revised estimates.

The firm estimates that the sectors that are most likely to contribute to the economy are manufacturing, technology, health, financial services, agriculture and tourism.



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

On February 4, 2019, U.S. District Judge Laura Taylor Swain, who presides over the island's bankruptcy cases under PROMESA's Court, approved the restructuring of the \$18 billion debt of the territory of Puerto Rico Sales and Use Tax Corp. ("COFINA", for its acronym in Spanish), backed by the territory's sales and use tax, marking the second deal between the territory of Puerto Rico and its creditors to win court approval. Puerto Rico, which is trying to restructure about \$120 billion of debt and pension liabilities, won court approval in November of last year for a consensual deal with creditors over about \$4 billion of debt related to the Government Development Bank ("GDB").

Judge Swain called the COFINA plan a significant step on the path towards Puerto Rico's financial recovery, economic stability, and prosperity. Governor Ricardo Rosselló said that Puerto Rico has taken a major step toward its total financial recovery and added that the court's decision proves the credibility gained by its administration. Meanwhile, the Chairman of the Federal Oversight and Management Board ("FOMB"), José Carrión, also said that the court approval of the COFINA plan of adjustment is an important milestone for Puerto Rico.

The COFINA plan will slash debt service on the sales and use tax-backed debt by \$17.5 billion over nearly 40 years, saving the island an average of \$456 million annually. Future sales and use tax revenue previously pledged exclusively to COFINA will be split, with 53% going to COFINA bondholders and 46% going to the territory of Puerto Rico's government.

The COFINA ruling followed a two-day hearing on the matter in mid-January where certain groups, mainly labor unions, expressed opposition to the plan, alleging it was not in the best interest of Puerto Rico because the plan would drive away resources from essential public services and was not economically sustainable in the long term. Owners of more than \$1.45 billion of COFINA bonds, meanwhile, voted in support of the plan of adjustment.

In her order, Judge Swain acknowledged the objections, admitting that the plan commits substantial portions of Puerto Rico's scarce revenues to bond payments over a period of decades, and lacks a comprehensive debt audit. Judge Swain also noted that the island's core government debt, which includes around \$13 billion of General Obligation ("GO") bonds and almost \$50 billion in unfunded pension liabilities, must still be addressed.



The FOMB has raised the possibility that an adjustment plan could be imposed on creditors in a process known as a cramdown and also asked the federal court in January to invalidate more than \$6 billion of the GO debt.