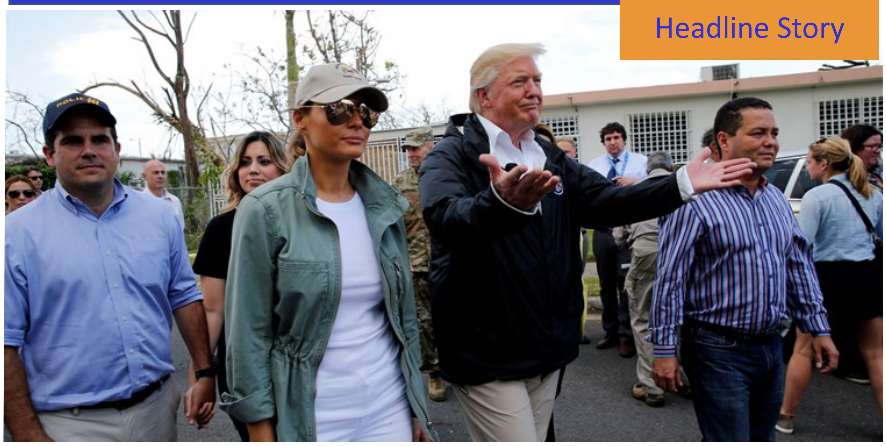
Puerto Rico's Disaster Recovery Aid Showdown

Headline Story



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Puerto Rico's Recovery Aid in the Midst of Showdown in Washington

A showdown between President Donald Trump and Democratic members of Congress about the disaster recovery aid received by Puerto Rico for Hurricane María was fueled by comments made by the President on Twitter, when he claimed that Puerto Rico got $91 billion dollars for the hurricane.

The actual amount allocated to Puerto Rico for disaster recovery is $40 billion, far less than the $91 billion claimed by the President. Furthermore, at a closed-door meeting in Capitol Hill, Mr. Trump allegedly told Republican legislators that Puerto Rico had gotten too much money to rebuild after Hurricane María and that the amount received by Puerto Rico was way out of proportion to what Texas, Florida and others have gotten.

White House Deputy Press Secretary Judd Deere even said that while Puerto Rico was on track to receive tens of billions of dollars in "unprecedented aid", "the Trump administration will not put taxpayers on the hook to correct a decades-old spending crisis that has left the island with deep-rooted economic problems." Rep. Nydia Velázquez, D-NY, blasted Trump administration's comments calling them shameful, heartless and inexcusable.

Most of the allocated funds for disaster recovery has not actually reached Puerto Rico, mostly due to to the time-consuming process put in place that requires its officials to submit a series of plans that outline how the local government expects to use the funds and await federal approval. Puerto Rico originally expected to receive part of the disaster recovery Funds in January of this year, but the federal government shutdown delayed the process.

Even though the U.S. territory is on track to receive tens of billions of dollars in unprecedented aid, particularly Community Development Block Grants for Disaster Recovery ("CDBG-DR") from the Department of Housing and Urban Development ("HUD"), which allocated historic amounts of funding for the island in the areas of housing, infrastructure and energy, most of the funds have not made their way to the communities in Puerto Rico.

While Puerto Rico has been able to use some of the more than $3.7 billion the federal government disbursed through the Federal Emergency Management Agency ("FEMA") to finance local government grants during the immediate aftermath of Hurricane María in 2017, most of the funds appropriated by Congress last year are still stuck in Washington.

The dispute between the Trump administration and Democratic members of Congress prevented the passage of a Republican-sponsored bill to provide disaster relief funding to states affected by hurricanes, wildfires and other natural disasters, which failed to advance to final floor vote after Democrats asked for more aid for Puerto Rico.

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Puerto Rico's Ports Authority agrees to restructure $220 million in debt

The Puerto Rico Fiscal Agency and Financial Advisory Authority ("AFFAF" by its Spanish acronym) entered into a Restructuring Support Agreement ("RSA") with the Ad Hoc Group of holders of bonds issued in 2011, on behalf of the Infrastructure Financing Authority ("PRIFA") and the Puerto Rico Ports Authority. These bonds have a maturity date of December 15, 2026.

The proposed agreement for the restructuring of $220 million in debt of the Puerto Rico Ports Authority has two principal components and represents a new unusual mechanism, which involves several public entities and which will also include a ports entity that will pay part of the payment to the creditors. This complex financial structure has only been used on a few occasions, such as in the City of Detroit Bankruptcy proceedings.

As part of the restructuring contemplated by the RSA, the Ad Hoc Group, which holds more than 90% of the outstanding PRIFA-Ports bonds, will tender all of their related holdings to their proportional share of the distribution made to PRIFA under the third amended plan of adjustment of the Puerto Rico Sales Tax Financing Corp. ("COFINA" by its Spanish acronym) under Title III of the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"), on account of $91.5 million of junior COFINA bond claims held by PRIFA and a $40 million promissory note. The Puerto Nuevo cargo and logistics operation in San Juan Bay will be renewed through the Ad Hoc Group's contribution of at least $11 million, a promissory note, to a newly formed subsidiary of the Ports Authority, and up to 10% of gross rental income generated from the property.

In exchange, the Puerto Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority, known as AFICA, an entity created in 1977 to issue revenue bonds to finance projects for economic development, will issue new bonds to the Ad Hoc Group in a face amount equal to the projected cash flows of the property.

The proposed debt restructuring deal still needs to get approval from the Financial Oversight and Management Board ("FOMB") although the FOMB has preliminarily favored the proposed agreement with the Ad Hoc Group of bondholders. If approved and implemented, the restructuring agreement will reduce debt service requirements and allow the Ports Authority to focus on Public-Private Partnerships ("P3s") and other long-term capital investments.

AFFAF was assisted in the negotiations by O'Melveny & Meyers LLP and Pietrantoni Méndez & Álavarez, as legal advisers, and Ankura, as financial adviser.

FEMA reaches agreement with the Government of Puerto Rico authorizing it to disburse recovery funds

The Government of Puerto Rico and the Federal Emergency Management Agency ("FEMA") reached an agreement that would transfer to the local government the responsibility of disbursing recovery funds.

The agreement came after an intense effort by the Central Office for Recovery, Reconstruction & Resiliency ("COR3") to work together with FEMA in the development and establishment of policies, fiscal procedures and internal controls to ensure compliance in the evaluation and approval of disbursements, a process known as "Process 270".

FEMA and COR3 officials said that to ensure that the process is efficiently and transparently carried out, and with full protection and compliance with applicable regulations, COR3 hired experts to establish, in collaboration with FEMA, the necessary protocols to take over the task of managing FEMA funds.

FEMA's interim director, Mike Byrne, who praised the local government's ability to manage the funds and was pleased that Puerto Rico could finally move on to the next phase of its recovery, mentioned that the establishment of new controls provides a higher degree of confidence that the money is being spent on what it was intended to be spent on. Byrne further said that these grants will be rebuilding the infrastructure of the territory, so there is nothing simple about it.

The interim FEMA director mentioned that the agency will welcome any scrutiny of the procedures that were put in place adding that it "is going to be the most transparent recovery in history."

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Judge Taylor Swain denies request by FOMB to toll the statute of limitations to file avoidance claims

U.S. District Judge Laura Taylor Swain, who is hearing Puerto Rico's Title III Bankruptcy cases, denied a request filed by Puerto Rico's federally created Financial Oversight and Management Board ("FOMB") to toll the two-year statute of limitations to file avoidance claims on behalf of the Government of Puerto Rico, that runs out on May 2.

In an omnibus hearing held on April 24, the Judge dismissed the claim without prejudice to adversary proceedings or other actions before the Court, saying she had not jurisdiction on the matter at this time and stating that extending the deadline to file the claims was not something she was persuaded "this court was allowed to do". Under the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA") and the Bankruptcy Code, the FOMB had two years to bring such actions, which can only be rolled under extraordinary circumstances.

According to Edward Weisfelner, an attorney for the Special Claims Committee of the FOMB, the task of identifying claims was huge and mentioned that the panel narrowed down the claims it will seek for money paid by the Government of Puerto Rico to amounts totaling $1 million and higher but that the number of claims is about 360,000. Mr. Weisfelner further added that this ruling by the Court could mean that in the absence of tolling, they would be forced to file claims against thousands of individuals.

The FOMB had requested more time to file the claims, arguing that the Judge had to rule first on the validity of certain debt before claims against scores of bondholders could be filed. According to the FOMB's lawyers, extending the deadline would have avoided unnecessary and costly litigation. The judge asked whether there was precedent to the extension but the FOMB's attorney said the island's case was unique. A lawyer for the Employee Retirement System creditors said that the FOMB had two years to bring the claims and that claiming it was distracted in other litigation was not sufficient justification. Mr. Weisfelner said that he was not asking for an indefinite extension and in response to a question from Judge Swain, he said those affected by a claim would not be able to raise as a defense that the statute of limitations has been reached.

The Judge also denied a request by the Unsecured Creditors Committee ("UCC") to be appointed trustee to file avoidance actions on behalf of the Government of Puerto Rico, and a motion seeking derivative action to investigate possible causes of action. However, the judge approved a stipulation that will allow the UCC and the FOMB to pursue avoidance actions decided by the fiscal panel.