

**PENDING LEGISLATION**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENERGY AND NATURAL RESOURCES**  
**UNITED STATES SENATE**  
ONE HUNDRED SEVENTEENTH CONGRESS  
FIRST SESSION  
ON  
**S. 375/H.R. 1192**

—————  
JULY 29, 2021  
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The text for the bill addressed in this hearing can be found at: <https://www.congress.gov/bill/117th-congress/senate-bill/375>



## PENDING LEGISLATION

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THURSDAY, JULY 29, 2021

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:07 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Joe Manchin III, Chairman of the Committee, presiding.

### OPENING STATEMENT OF HON. JOE MANCHIN III, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. The Committee will come to order. The Committee is meeting today to consider S. 375, Senator Menendez's bill to require greater disclosure by professionals involved in the Puerto Rico bankruptcy cases, and H.R. 1192, the House companion measure, which the House passed earlier this year. I am pleased to welcome our dear friend, Senator Menendez, who has joined us this morning to provide a few remarks.

We are also very fortunate to have Judge Arthur Gonzalez with us. Early in his career, Judge Gonzalez served as a United States Trustee, which for those of us not familiar with bankruptcy law, is a Justice Department official who oversees the administration of bankruptcy cases. He served for 17 years as a bankruptcy judge in the Southern District of New York, and for the past five years, he has been a member of the Financial Oversight and Management Board for Puerto Rico. Judge Gonzalez has not only 30 years of experience with bankruptcy law but also firsthand knowledge of the cases that are the focus of the bills before us.

We are also fortunate to have with us today Professor Stephen Lubben, who teaches bankruptcy law at the Seton Hall University School of Law and is a recognized authority on the subject. I also appreciate Anthony Suarez joining us today, who is an experienced trial attorney, former Florida State legislator, and former President of the Puerto Rico Bar Association of Florida. Professor Lubben and Mr. Suarez will both be testifying remotely. We are pleased to have their testimony.

I want to take a few minutes to review how we got here today because this is a unique and complicated situation, and I think it is important that we all start from the same place. Five years ago, Congress passed a law known as "PROMESA" to address Puerto Rico's financial crisis. Puerto Rico was over \$70 billion in debt at the time and faced another \$50 billion in unfunded pension liabilities. It could no longer pay its debts as they became due. But unlike a municipal government in one of the 50 states, Puerto Rico

could not declare bankruptcy because our bankruptcy laws exclude Puerto Rico from Chapter 9, as the municipal bankruptcy provisions in the Bankruptcy Code are known.

To address Puerto Rico's financial crisis, PROMESA created the Financial Oversight Board, and it gave the Board sweeping powers to help put Puerto Rico's financial affairs in order. It also created a new, unique bankruptcy-like procedure by which the Oversight Board could come up with plans to restructure Puerto Rico's debt, subject to the approval of a district court judge designated by Chief Justice Roberts. Four years ago, the Oversight Board filed six of these bankruptcy-like cases to restructure the debts of the Commonwealth and five of its public authorities.

Considerable progress has been made since then. The restructuring plan in one of these cases has already been confirmed by the court, the joint plan covering three cases is now awaiting approval by the court, and the two remaining cases could be completed next year.

Which brings us to the legislation before us. Puerto Rico's bankruptcy cases—like any large corporate bankruptcy case or any municipal bankruptcy case—are complicated affairs. They require legions of lawyers and accountants and consultants and other professionals, all of whom expect to be paid for their work. In a corporate bankruptcy, the debtor cannot hire professional help without the bankruptcy court's approval, and the courts will not approve hiring professionals until they disclose any potential conflicts of interest. That is not the case with municipal bankruptcies.

To protect state sovereignty, Chapter 9 lets municipal governments hire professionals without court approval and without requiring applicants to disclose potential conflicts before they are hired. As Puerto Rico is a sovereign territory, PROMESA's bankruptcy provisions were modeled after the municipal bankruptcy provisions in Chapter 9. The bills before us would change that and require professionals retained to work on cases under PROMESA to make the same sorts of disclosures that professionals must make in corporate bankruptcy cases. That strikes me as a sensible thing to do. I suspect we can all agree that professionals should disclose potential conflicts. That is likely why the House was able to pass the bill unanimously.

I, too, support requiring more disclosure, but I am concerned that the way the bill goes about it may have adverse effects on the pending cases. I do not think I am alone in having these concerns. Robert Keach, former President of the American Bankruptcy Institute, warned the House Judiciary Committee two years ago that enactment of the bill could be highly disruptive of the current proceedings and the considerable progress that has been made in the PROMESA cases.

Similarly, Natalie Jaresko, the Oversight Board's Executive Director, warned the House Natural Resources Committee last year that the bill was overly expansive and that requiring disclosure on the scale proposed would be an impossible exercise. These points were not addressed when the House passed this bill.

It is my hope that this can be part of our discussion with our witnesses this morning and that it will help us find a way to increase disclosure, guard against conflicts of interest—which I support—

but in a way that is more feasible and will not disrupt the pending cases.

With that, let me turn to Ranking Member Barrasso for his opening remarks.

**OPENING STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman.

Today we are here to receive testimony on the Puerto Rico Recovery Accuracy in Disclosures Act of 2021, or PRRADA. This bill would require professionals hired in debt adjustment cases involving Puerto Rico to file disclosure statements outlining their connections with debtors, creditors, with the Puerto Rico Financial Management Oversight Board, and other interested parties. The bill would act retroactively for entities that have already completed their work and require those entities to file disclosure statements within 60 days.

The Senate version of this bill has been introduced by Senators Menendez and Rubio. The House bill, introduced by Representative Velázquez, unanimously passed the House on February 24th of this year. Unanimously, Mr. Chairman.

So first, I want to welcome the witnesses testifying before us, and particularly, I want to welcome Mr. Anthony Suarez. He has a long and distinguished legal career. He was a member of the Florida State Legislature, a United States Delegate to the Guatemala Peace Accords in 1996, and President of the Puerto Rican Bar Association of New York and of Florida, currently has his own law practice, and is also an adjunct professor of law at Barry University School of Law in Orlando, Florida. Mr. Suarez, thank you for agreeing to testify today.

Mr. Chairman, Congress passed the Puerto Rico Oversight Management and Economic Stability Act in 2016. This was a direct result of a worsening fiscal situation in Puerto Rico. As a member of this Committee at the time, the legislation established an Oversight Board to help manage Puerto Rico's fiscal matters as related to financial planning and the budget of the island.

Under this law, the Board has the power to hire professionals who could assist in these fiscal matters. Advisors to the territory's Oversight Board were excluded from the disclosure requirements under PROMESA. The PRRADA bill will ensure that some form of financial disclosure is added to PROMESA to address this—to ensure transparency for the public.

Today we will hear testimony as to the benefits and the need for this proposed legislation. In my home State of Wyoming, a U.S. territory until 1890, our legislature considers it a matter of responsibility to our taxpayers to keep our fiscal house in order. As a former member of the State Legislature, I can speak to this fact. Residents in my state expect no less.

Coal, oil, and natural gas producers provide needed state revenue, which funds vital public services, such as schools, roadways, and public safety. Despite the Administration's best efforts to end American oil, natural gas, and coal production, the Wyoming delegation in Congress continues to fight to protect these important in-

dustries so we can generate the revenue to keep our state's fiscal house in order.

Each state and territory has their own unique fiscal challenges, however, there is one thing we can ensure—that we may maintain transparency in our fiscal dealings. Fiscal disclosure requirements make sense. We have them here in the Senate. They should also apply to the financial dealings of advisors to Puerto Rico's Oversight Board hired under PROMESA.

So again, thank you to the witnesses, thank you to Senator Menendez and Senator Rubio for introducing the bill, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you Senator Barrasso. And next, let me welcome our friend, Senator Menendez, for his remarks.

**OPENING STATEMENT OF HON. ROBERT MENENDEZ,  
U.S. SENATOR FROM NEW JERSEY**

Senator MENENDEZ. Thank you, Mr. Chairman, and Ranking Member Barrasso, and distinguished members of the Committee for holding this hearing on the Puerto Rico Recovery Accuracy in Disclosures Act of 2021, or PRRADA.

As the lead sponsor of PRRADA, along with Senator Rubio, I appreciate the opportunity to speak to you today about what I believe is an urgent need to enact this bipartisan and bicameral legislation. I also want to thank my colleague, Congresswoman Velázquez, for her tireless advocacy for the people of Puerto Rico and her leadership on this issue, along with my colleagues Senators Rubio, Hirono, Wicker, Blumenthal, Wyden, and Stabenow for their co-sponsorship.

PRRADA is a rather straightforward bill. It would simply close a loophole in existing law to ensure that advisors and consultants to Puerto Rico's Fiscal Oversight Board follow the same transparency and disclosure practices as would be required in other U.S. bankruptcy cases.

As my colleagues will recall, in 2016 Congress passed the Puerto Rico Oversight Management and Economic Stability Act—or PROMESA—which aimed to create a standardized bankruptcy process for Puerto Rico to allow the island to restructure its debts while meeting its obligations to creditors and maintaining services for the people of the island. PROMESA created the Fiscal Oversight and Management Board, or “La Junta” as it is known on the island, which currently has sweeping authority over Puerto Rico's debt restructuring and budget.

Unfortunately, PROMESA did not require the Oversight Board's advisors and consultants to disclose conflicts of interest with creditors to whom Puerto Rico owes money. By failing to hold these advisors and consultants to the same transparency standards required on the mainland, PROMESA created yet another unjust double standard for the people of Puerto Rico.

I opposed PROMESA because I believed it would not do enough to protect the people of Puerto Rico during the debt restructuring process. And while I like to be right as much as I can, this is one area where I wish I had been wrong. In many ways, the Oversight Board has made life on the island harder and less fair for so many Puerto Ricans.

The legislation the Committee is considering today would address one key issue created by PROMESA. It would simply hold the cadre of vendors and consultants who have profited as a result of the law to reasonable transparency standards. PRRADA would require advisors and consultants working for the Oversight Board to disclose any potential conflicts of interest, and to comply with the same robust transparency practices that are required for those providing advice on bankruptcy cases on the U.S. mainland.

Puerto Rico has suffered natural disasters and economic devastation from Hurricanes Irma and Maria. And during the Trump Administration, it is well-documented that relief for Puerto Rico was improperly withheld, inadequate, and woefully insignificant.

The American citizens—the American citizens—who call the island home, are enduring a debt-restructuring process that is deeply unpopular because of the painful cuts that have been forced by the Oversight Board so that the island can pay its creditors. Think for a moment about the combined weight of these issues—natural disaster, economic devastation, inadequate relief when it needed it the most.

So colleagues, please understand in this context how extraordinarily unfair it is that we have a system whereby the people of Puerto Rico are footing the bill for these consultants who are not even required to disclose their own conflicts of interest. The Weekly Journal recently reported that “Four years after Puerto Rico filed for bankruptcy under Title III of the federal PROMESA law, over \$830 million in attorney fees have been paid”—\$830 million. And yet, the island is far from putting an end to the more than \$72 billion debt restructuring process.

At a baseline, shouldn't we give the people of the island access to this basic level of transparency about the consultants and advisors providing input on the restructuring process, which would be done in any similar proceeding? Now, I know that bankruptcy law can be complicated, but transparency should not.

To me, it is shocking that you can be the referee and the coach. We have consultants who have clients as bondholders and yet are advising the Board at the same time. How do you play referee and coach and get paid for both of them? That is what we are trying to create a light on here. I know that there are interests involved. But it is the interests of the 3.5 million people of Puerto Rico that deserve to be upheld the most.

This bill pursues fairness and equity for the people of Puerto Rico. Let me note that even the member of the PROMESA Board testifying today is testifying in support of the goals of our bill, and I appreciate that.

Our colleagues in the House have passed this bill—not once but twice—and both times unanimously. I appreciate Mr. Chairman and Ranking Member Barrasso for holding this hearing and giving this matter attention. I also hope you will act swiftly to right this injustice. Thank you again for your consideration of this vital legislation.

The CHAIRMAN. Thank you, Senator Menendez. We appreciate very much your being here.

Now we are going to turn to our witnesses, who I introduced a moment ago. We are very happy to have you all join us this morn-

ing and appreciate your expertise. We will begin with Judge Gonzalez.

Mr. GONZALEZ. Thank you.

The CHAIRMAN. Thank you, sir. Thank you for being here.

**OPENING STATEMENT OF HON. ARTHUR J. GONZALEZ,  
SENIOR FELLOW, NEW YORK UNIVERSITY SCHOOL OF LAW**

Mr. GONZALEZ. Chairman Manchin, Ranking Member Barrasso, and members of the Committee, my name is Arthur J. Gonzalez. I am a member of the PROMESA Board and a Senior Fellow at New York University's School of Law, teaching courses in bankruptcy law. I became a Senior Fellow in March 2012 upon my retirement as Chief Judge of the United States Bankruptcy Court for the Southern District of New York.

Prior to becoming a bankruptcy judge in 1995, I was United States Trustee for Region 2, which includes the states of New York, Vermont, and Connecticut. During my early legal career as an attorney, I was a District Counsel attorney at the Office of Chief Counsel of the Internal Revenue Service. Prior to graduating from law school and entering the practice of law, I spent 12 years as a teacher in the New York City Public School system.

Thank you for inviting me to testify today before the Committee regarding the Puerto Rico Recovery Accuracy in Disclosure Act of 2021. My testimony regarding the bill will primarily draw from my experience with the interpretation and application of Bankruptcy Rule 2014 and the determination of disinterestedness under Section 101(14) of the Bankruptcy Code and their potential application and impact on the PROMESA Title III cases pending in the United States District Court in Puerto Rico. Section 2(a) of the bill before this Committee is premised in large part upon the disclosure requirements of Rule 2014.

As a bankruptcy judge and U.S. Trustee, I gained a great deal of experience regarding issues of disclosure and under Rule 2014 in the context of large, complex bankruptcy cases—often referred to as “mega” cases. During my career as a bankruptcy judge, I presided over a number of mega cases, including Enron, WorldCom, Chrysler, and Sunbeam. Further, during my career, I have reviewed—either directly or indirectly—well over 1,000 professional persons' retention applications. Such review included submissions of verified statements under Rule 2014 dealing with disclosures related to the retention process.

My comments and observations regarding PRRADA that I believe may aid in its implementation and furtherance of its goals are contained in my written statement submitted to this Committee. For purposes of my oral testimony this morning, I would like to emphasize certain points of my written testimony.

As an initial matter, I would like to state that as a PROMESA Board member, I fully support the Board's purpose to the extent of disclosure requirements of Federal Rules of Bankruptcy Procedure to professional persons seeking compensation under PROMESA sections 316 and 317. This will help avoid conflicts of interest and provide greater transparency through enhanced disclosure.

I believe it is essential to the effectiveness of the bill that certain sections of the bill be clarified or modified so it can be implemented without unnecessary litigation to ensure its purpose be accomplished.

I would now turn to the points in my written testimony that I would like to emphasize. First, implementation of the bill should be consistent with the application of Rule 2014 as that rule is implemented in large bankruptcy cases. In that, an “interested parties list” should be used to perform the Rule 2014 connections analysis. If the regular analysis were to be required to be done on the more than 165,000 creditors, it would be virtually impossible to complete in any relevant timeframe and be extraordinarily costly.

Further, for the on-island firms, the staffing requirement for such a massive effort does not exist. An interested party process will ensure a timely and effective implementation of the bill. Further, an interested parties list analysis would yield the results necessary to achieve the goals and purpose of the bill.

Second, the bill should be clarified to provide that any action regarding issues raised under the bill are brought before the Title III court presiding over the fees and expenses sought under PROMESA sections 316 and 317. As I stated in my written testimony, I believe that if an issue under the bill were to be brought in another district court, such matter would be transferred to the Title III court, but nonetheless, I believe clarity as to this issue would avoid unnecessary litigation. Further, the Board should be clarified as to whether a party in interest can raise an issue under the bill if the U.S. Trustee has not filed an objection under section 2(b)(2).

One aspect of this I did not put in my written testimony—and it came to my attention yesterday, as I thought this through—is that the bill is not retroactive as to the fees incurred and ordered prior to the enactment of the bill. But it is retroactive with respect to the look-back for purposes of connections.

The issue I see with that that could be problematic is that the interested parties list that is developed now in 2021 would not necessarily be the same parties that existed in 2017. So when you look back, the list would be a mismatch. Second, the professionals in 2017, '18, '19—those firms may well have changed—their client base may have changed. So it would be difficult and awkward to apply it retroactively. I'm not sure it would lead to any greater information, but nonetheless, I still think it would be difficult to do it and I would ask the Committee to consider the fact that it would be a cumbersome, expensive process to attempt to recreate what would've been an interested parties list in the four-year history of the case.

[The prepared statement of Mr. Gonzalez follows:]

WRITTEN TESTIMONY OF

Arthur J. Gonzalez

before the

Senate Committee on Energy and Natural Resources

Hearing on S. 375 and H. R. 1192, the Puerto Rico Recovery Accuracy in Disclosures Act of 2021

July 29, 2021

Chairman Manchin, Ranking Member Barrasso, and Members of the Committee, my name is Arthur J. Gonzalez. I am a member of the Puerto Rico Financial Oversight and Management Board ( the "Board") <sup>1</sup> and a Senior Fellow at New York University School of Law - teaching courses in bankruptcy law. I became a Senior Fellow in March 2012 upon my retirement as Chief Judge of the United States Bankruptcy Court for the Southern District of New York. Prior to becoming a Bankruptcy Judge in 1995, I was the United States Trustee ("UST") for Region 2 that includes the states of New York, Vermont and Connecticut. During my early legal career as an attorney, I was a District Counsel attorney at the Office of Chief Counsel of the Internal Revenue Service

Prior to graduating from law school and entering the practice of law, I spent 12 years as a teacher in New York City Public Schools.

Thank you for inviting me to testify today before the Committee regarding the Puerto Rico Recovery Accuracy in Disclosure Act of 2021. ("PRRADA" or the "Bill")

My testimony regarding the Bill will primarily draw from my experience with the interpretation and application of Bankruptcy Rule ("Rule") 2014 and the determination of "disinterestedness" under Section 101(14) of the Bankruptcy Code ("Code") and their potential application and impact on the PROMESA Title III cases pending in the United States District Court in Puerto Rico. Section 2(a) of the Bill before this Committee is premised in large part upon the disclosure requirements of Rule 2014.

As a Bankruptcy Judge and UST, I gained a great deal of experience regarding issues of "disclosures" under Rule 2014 in the context of large complex bankruptcy cases - often referred

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<sup>1</sup> I was appointed to the Board in August 2016 by President Obama in accordance with Section 101(e)(1)(A)(vi) for a three-year term. Following the expiration of that term, I remained on the Board in "holdover" status until the appointment of Justin M. Peterson by President Trump to the Board in October 2020. Thereafter, I was reappointed to the Board in January 2021 by President Trump from a list of candidates submitted by Speaker Pelosi in accordance with Section 101(e)(1)(A)(i) for a three-year term and continue to serve in that capacity.

to as “Mega” cases. During my career as a bankruptcy judge, I presided over a number of “Mega” cases, including Enron, WorldCom, Chrysler and Sunbeam. Further, during my tenure, I have reviewed, either directly or indirectly, well over a thousand professional persons’ retention applications. Such review included submissions of verified statements under Rule 2014 dealing with disclosures related to the retention process.

#### **Comments and Observations regarding PRRADA**

The following are my comments and observations regarding PRRADA that I believe may aid in its implementation and furtherance of its goals.

As an initial matter, I would like to state that as a Board member, I fully support the Bill’s purpose to extend the disclosure requirements of the Federal Rules of Bankruptcy Procedure to professional persons seeking compensation under PROMESA Sections 316 and 317. This will help to avoid conflicts of interest and provide greater transparency through enhanced disclosure. I believe the Bill should be administered consistent with the disclosure requirements upon which it is based, under the Bankruptcy Code and Rules, to ensure a reliable and predictable application and the interpretation of the terms of the Bankruptcy Code and Rules contained in the Bill.

There are currently over 165,000 proofs of claim filed in the Title III cases. Unless and until a claim is disallowed, the holder of such claim is considered a “creditor.” A technical application of term “creditor” would render compliance with the statute practically impossible and extraordinarily costly to the Title III cases. Such compliance effort would require a “connection” analysis with every single one of the more than 165,000 creditors regardless of amount. More importantly, such analysis likely would not necessarily provide any more meaningful additional relevant information or transparency, as opposed to a more focused approach, described below.

At the outset of a typical bankruptcy case, an “interested parties list” is created by the debtor for purposes of the Rule 2014 analysis. That list is generally comprised of parties related to the debtor, parties to litigations with the debtor, a list of creditors<sup>2</sup> of the debtor known to the debtor at the time of filing, parties that have entered an appearance in the case, etc. The “interested parties list” is routinely updated to reflect additional parties based upon the categories referenced above. It is, however, not updated with the names of proof of claim filers. The “interested parties list” approach to the connection analysis of the term “creditor” as implemented in cases under the Code would provide relevant and meaningful disclosures and fulfill the purpose of the Bill. An application of the term creditor for those purposes that would include all those who filed a proof of claim would impede the goals and effectiveness of the Bill.

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<sup>2</sup> Often the list of creditors may be limited in a large case to a threshold dollar amount.

As mentioned above, requiring every professional to run a “check” against each of the 165,000-plus creditors who filed a proof of claim in the Puerto Rico Title III cases would cause extraordinary delays and drive expenses up considerably. The burden of complying with such a requirement would most likely make it impossible for smaller professional firms that do not have the staff to undertake such a massive cross-checking effort to participate in the PROMESA case. The impact would be significant on all professional persons but would be most harshly felt by on-island firms. Limiting the cross-checking to creditors above a certain amount would greatly reduce the burden and be consistent with established practice in the disclosure process in bankruptcy cases of the size and breath of the Title III cases.

**Section 2. Disclosure by Professionals Persons Seeking Approval of Compensation under Sections 316 and 317**

**Impact of PRRADA regarding “on island” professionals in the Title III cases**

In my view, the term “any creditor” as used in PRRADA will likely result in virtually every “on island” professional person to be found to be “not disinterested.”

I believe this because it is very likely that one or more partners in an on-island firm will own a bond issued by the Commonwealth or one of its instrumentalities, or be receiving a government pension due to previous government service. Under the attribution rules applied under Section 101(14) and Rule 2014, the status of one partner is attributed to the partnership. This would result in a determination that the firm is a “creditor.” As a result, the partnership will be determined to be “not disinterested” as such term is applied under Section 2(e)(1)(B) of the Bill.

I mention this just to note that the unique nature and broad impact of the Title III cases and the likely “debtor/creditor” relationship between many of the residents of Puerto Rico and the government. This situation will result in a determination under Section (e)(1)(B) that could form the basis of an adjustment to relevant compensation being sought. I recognize that it is unlikely that an adjustment would be made based upon solely the type of “connection” described above. But that the determination of “not disinterested” would nonetheless be made.

**Page 3, Section (2)(b) - Review**

As written, the intended application of Section (2)(b) is unclear regarding the application of Subsection (b)(3). Under Subsection (b)(1) the UST “shall” review the verified statements filed under the Bill. Under Subsection (b)(2) the UST “may” file an objection” to compensation under Section (e). Under Subsection (b)(3), a party in interest under Section 1109 of the Code “... may appear and be heard on any issue in the case under this section.” The lack of clarity is that if the UST does **not** file an objection, does Subsection (b)(3) apply? The question is whether there “an ‘issue’ in the case under this section has been raised, if the UST does not file an objection under Subsection (b)(2). In other words, if a Subsection (b)(2) objection has to be

made before Subsection (b)(3) applies, then the UST would be a “gatekeeper.” In that, if the UST does not file an objection, then no one could be heard under Subsection(b)(3)

If, however, the UST is not a “gatekeeper” as described above, then Subsection (b)(3) applies independent of actions of the UST.

**Page 4, Section (c) - Jurisdiction**

Section (2)(c) states that the districts courts shall have jurisdiction of all cases under this section. I believe that this section is accurate that jurisdiction lies in the district court generally under the Bill in the Title III cases. Section 307 of PROMESA addresses the issue of venue of any Title III case, and section 308 provides for the selection of Presiding Judge of a Title III case. Currently all the Title III cases are pending in the United States District Court for the District of Puerto Rico. Under section 308 of PROMESA United States Laura Taylor Swain was selected as the “presiding judge” by Chief Justice John G. Roberts, Jr.

Compensation awarded in the Title III cases is under sections 316 and 317. Sections 316 and 317, use the term “the court” – meaning the court presiding over the Title III case or cases. This interpretation is consistent with the manner in which compensation issues under the Code sections 330 and 331 are decided.

My concern is that Section 2(c) referenced above in PRRADA, may be read to allow a party to bring an action regarding compensation sought by a professional person under sections 316 and 317 in a *district court* other than “the” court in which the Title III cases are currently pending. Such interpretation would lead to unnecessary use of court time, delay and additional expenses: the impacted professional person would have to remove any matter filed in another district court to the Title III Court. I believe that Section 2(c) should be clarified to provide that any issues arising under the application of the Bill be raised solely in the Title III Court.

**Page 4, Section (d)(2) - No Delay**

I do not understand the relevance or purpose of this subsection. It directs that the judge presiding over the Title III cases shall **not** delay any other proceeding in connection with the Title III case pending the filing of a verified statement under Section 2(a)(1). I do not understand how this would arise and under what basis a party required to file a verified statement under this section would cause or result in a request for a delay of other proceedings in the case.

That concludes my comments and observations.

I thank the Committee for the opportunity to be here today and hope that my statements and responses to any of the questions you may have will be helpful in your consideration of the Bill.

The CHAIRMAN. Thank you, Judge, we appreciate it.

Mr. GONZALEZ. Thank you.

The CHAIRMAN. Next, I will recognize Professor Lubben for his statement.

**OPENING STATEMENT OF MR. STEPHEN J. LUBBEN, HARVEY WASHINGTON WILEY CHAIR IN CORPORATE GOVERNANCE AND BUSINESS ETHICS, SETON HALL UNIVERSITY SCHOOL OF LAW**

Mr. LUBBEN. Thank you, Senator Manchin, for inviting me to testify today. I appreciate the opportunity to play at least some small role in Puerto Rico's restructuring.

As you noted, we are here today to talk about PRRADA, but you can't really talk about PRRADA without talking about PROMESA because PRRADA is basically a supplement to PROMESA. And PROMESA created a special bankruptcy proceeding that is unique to Puerto Rico and its municipal entities. And it is unique in other ways, because it draws from both Chapter 11 and Chapter 9.

As you noted in your opening remarks, in Chapter 11 corporate bankruptcy cases, the courts have a lot of oversight over professionals and their fees. The court approves retention of the professional, and the court also approves payment of the professionals.

In Chapter 9, on the other hand, there is almost no court oversight at all. It is very, very slight. Now, arguably, you know—and obviously that is the subject of a different committee and a different hearing—arguably Chapter 9 should be updated in this regard. But I currently believe the current Chapter 9 is kind of a relic of the 1930's, when Congress was attempting to develop a municipal bankruptcy system in the face of a fairly hostile Supreme Court.

PROMESA essentially splits the difference between Chapter 9 and Chapter 11. Retention is fully discretionary. There is no court oversight at all over retention of professionals. But payment of professionals is subject to court approval. And that is more like Chapter 11. In Chapter 11, when the court is considering whether or not to pay those professionals, it has in front of it—as has been noted—a wide array of disclosure information about the professionals. That was triggered by retention decision. And then, the disclosure system then flows over to the payment issue because bankruptcy courts will then deny compensation to professionals that had undisclosed conflicts of interest.

PRRADA essentially establishes a comparable system for the Puerto Rican bankruptcy system, and I think that makes a lot of sense. I am just going to highlight three reasons why I think that makes a lot of sense.

First of all, under section 316 of PROMESA, the court is supposed to award compensation where it is reasonable compensation. Well, it seems to me that not having a conflict of interest is not an inherent, important factor in deciding whether or not the compensation is reasonable. So for that reason, it makes a lot of sense to enact PRRADA.

Second, and this has been mentioned in passing a couple of times, ultimately it is the people of Puerto Rico who are paying the cost of all these professionals. Somebody who's paying the bill, I

think, has a right to know this kind of information—whether or not a professional that is being paid is working under a conflict of interest. So that is the second reason why I think it makes a lot of sense to enact PRRADA.

And third and finally, as has also been mentioned in a couple of statements, the people of Puerto Rico are being asked to make serious sacrifices as part of the debt restructuring process. For example, many former employees of the Puerto Rican government are likely facing cuts to their pension payments. In that context, I think, again, people have a right to know that the debt restructuring process is being run in a transparent way, with full disclosure as to whose interests are being promoted in the bankruptcy process.

And indeed, I think this third reason is almost standing alone as a reason to pass PRRADA because, basically, what I am saying here is that transparency can help promote legitimacy of the process. And that is a reason alone to pass PRRADA.

So I thank you for allowing me to speak today and I look forward to answering any questions you have about the bill, as well.

[The prepared statement of Mr. Lubben follows:]

STATEMENT OF  
PROFESSOR STEPHEN J. LUBBEN  
BEFORE  
THE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
WASHINGTON, D.C.

July 29, 2021

Comments on S. 375: Puerto Rico Recovery Accuracy in Disclosures Act of 2021

**Biography:**

Stephen J. Lubben holds the Harvey Washington Wiley Chair in Corporate Governance & Business Ethics at Seton Hall Law School in Newark, New Jersey. He has been a member of the Seton Hall faculty since 2002, where he teaches classes in Bankruptcy, Corporate Finance, Financial Institutions, Business Associations, and (very rarely) Constitutional Law.

From 2010 to 2017 he was the “In Debt” columnist for the *New York Times’s* DealBook page. He has been widely quoted by courts and the media on chapter 11 cases, and has been retained as an expert in insolvency and corporate law cases around the world. He previously practiced law with the New York and Los Angeles offices of Skadden, Arps, Slate, Meagher & Flom LLP, as a member of the corporate restructuring department, and was a law clerk for the Honorable John T. Broderick, Jr. of the New Hampshire Supreme Court in Concord from 1996 to 1997.

## Introduction

PROMESA<sup>1</sup> was enacted under Congress' territories powers in the aftermath of the Supreme Court's decision that the Commonwealth had no power to enact a restructuring law for its own municipal entities.<sup>2</sup> Title III of PROMESA represents a mix of two existing types of bankruptcy: chapter 11 (corporate reorganization) and chapter 9 (municipal reorganization), along with certain unique, Puerto Rico-specific elements – like the central role of the Oversight Board in the reorganization and the appointment of a district court judge in place of a bankruptcy court judge to hear cases.

Bankruptcy, especially when it takes the form of restructuring, invokes the power of the federal government to alter people's existing legal rights. As a result, people who are impacted by a bankruptcy process have a right to understand in whose interest the process is being conducted. Because S. 375 (or "PRRADA") furthers these important transparency interests in connection with PROMESA, I am pleased to speak today in support of the bill.

## Professionals in Bankruptcy Cases (Some Relevant Background)

Before there were reorganizations of local governments, there were reorganizations of corporations.<sup>3</sup> Until the 1930s, corporate reorganizations were conducted in "equity receiverships." As one former bankruptcy professor, now a sitting bankruptcy judge, summarizes:

The insular nature of equity receiverships... lent the process to abuse and generated substantial criticism. The most notable critic was William O. Douglas... He asserted that management and those creditors aligned with management controlled most aspects of the equity receivership process, providing no representation for, and frequently small returns to, other creditors. In fact, creditors not participating in the reorganization committee's plan could be cashed out for a fraction of their debt holdings.

Justice Douglas also lamented the role of protective committees in the process. He complained that the committees often were self-selected and influenced, if not controlled, by management and the corporation's investment bankers.<sup>4</sup>

During the New Deal, Congress addressed these problems through codification of corporate bankruptcy. Specific conflicts of interest were proscribed, and professionals became subject to court oversight and extensive disclosure requirements.

But when municipal bankruptcy developed at roughly the same time, this aspect of corporate bankruptcy was not translated into this new context.

<sup>1</sup> The Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101-2241.

<sup>2</sup> Puerto Rico had previously been excluded from chapter 9 of the Bankruptcy Code.

<sup>3</sup> See generally Stephen J. Lubben, *Fairness and Flexibility: Understanding Corporate Bankruptcy's Arc*, 23 U. Pa. J. Bus. L. 132 (2020).

<sup>4</sup> Michelle M. Harner, *The Search for an Unbiased Fiduciary in Corporate Reorganizations*, 86 Notre Dame L. Rev. 469, 480-81 (2011).

Why? In short, in the 1930s Congress was uncertain “how far” the Supreme Court would permit municipal bankruptcy legislation to go.<sup>5</sup>

Even today, chapter 9’s only express regulation of professionals in municipal bankruptcy cases is in the context of plan confirmation, when the court determines the reasonableness of the fees.<sup>6</sup> Chapter 9 provides no guidance on what constitutes reasonable compensation.

### Professionals in PROMESA

PROMESA, and particularly title III thereof, is clearly heavily influenced by chapter 9. But title III departs from chapter 9 in several notable respects, including with regard to professional compensation. Indeed, PROMESA adopts an approach closer to that of chapter 11 in this regard.

Under title III, section 316,<sup>7</sup> and section 317,<sup>8</sup> the court is given control over the award of compensation to all professionals throughout the case.<sup>9</sup> Moreover, the court is instructed to evaluate compensation applications under a standard that closely tracks that used in chapter 11 cases.<sup>10</sup> Caselaw developed in the chapter 11 context will presumably inform the court’s analysis under sections 316 and 317.<sup>11</sup>

While the PROMESA court is instructed to evaluate professional compensation under a chapter 11 style framework, PROMESA does not expressly incorporate the disclosure requirements in today’s chapter 11,<sup>12</sup> which have their roots in the New Deal reforms I noted at the outset. Perhaps because PROMESA follows the chapter 9 model with regard to retention of professionals,<sup>13</sup> while following chapter 11 with regard to compensation, these disclosure obligations were neglected.

That is, disclosure may have fallen through the cracks when bits of chapter 9 and chapter 11 were melded in PROMESA.

<sup>5</sup> Ashton v. Cameron Cnty. Water Improvement Dist. No. 1, 298 U.S. 513 (1936) (invalidating the first attempt at municipal bankruptcy). Congress enacted a revised municipal bankruptcy act in 1937, Pub. L. No. 302, 50 Stat. 653, which was upheld by the Supreme Court. United States v. Bekins, 304 U.S. 27, 54 (1938). That law was extensively revised in the mid-1970s and forms the basis for today’s chapter 9.

<sup>6</sup> 11 U.S.C. § 943(b).

<sup>7</sup> 48 U.S.C. § 2176.

<sup>8</sup> 48 U.S.C. § 2177.

<sup>9</sup> On the other hand, the retention decisions of both Puerto Rico and the Oversight Board are not subject to court review, much as in chapter 9. That is, these parties have chapter 9 like powers over retention of professionals, while the court has chapter 11 like powers with regard to compensation of those professionals.

<sup>10</sup> Compare 48 U.S.C. § 2176 with 11 U.S.C. § 330.

<sup>11</sup> To date, there have been no reported compensation opinions in the title III cases.

<sup>12</sup> E.g., 11 U.S.C. § 327; Bankruptcy Rule 2014, and the extensive judicial gloss on both.

<sup>13</sup> See *supra* note 9; see also 48 U.S.C. § 2176(a) (“the court may award to a professional person employed by the debtor (*in the debtor’s sole discretion*), the Oversight Board (*in the Oversight Board’s sole discretion*), a committee under section 1103 of title 11...” (emphasis added).

**The Benefits of PRRADA**

PRRADA corrects this apparent oversight in PROMESA. When enacted, the professionals retained by all the major parties to the pending title III cases will be required to make the sort of disclosures that these same professionals already make when they appear in chapter 11 cases.

Not only does PRRADA fix this gap in PROMESA, but it provides the court with Congressional guidance on the award of compensation under sections 316 and 317. Moreover, PRRADA reflects Congress' express determination - and this is a legislative policy determination, that is best made by Congress - that transparency should prevail, while conflicts of interest are banished, in the title III proceedings. That is, divided loyalties are forbidden even if, on a purely economic basis, the court might find that the professional's compensation is "reasonable" under existing section 316.

And this is how it should be. Congress has long recognized that when the power of federal law and the federal courts is used to impose sacrifices in bankruptcy, the process must be fully transparent and fair. The professionals shepherding the debtor through its restructuring must work for the party that retained them in the case, and no one else.

In the PROMESA cases, it is the citizens of Puerto Rico, as taxpayers, who will ultimately pay for the professional fees incurred. And at the same time, these citizens are being asked to make considerable sacrifices, in the form of reduced pensions, higher utility rates, and even reduced employment.

Just as in the railroad reorganizations that worried the New Dealers, the people of Puerto Rico have every right to know that the PROMESA process is not being twisted to advance undisclosed interests. As a matter of basic agency law, a professional owes its client a duty of good faith and loyalty. But whether those standards are being met is only knowable upon full disclosure.

At this critical juncture in their history, PRRADA can provide Puerto Ricans with the information they need to understand the motivations of the professionals who are playing key roles in crafting their Commonwealth's future. While the bill would impose some administrative burdens on the professionals, the disclosures are only those that these professionals are already providing in corporate bankruptcy cases, and it seems that the people of Puerto Rico, our fellow Americans, are entitled to at least that much.

**Conclusion**

Congress can promote faith in the PROMESA process by mandating transparency. I hope it does so by passing S. 375.

\* \* \*

Technical Notes and Comments on the Bill:

- Section 2(b)(2): I believe the cross reference here should be to subsection (a), rather than (e).
- Section d(2): As presently worded, this section is quite broad, and might allow a professional to argue that their fee application may not be delayed, despite the professional's failure to comply with subsection (a). Why should the professional be paid if they have not complied with the "rules"? I would suggest narrowing this provision so that it provides that only the debtor's plan of adjustment, or reorganization generally, is not delayed by disclosure disputes.
- In addition, note that the reference to "paragraph (1)" seems to be in error - I believe the cross reference here should be to subsection (a).
- Section 2(e)(1)(C): The court is authorized to deny compensation when a professional holds an interest adverse to the *estate*. But there is no bankruptcy estate in a title III case (or a chapter 9 case for that matter).<sup>14</sup> I suggest rewriting this section to read "the debtor and its reorganization" in place of "the interest of the estate."
- Section 2(e)(2): Is this paragraph necessary, given that the court presumably already takes into account similar considerations under section 316 of PROMESA? In any event, the section suffers from the same problematic reference to the "estate," noted above. If retained, the paragraph could be rewritten as "in the best interests of creditors, the debtor, and the debtor's reorganization."

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<sup>14</sup>Juliet M. Moringiello, *Goals and Governance in Municipal Bankruptcy*, 71 Wash. & Lee L. Rev. 403, 414 (2014).

The CHAIRMAN. Thank you, Professor. And next, we will have Mr. Suarez.

**OPENING STATEMENT OF MR. ANTHONY SUAREZ,  
PRESIDENT, ANTHONY SUAREZ LAW GROUP, P.A.**

Mr. SUAREZ. Thank you, Senator Manchin, and all members of the Committee, for inviting me and giving me the opportunity to express my point of view on this issue, being down here in the trenches.

My name is Anthony Suarez, and I am President of the Suarez Law Group. But I am also the President of the Legal Services Clinic of the Puerto Rican Community, a not-for-profit law firm that we started after Hurricane Maria.

And I am, of course, an American citizen of Puerto Rican descent. My grandfather migrated to New York in 1920, however, I have always maintained a great interest in the island and my cultural heritage.

In that capacity, as was indicated in the introduction, I gained election as President of the Puerto Rican Bar Association of New York in 1988, and then as President of the Puerto Rican Bar Association of Florida 30 years later. As far as I know, I'm the only person who has even attempted that one. In 1999, I was elected to the Florida House of Representatives, and at that time was the only representative of Puerto Rican descent in the State of Florida. And I served alongside today's United States Senator Marco Rubio, who then was just entering the Florida House.

Now, I have traveled extensively around the island and have been invited as a speaker to the Colegio de Abogados de Puerto Rico, their Bar Association, to speak to their bar members, to speak to the Attorney General and members of the Puerto Rican Bar—Puerto Rican Supreme Court in reference to issues affecting the Puerto Rican diaspora—those of us who live on the mainland.

And so the question here is about this bill. Well, it affects the reputation—the reputation of the Puerto Rican Government over the years has been tarnished greatly. This affects not only Puerto Ricans on the island, but it affects all of us who cherish the island and our relationship with the United States body politic. Perception is everything and in this process, it is not only urgent that you pass this bill, it is irreplaceable—absolutely necessary.

This bill will be reported widely on the island and around the nation. It will enhance the concept that the governmental process is open and accessible. As an American citizen who served in the United States Army for 18 years, retiring as a Captain of Military Intelligence, and as a Florida State Representative, I know how important governmental credibility is to our system. And today this concept is in dire need of attention. The bill will aide in this process.

On my weekly radio show here, broadcast in central Florida, which I have done—it is called "I Need to Know," I have done it for over 20 years—the governance of Puerto Rico is a topic of discussion every show and it is always a hot debate. And this will continue until the island and the U.S. Congress finally determine Puerto Rico's ultimate fate.

However, at the root cause of the controversy is trust in the decisions made by their leaders. Nothing is more sacred. Nothing is more important than maintaining the trust between a citizen and its government and this bill works toward that. We have had lots of controversies on my radio show. I have heard people talk about fees being paid to persons working with PROMESA—huge fees. Meanwhile, as our previous speaker has mentioned, the Puerto Rican workers are losing pension plans—their pension funding. Their pensions are being cut. Their future is being significantly affected. This cannot go on.

So I urge Congress to pass this bill, to ensure transparency, and retain trust for the people. Thank you very much.

[The prepared statement of Mr. Suarez follows:]

From: Anthony Suarez Esq

President of Suarez law Group and The Legal services Clinic of the Puerto Rican Community Inc.

Statement to United States Senate July 29<sup>th</sup> 2021

Dear Sirs:

I am Anthony Suarez currently President of Suarez Law Group and of the Legal services clinic of the Puerto Rican Community Inc a Florida non for profit law firm.

I am an American Citizen of Puerto Rican descent whose Grandfather migrated to New York in 1920. However I have always maintained a great interest in the island and my cultural heritage. In that capacity I gained election as President of the Puerto Rican Bar Association of NY in 1988 and of the Puerto Rican Bar Association of Florida, thirty years later. As far as I know, being the only person to have achieved that task. In 1999, I was elected to the Florida House of Representatives, at that time, the only representative of Puerto Rican descent in the state. I served with Sen Marco Rubio who then was just entering the Florida house.

I have traveled extensively on the island and was invited as a speaker to the COLEGIO DE ABOGADOS de Puerto Rico at a Forum to speak to members of their bar, as well as to the Attorney General and members of the Puerto Rican Supreme court on issues affecting the Puerto Rican "diaspora."

The reputation of the Puerto Rican Government over the years has been tarnished greatly. This affects not only Puerto Ricans on the island but those of us who cherish Puerto Rico and its relationship to the United States body Politic. Perception is everything and transparency of the process is not only urgent it is irreplaceable.

This bill will be reported widely on the island and around the nation. It will enhance the concept that the Governmental process is open and accessible. As an American who served our nation, in the US Army (1970-88), retiring as a captain of Military Intelligence and as a Florida state Representative I know what governmental credibility means to our nation. Today this concept is in need or dire attention. This bill will aide in that process.

On my weekly radio show "I need to know" broadcast in central Florida, the topic of Puerto Rico's governance is always a topic of interest and hot debate. This will continue until the Island and the US Congress finally determine its ultimate fate. However at the root cause of the controversy is trust in decisions made by leaders. Nothing more sacred can exist than its citizens believing in the fairness of their representatives. Too much cynicism is prevalent and this bill works precisely on that issue.

I urge the Congress to pass this bill to insure transparency and trust.

The CHAIRMAN. Thank you, sir. Now we will go to our questions, and all three of you could answer this.

The disclosure requirements of Rule 2014 of the Federal Rules of Bankruptcy Procedure are tied to hiring, rather than paying already hired professionals. These requirements do not apply to PROMESA because Congress does not want the bankruptcy courts telling sovereign states—and by extension Puerto Rico—who they can or cannot hire. Bankruptcy courts do, however, have authority to police the payment of professionals in municipal bankruptcies. And the Supreme Court has repeatedly said that the requirement of compensation paid to professionals and municipal bankruptcies must be reasonable and carries with it the power and duty to make sure the professionals are not only compensated for loyal and disinterested services but are untainted by conflicts of interest.

So the question would be—would the same requirement in PROMESA that compensation must be reasonable, coupled with the bankruptcy court's broad, equitable power to issue necessary orders under the Bankruptcy Code, already provide Judge Swain the power she needs to order any additional disclosures she thinks appropriate to police conflicts of interest?

Mr. GONZALEZ. May I respond?

The CHAIRMAN. Judge Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman. I think, in terms of could Judge Swain do it? Yes, I think she has the authority to do it. I think the problem would be, if you do not apply 2014 through this bill, it wouldn't be as easy to interpret. There is case law that has developed under 2014. There is a great deal of guidance as to how it plays out. Judge Swain has not done it to date.

So I think it would be easier if it were incorporated into the traditional disclosure requirements under 2014, such that the parties know how to react to it, how to ask the court for variances within that structure. And so in that regard, I think it would be helpful.

Second, although she could do it, what we currently have as a conflicts process—it does exist—I will not take the time to go through it in detail, but its depository is not the court. It is our website. Certain things are there, certain things are confidential. So if the depository for this information—as it would be under 2014—was made to be the court, it would be easier to work with that material.

The CHAIRMAN. Anyone else? Yes, Mr. Lubben. Yes, sir.

Mr. LUBBEN. I think I agree with everything that Judge Gonzalez has said. I would also add that I think there is something to be said for Congress to expressly state that this is our policy. Yes, Judge Swain could probably end up in a similar location, you know, using her equitable powers. But I think there is a lot to be said for Congress weighing in and saying "This is a legislative policy. We want a transparent process in the Puerto Rican bankruptcy."

The CHAIRMAN. Yes, sir. Mr. Suarez.

Mr. SUAREZ. I would like to add that Congress has already taken the hit for creating PROMESA and creating that controversy that Puerto Rico is no longer a sovereign. But now PROMESA will take the hit for not being transparent. So it is important to disclose, and since we have the responsibility—Congress does—you might as well now go full-in and say you must require full disclosure so you

do not get the black eye associated with what you have already done.

The CHAIRMAN. Well, let me ask this. Does the Oversight Board in the Commonwealth of Puerto Rico already require conflict disclosure before they hire professionals? Are they doing that? Judge Gonzalez.

Mr. GONZALEZ. Yes, the process that we have in place, and it has evolved over the years, when someone is hired or when their contract is renewed, there is a questionnaire that must be filled out. That questionnaire generally centers around conflict-type questions. Responses are then sent to the Board. Explanations, if necessary, are sent to the Board. And a declaration is then prepared, attached to the contract, and then that contract is on file at our website.

However, there are two points I would like to raise. First, to the extent a party has deemed some information to remain confidential and only shared with the Board, the contract that would be on file with the declaration would not have that information.

The second point, in terms of that, there are two professionals who have had evergreen situations—their contract doesn't come up for renewal, so they wouldn't be subject to the evolving disclosure process. But in the context of their fee applications, their contracts have been attached.

So again, it just comes back to what I said—the 2014 would provide the central location, where it is not the easiest database to navigate to find where all this information is currently.

The CHAIRMAN. I am going to take a little bit of a liberty here and ask one more, since our time—I think we are going to be in good shape today.

If Congress enacts the bill, should it give Judge Swain the discretion to consider if applying Rule 2014 to the pending PROMESA case would be just impractical and allow her to tailor its application if it is infeasible, or it would work an injustice?

Mr. GONZALEZ. I do not think it would work an injustice. I think it is not retroactive to the fees that have already been subject to order of approval. Its relation back, as I explained earlier, may be difficult to deal with, but I do not think it would be unfair. She certainly could do it and I think the implementation of the standard approach to 2014—in large cases—she should have the discretion to employ, to ensure that it would be an effective process.

The CHAIRMAN. Thank you. Senator Barrasso.

Senator BARRASSO. Well, thank you very much, Mr. Chairman. I have a couple of questions for Mr. Suarez and then one question for all the witnesses.

Mr. Suarez, this past Sunday, about 70 years ago, in 1952, Puerto Rico became a self-governing Commonwealth of the United States. Since that time, the island has faced financial difficulties that have required the Congress to provide oversight that resulted in the PROMESA law.

Do the House and Senate PRRADA bills we are discussing here today address a need that the PROMESA law does not?

Mr. SUAREZ. Could you please repeat that question for me? I'm sorry.

Senator BARRASSO. The question is, do the House and Senate PRRADA bills that we are discussing here today address a need that the PROMESA law does not address?

Mr. SUAREZ. Yes. I think it does. And specifically, it closes that loophole, as you have discussed, that allows for some transparency on these fees. This is a big issue in Puerto Rico. You are constantly hearing about teachers being cut and sanitation guys losing their pensions, police officers losing their pension, whereas huge fees are being paid out to the persons, and people do not understand.

I think this bill does provide for closing of that loophole. I think we should be giving the judge the discretion, because then it takes it out of the political realm. People will perceive it as a judicial decision and it lessens the political impact, and thus, I think, the transparency of it and acceptability of the bill.

Senator BARRASSO. Well, thank you. And a follow-up on that, Mr. Suarez, relating to conflict of interest. So with regard to Puerto Rico's Financial Oversight Board, how important do you think it is that there are disclosure rules in place to ensure that there is not even an appearance of a conflict of interest in the advisors that the Board hires?

Mr. SUAREZ. I think we have already talked or spoken about this in some detail. It is of paramount importance. There is absolutely nothing more important than the trust that the society has in its governance. Puerto Rico is suffering greatly. It has suffered greatly, from both political parties, and the people are really, really angry and they are frustrated.

So this bill, what it does is, it gives some transparency to it. On the island, it will be translated as an exposure of those people who are the elites, or controlling the government, and thus it puts a stop, at least the appearance of a stop, where now they have to go in front of a judge, and they have to disclose those interests so that it just feels better.

Senator BARRASSO. So if I could ask you one question, then I am going to ask the other two witnesses to comment on it. And the question is this—is there any reason why the bills that we are discussing here today would not improve transparency for the public and shouldn't be taken up by the Committee in the full Senate? Any reason we shouldn't be doing this? Mr. Suarez.

Mr. SUAREZ. Oh no, absolutely not. I see no reason. And the question of whether the judge would be very costly—the cost of not having people believing in their government is 10 times higher than the cost, whatever's incurred by requiring additional paperwork done in this case. So there is just no reason.

Senator BARRASSO. Agreed. Judge.

Mr. GONZALEZ. No, I know of none, Senator.

Senator BARRASSO. And Mr. Lubben.

Mr. LUBBEN. Yes, I know of none. I make some very small technical changes in my written testimony—you know, suggestions for changes.

Senator BARRASSO. Sure.

Mr. LUBBEN. But definitely it should be passed.

Senator BARRASSO. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. Thank you for holding this hearing. I am a co-sponsor of this bill and I think it is a very commonsense approach to the concerns that the people of Puerto Rico have as they are footing the bill for all of these advisors and consultants involved in these bankruptcy proceedings. And at the same time, as their pensions are being cut and teachers are being laid off, et cetera, I think it makes perfect sense that they should know whether there is any conflict involved with the people who are involved in these proceedings.

I am grateful that you are having this hearing so that we can address some of the concerns that have been expressed, although I have to say that I am not quite understanding why these concerns should delay the passage of this measure. I am glad that Representative Velázquez has worked so hard on helping the people of Puerto Rico, along with, of course, our colleague, Senator Menendez—that this bill is now before us.

I have to say that both Senator Menendez and Mr. Suarez have pointed out how important this bill is to the people of Puerto Rico. As I said, they are the ones footing the bill. They should know if the people they are being asked to foot the bill for have any conflicts of interest.

I do have a few questions. For Professor Lubben, Judge Gonzalez, in his statement said that, “technical application of the term ‘creditor’ would render compliance with the statute practically impossible and extraordinarily costly.” And he suggests changing the bill text from “creditor” to “interested party”, and I would like to know if you share this concern that Judge Gonzalez has raised regarding the bill? Professor Lubben.

Mr. LUBBEN. It is not an unfair concern, but I also do not think that the bill necessarily needs to be amended to address it. I think, as Judge Gonzalez himself well knows, bankruptcy judges—and I would include Judge Swain in this—have a lot of experience managing these rules in big Chapter 11 cases and figuring out how to make them work in a practical sense.

So in other words, you know, yes, if you are overly literalistic about “creditor”, yes, it is very broad, but I think Judge Swain has the inherent authority to set up some ground rules to make this work in a practical sense.

Senator HIRONO. And again, for you, Professor, I believe you noted that Chapter 9 should be revisited. And so, this is in context of—one of the arguments we have heard against this bill is that the Puerto Rican bankruptcy should be treated more like a municipal bankruptcy under Chapter 9, where a disclosure of this type is not required. So my reaction is, why shouldn’t we require this kind of disclosure? And as you noted, we should probably take a look at Chapter 9 instead. Could you talk a little bit more about why, maybe, we should revisit the provisions that stop these kinds of disclosures under Chapter 9?

Mr. LUBBEN. Well, again, as I said in my opening remarks, I think in some ways, the fact that we do not require the disclosures in Chapter 9 is a reflection of a 1930’s view of what the Supreme Court would allow with regard to municipal bankruptcy and the 10th Amendment.

So there are sort of two responses. Number one, the view of the 10th Amendment has changed since the 1930's, and that is the reason why Chapter 9 itself should probably be updated.

And then, you know, without getting too far into contentious issues, I think we also have to admit that Puerto Rico is not quite in the same position as a state. Note the existence of PROMESA itself, right? And the Oversight Board itself suggests it is not quite like a state. And so, the analogy to Chapter 9—in any event, in this particular case—is not particularly apt, I think.

Senator HIRONO. I agree with you. It took a lot for us to acknowledge the situation that Puerto Rico was in and that it could not get into bankruptcy proceedings, so now that it can.

So one of the other—if you do not mind, Mr. Chairman?

The CHAIRMAN. Please.

Senator HIRONO. I just have one more question.

The CHAIRMAN. Sure, no problem.

Senator HIRONO. There was a concern raised about the jurisdiction provision in the bill, and Judge Gonzalez voiced concern that the provision may allow a party to bring action in a court other than the district of Puerto Rico. Doesn't PROMESA already require that all cases be brought in the district of Puerto Rico, Professor Lubben? If that is the case, how would cases brought under PRRADA wind up anywhere else?

Mr. LUBBEN. Yes, section 306 of PROMESA already has a jurisdiction provision. So I get what Judge Gonzalez is saying, that the separate jurisdiction provision in PRRADA is, perhaps, a little bit redundant, but I do not see that it does any harm for the reasoning he actually said in his oral testimony, at least as long as the Title III cases are pending. I would assume any other district court judge who got a disclosure case under PRRADA would immediately transfer it to Judge Swain. So I do not see that as a really serious issue. Again, you could argue that maybe the jurisdiction clause in PRRADA is a little bit redundant, but I do not see that as a fatal flaw.

Senator HIRONO. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Senator Marshall.

Senator MARSHALL. Yes, thank you so much, Chairman. I just have one question for all the witnesses. Will the bills we are discussing today improve transparency for the public and should they be passed by the Senate? Yes, whoever wants to go first. Yes, go ahead.

Mr. SUAREZ. We have already addressed this issue and I think that it bears repeating. This is essential for the purposes of ensuring that PROMESA is ultimately successful. Transparency is “sumamente”, all right? It is absolutely essential to have credibility on the island, and actually outside of the island, as well.

Mr. LUBBEN. As I said in my opening remarks, I think transparency can promote legitimacy. So I do think this bill is very important.

Senator MARSHALL. Thank you. Oh, one more. Go ahead.

Mr. GONZALEZ. Yes. I would agree, but I would ask your indulgence if I could say something about fees, because they've been raised in this context a number of times. The fees are enormous. There is no doubt that \$1 billion of fees is an enormous amount of

money. My own experience in cases—in Enron, in 2004 dollars it was \$760 million in fees, and ultimately \$1 billion by the time the case was over, and it returned \$22 billion to creditors.

There are a number of items that impact fees. One is the rate, and with respect to us, we have gotten a discount across the board on the rates. The other is the complexity of the case. This is an extraordinary, complex case that requires the best of the best, in terms of advisors.

The next is a litigious nature. This case has been extraordinarily litigious over the last four years, and it is the length and time of the case—all of those add up to enormous fees.

Another way to look at the fees, though, is in the context of what is accomplished. We have, in a COFINA restructuring, there is \$17 billion in future payments on the debt that were reduced as a result of that restructuring. In the settlements that have been reached to date, in the Commonwealth case, and hopefully the plan will go effective, billions upon billions of dollars in debt has been reduced.

So yes, it is an enormous amount of money. Yes, disclosure should be placed in the structure, so people can know where there is money and who it is going to and whether there are conflicts or not. But by the same token, in terms of the value added, from what has happened by the extraordinary work of these professionals, I think that those amounts paid were rightful and justifiable, under the circumstances.

Senator MARSHALL. So maybe I do have follow-up question, then.

The CHAIRMAN. Well, you have plenty of time.

Senator MARSHALL. So this legislation, this started back in 2016—and forgive me if this has already been addressed. What is the financial health of Puerto Rico today compared to 2016? Which direction are we going? So we are not just throwing good money after bad money.

Mr. GONZALEZ. I don't think I could give you a detailed answer to that. I believe we are on a road to getting the debt restructured. That should stabilize many aspects of the economy and ultimately return Puerto Rico to the public debt, short- and long-term—as is one of the stated goals in the statute. I think there is a great deal more disclosure in dealing with the finances of the government that has been achieved over these last years. And I think it is moving in the right direction in that regard and there is more certainty as to what is going to happen. But beyond that, I think I would have to defer to some of the financial advisors to give you a more complete answer.

Senator MARSHALL. Thank you. Any of the other witnesses have any comments? I know it is not your specialty, but—Okay.

Thank you so much, Chairman, and I yield back.

The CHAIRMAN. Yes. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman and Ranking Member, for this important conversation. Listen, there is so much—and I thank you for the panelists—work that needs to be done in Puerto Rico, and for the people there, and looking out for the best interests of people of Puerto Rico.

And so, Judge, let me start with you, because I really appreciate the experience and expertise that you bring to this hearing, with

your focus on bankruptcy law. Can you do me a favor? Can you elaborate on how Puerto Rico's bankruptcy process differs from the typical process for state and U.S. Courts?

Mr. GONZALEZ. Yes. I think one main difference is that the Board represents the debtor in the Title III case. I will identify the Commonwealth, which is a Title III case. However, the government—governor, legislative bodies—is still functioning, so you really have two parties there, which adds to the expense, in terms of professionals, because you have the Board having one set of professionals and the government having another.

In a Chapter 9 case, where a state authorizes a municipality to go into bankruptcy, most of the states, to my knowledge, put in—for example, in Detroit—an emergency manager. That emergency manager literally takes over the control of the city for these purposes. And that would differ radically with how Puerto Rico—the compromise with Puerto Rico continuing its sovereign aspects. It is a government, and at the same time is compromising—some oversight in the bill was given to the Oversight Board.

It is more complex, I think, than the typical Chapter 9 case, in which a municipality goes into insolvency and is controlled by either a board or executive manager, or someone is put in control of that, that has virtually total control over both the administration of the government, as well as the insolvency case itself.

Senator CORTEZ MASTO. And then, for that reason, and you just touched on it, Puerto Rico has a role to still provide services for its citizens—

Mr. GONZALEZ. Oh, definitely.

Senator CORTEZ MASTO [continuing]. And it still has to carry out the functions of a government as it is going through this bankruptcy, correct?

Mr. GONZALEZ. Definitely, yes. And—

Senator CORTEZ MASTO. Go ahead.

Mr. GONZALEZ [continuing]. Our role is that of oversight, but we do not run the government. We look at it from a fiscal standpoint and try to put guardrails on that process. But no, we do not run the government.

Senator CORTEZ MASTO. What role—because there is a lot of talk about the hiring of professionals, the fees that are charged to professionals—what role does the court have in determining the reasonableness of those fees?

Mr. GONZALEZ. The court?

Senator CORTEZ MASTO. Yes.

Mr. GONZALEZ. Is that—I am sorry—

Senator CORTEZ MASTO. The bankruptcy court.

Mr. GONZALEZ. Well, the district court that is presiding over the case has complete discretion in terms of having the fees reviewed and awarding what it believes is a reasonable amount of consideration under the circumstances.

There is a fee examiner in place that reviews the fees and reports to the court his view on the reasonableness of the fees that have been incurred. The court will hold a hearing and hear objections, if such were filed, and then make a determination of what she believes is reasonable under the circumstances, which is a mirror of what happens under the Bankruptcy Code. And the Bank-

ruptcy Code, with sections 330 and 331—under PROMESA it is sections 316 and 317—control the hearing and the awarding of fees.

Senator CORTEZ MASTO. Thank you. Thank you to the panelists. Chairman, I yield the remainder of my time.

The CHAIRMAN. Thank you, Senator. I will have one final question, and this could be to all three also.

As I understand Rule 2014, professionals are required to disclose all connections with a debtor, creditors, and other parties of interest, as well as their attorneys and accountants, in a bankruptcy case. Although not defined in the rule in the Bankruptcy Code, the courts have given the term “connections” a broad meaning, encompassing more than conflicting interests.

As you note in your statement, Judge Gonzalez, bankruptcy judges have found it necessary to focus on connections with material interested parties, which may be defined by a threshold dollar amount in large, complex bankruptcies.

My question is, is it practicable to require all of the professionals retained by the Oversight Board, the Government of Puerto Rico, and the creditors’ committees, to disclose their connections with all 165,000 creditors in these cases. Or would it be more feasible to focus on a material interested parties list?

Mr. GONZALEZ. In response to that, I agree with Professor Lubben that, when I raised the issue, my concern was that the judge would—depending on how the bill was written—ultimately, there would be an argument that the normal discretion that would come under 2014 wouldn’t exist. To the extent the judge has discretion under 2014, that would normally play out in a bankruptcy case, the judge would address that issue.

In fact, ironically, and this is a technical point—the 2014 Rule already applies in the Title III cases, in the context of the creditors’ committee, because under Section 1103, which deals with the creditors’ committee retaining professionals, it also sweeps in 2014 and 1103 as part of PROMESA. So as a practical matter, I believe the creditors’ committees’ professionals are already complying with 2014, and they would be operating under a material interested party list, but they would already be utilizing it. And if this bill is enacted, I would expect that that would be the similar structure that would go forward with respect to this.

The CHAIRMAN. Professor Lubben.

Mr. LUBBEN. I agree with what Judge Gonzalez has said. As I indicated earlier, I think because the bill expressly references 2014, the court would inherently have the same discretion to make the system work. And so you wouldn’t have to necessarily include every creditor who’s owed \$5, for example, on the conflicts list. It could be limited to some sort of material dollar amount and that makes it workable. That already happens in Chapter 11 cases and I am fairly confident that Judge Swain would do something similar in this case, based on the language that we have in the pending bill.

The CHAIRMAN. Thank you. Mr. Suarez.

Mr. SUAREZ. I agree with Professor Lubben that we should have a disclosure of a certain amount so it doesn’t get so tedious over all of those hundreds of thousands of creditors. My concern, Senator, is that, you know, when Judge Gonzalez correctly says there

is value added—the lawyers have done a good job, they deserve what is reasonable. In the law, \$500 an hour for lawyers could be considered reasonable. A \$1 million, \$2 million, multi-million fee—that is reasonable.

But in the street—and I have two family members who are pensioners in Puerto Rico—one's a teacher, one's a police officer. And when a teacher gets a \$1,500 a month pension and she has no Social Security because of the way Puerto Rico operates, right? And then they take 20 percent of her salary away—this is huge for them.

So the perception is very, very important, and I think that the more we can stay within reason about it so we do not create a bureaucracy unto itself, then it becomes inapplicable, but by putting a certain number—a reasonable number, say, okay, you have, you know, a conflict of interest which is more than \$20, \$30, \$40,000—something like that, then that could do it. But it is certainly important that these conflicts be reported as fully as practical.

The CHAIRMAN. Thank you. Senator Hirono, do you have any more questions? Senator Cortez Masto? You don't? Okay.

I want to thank all of our witnesses for making this effort and for being so helpful to us with the decisions we have to make.

Members will have until close of business tomorrow to submit additional questions for the record. The Committee stands adjourned.

[Whereupon, at 11:08 a.m., the hearing was adjourned.]

**APPENDIX MATERIAL SUBMITTED**

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**Appendix A****U.S. Senate Committee on Energy and Natural Resources  
July 29, 2021 Hearing: *S. 375 and its House-passed companion measure, H.R. 1192,  
the Puerto Rico Recovery Accuracy in Disclosures Act of 2021, commonly known as  
“PRRADA”*****Questions for the Record Submitted to the Honorable Arthur J. Gonzalez**

Honorable Arthur J. Gonzalez follow up answers to questions presented by Committee member Senator John Hoeven

**Question #1** What steps has Puerto Rico Financial Oversight and Management Board taken thus far to restore the fiscal health of the Commonwealth of Puerto Rico?

PROMESA gives the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) two mandates: restructure Puerto Rico’s debt so it can regain access to capital markets without which no government can function effectively, and achieve fiscal responsibility through balanced budgets and pro-growth reforms.

During its term, the Oversight Board has taken several steps to restore fiscal health to the Commonwealth of Puerto Rico. Despite the ongoing COVID-19 pandemic, fiscal year 2021 was a year of significant progress. The Oversight Board filed a Plan of Adjustment with the court that would enable the Commonwealth and two of its instrumentalities to restructure their debts upon plan confirmation, which we hope will occur this year. Additionally, the Oversight Board had previously entered into a restructuring support agreement for the Commonwealth’s electric utility, PREPA. Separately, the Oversight Board has certified the first compliant Commonwealth budget developed jointly by the Government of Puerto Rico and the Oversight Board.

**Ensuring Sustainable Debt Levels**

Puerto Rico’s bankruptcy is not only the largest governmental entity debt restructuring in the history of the United States, but also extraordinarily complex. Puerto Rico’s \$72 billion in debt was spread over more than a dozen public entities. The average debt service the government alone had to pay each year was \$2.7 billion, and without PROMESA would have reached as much as \$4.2 billion. In addition, the government was obligated for more than \$55 billion in accrued pension liabilities to retirees and active employees. Puerto Rico’s largest government pension system, the Employees Retirement System, was obligated for more than \$36 billion in actuarially-determined pension liabilities, for which less than 1% was funded. By comparison, on average the Detroit pension systems at the time of its insolvency filing were about 60% funded (General employees system was about 53% funded while police and fire system was about 71% funded).

The Oversight Board has already restructured the debt of the Puerto Rico Urgent Interest Fund Corporation (“COFINA” for its Spanish acronym), reducing it by \$6 billion, from \$18 billion to \$12 billion and saving Puerto Rico \$17.5 billion in total principal and interest payments, and reduced the debt of the Government Development Bank by \$3 billion, from \$5 billion to \$2 billion.

Recently the Oversight Board filed the seventh amendment to the Commonwealth's Plan of Adjustment, which puts the Commonwealth on a path towards reducing its debt to sustainable levels and enabling economic growth.

The Plan of Adjustment for the central government is the largest part of Puerto Rico's debt restructuring, with about \$35 billion in claims by bondholders and creditors, and more than \$55 billion, as noted above, in accrued pension liabilities. The Plan of Adjustment reduces the \$35 billion of existing claims by almost 80%, through a process of cash payments and debt reduction concessions ultimately resulting in a total debt burden remaining \$7.4 billion.

The terms of the Plan of Adjustment provide the largest recovery of all claims-classes to government retirees. The Oversight Board and the Official Committee of Retirees also agreed to take several steps to strengthen the pension system going forward. In addition, the Oversight Board agreed with the Public Servants United of Puerto Rico (SPU)/AFSCME Council 95 to provide up to \$1.2 billion to restore employee contributions to the Sistema 2000 retirement plan contributors lost because the money the government withdrew from employee paychecks never ended up in their retirement accounts.

The Plan of Adjustment also includes a \$2,600 deposit per employee to defined contribution accounts of members hired before the implementation of Sistema 2000 who were also affected by the 2013 freeze of accrued interest. The Plan also makes teachers and judges for the first time eligible for Social Security. The Oversight Board also included terms that protect those with relatively small claims. Individual claims lower than \$20,000, or if multiple claims are filed by the same claimant, below \$40,000 in aggregate, will receive payment in full as part of the 'convenience class.'

The Oversight Board firmly believes that this is the best plan we could achieve under the legal and fiscal circumstances within which Puerto Rico finds itself. The United States District Court will hold the confirmation hearing on the Plan of Adjustment later this fall and we hope the court will confirm the plan by year-end, so the Commonwealth can exit bankruptcy and move on to a new era of stability and prosperity.

#### **Fostering Economic Growth**

Reducing Puerto Rico's debt to sustainable levels is one of two key elements of Puerto Rico's return to fiscal health. Puerto Rico must also build a strong foundation for economic growth that will provide opportunity for businesses to grow, create meaningful jobs, and enable Puerto Rico's residents to prosper.

With input from the Government of Puerto Rico, the Oversight Board certifies a yearly Fiscal Plan that provides a comprehensive roadmap to create those conditions for growth and opportunity. The structural reforms included in the Fiscal Plan are (1) improving K-12 educational outcomes; (2) improving human capital and welfare; (3) improving energy reliability and affordability; (4) improving the ease of doing business; and (5) improving infrastructure.

One of the crucial structural reforms within the Certified Fiscal Plan is the power sector reform. Puerto Rico now has a strong, independent energy regulator; private operator Luma Energy will modernize the grid and deliver more reliable customer service; and the Public-Private Partnership Authority has started the process to find capable private operators for the power plants. Grid and power generation assets will remain in the hands of the people of Puerto Rico, but they will be managed by capable private companies incentivized to improve the system. Puerto Rico cannot grow long-term if power is not affordable and reliable.

The Fiscal Plan also includes significant investments. One of the most important new investments is in civil service. The Fiscal Plan allocates \$11.5 million in fiscal year 2022 for a pilot project within the financial agencies to align government employees' capabilities and organizational structures with the needs of a modern government.

The Fiscal Plan continues to provide \$400 million to incentivize private sector investments in broadband build-out and to improve access to faster internet offerings in underserved areas; and \$392 million to address critical infrastructure gaps in hospital and health facilities and to expand public hospitals.

PROMESA has not given the Oversight Board an explicit mandate to implement an economic development plan. But in many ways the Fiscal Plan is a development plan. Without the structural reforms the Oversight Board and the Government agreed to, Puerto Rico would continue to depend solely on tax incentives to attract businesses to invest in its economy. Tax incentives cannot be the single tool. The government must champion and implement the necessary reforms and investments to develop true competitive advantages.

#### **Strengthening Fiscal Responsibility**

The Oversight Board also significantly strengthened the budget process to improve accountability and transparency. Before PROMESA, a typical agency budget had two lines: payroll and operating expenses. Today, agency budgets include all expenditures in a detailed format. Equally critical is a commitment to monitor expenditures throughout the year to maintain a balanced budget. This is an effort to provide higher quality data for managing government operations and budgets, as well as providing data and information to taxpayers as to how funds are being utilized. Government revenue forecasts are now based on key macroeconomic indicators to prevent the government from overestimating tax revenue and ending up with budget shortfalls. These efforts are intended to avoid past practices that contributed to Puerto Rico's fiscal crisis.

Further, the Oversight Board has been scoring proposed legislation. In fiscal year 2021, over 25 legislative bills were submitted for review to the Oversight Board to ensure legislation is consistent with the Certified Fiscal Plan and Budget, as required by PROMESA, but also to provide the legislature with the economic and fiscal impact of legislation under consideration. This, too, is an effort to avoid past practices that contributed to Puerto Rico's fiscal crisis, whether it be significant underestimation of spending needs or overly optimistic revenue projections.

With balanced budgets on the horizon and the debt restructuring well under way, the Oversight Board will make every effort to ensure that we have embedded sound fiscal management in

government processes before the Oversight Board completes its mandate under PROMESA. Even though significant improvements have been made, the Government needs to redouble its efforts towards achieving fiscal responsibility and ensuring fiscal sustainability once the Oversight Board is gone.

**Question #2.** Are there changes to the Bill before the Committee that you would recommend in order to help mitigate the implementations concerns you highlighted in your testimony?

I believe that there is consensus that the Bill would provide greater transparency regarding professionals compensated by the Commonwealth of Puerto Rico in the PROMESA Title III cases.

My comments in my written and oral statement as well as my responses to the Committee members' questions are intended to address issues in the Bill that I believe should be clarified to ensure effective and efficient implementation of the Bill. (All page references below are to the Bill.)

**Point 1**

**Page 3, Section (2)(b) - Review**

As written, the intended application of Section (2)(b) is unclear regarding the application of Subsection (b)(3). Under Subsection (b)(1) the United States Trustee "shall" review the verified statements filed under the Bill. Under Subsection (b)(2) the UST "may" object to compensation if the requirements of Section (e) are not satisfied. Under Subsection (b)(3), a party in interest under Section 1109 of the Code "... may appear and be heard on any issue in the case under this section." The lack of clarity is that if the UST does **not** file an objection, does Subsection (b)(3) apply? The question is whether an "issue" in the case under this section has been raised if the UST does not file an objection under Subsection (b)(2). In other words, if a Subsection (b)(2) objection has to be made before Subsection (b)(3) applies, then the UST would be a "gatekeeper." If the UST is a "gatekeeper" and does not file an objection, then no one else could be heard under Subsection (b)(3) on any party subject to Bill's disclosure requirements.

If, however, the UST is not a "gatekeeper" as described above, then Subsection (b)(3) applies independent of actions of the UST.

There are pros and cons to either interpretation of the Bill. If the UST is the gatekeeper that likely would prevent frivolous issues being raised before the Court and would ensure consistency in how the various applications are reviewed. The argument would be if the UST did not have a basis to raise an issue before the Court regarding a Professional's disclosures under the Bill, then one should assume that there is nothing meritorious to bring to the Court's attention.

On the other hand, if a party in interest under the Bill can raise any issues regarding a professional's disclosures, regardless of whether the UST files an objection with the Court, then there would be greater access to the Court.

It is important to note that regarding any fee application before the Court a party in interest may raise any issue regarding an applicant's request for payment. That right is completely independent

of any action by the UST. So the broader policy of access to the Court regardless of action of action by the UST under Subsection (b)(2) would be consistent with the general practice in dealing with fee applications in bankruptcy cases.

A gatekeeper role for the UST under PRRADA would be an exception to the general rule applied in the Title III cases, as it is in all bankruptcy cases, regarding the right a party in interest to be heard on fee applications.

**Point 2**

**Page 4, Section (c) - Jurisdiction**

Section (2)(c) states that the district courts shall have jurisdiction of all cases under this section. I believe that this section is accurate that jurisdiction lies in the district court generally under the Bill in the Title III cases. Further, under PROMESA section 306 establishes jurisdiction for Title III cases. Under that section issues dealing with fees are before the Title III court.

My concern is that Section 2(c) referenced above in PRRADA may be read to allow a party to bring an action regarding compensation sought by a professional person under sections 316 and 317 in a *district court* other than “the” court in which the Title III cases are currently pending. Such interpretation would lead to unnecessary use of court time, delay and additional expenses: the impacted professional person would have to remove any matter filed in another district court to the Title III Court. I believe that Section 2(c) should be clarified to provide that any issues arising under the application of the Bill be raised solely in the Title III Court.

As indicated above, Section 306 of PROMESA places issues dealing with fees before the Title III court. Therefore, if PRRADA is an amendment to PROMESA then there is no need to have a jurisdictional section in PRRADA. If however, PRRADA is **not** enacted as an amendment to PROMESA, then I believe any reference to jurisdiction should be linked to Section 306 of PROMESA to avoid any confusion.

I agree, as I acknowledged in my written statement referenced above and my statements at the hearing, with comments made at the hearing that any filing in a court other than the Title III court simply would be addressed by transferring it to the Title III court. However, I think it would be preferable not to have any confusion at all regarding this issue. Therefore, I believe that it is better simply to remove the jurisdictional section if PRRADA is an amendment to PROMESA. Alternatively, if it is not enacted as an amendment to PROMESA, then any PRRADA jurisdiction section should reference Section 306 of PROMESA.

**Point 3**

**Application of Court’s Discretion regarding Rule 2014(a) under PRRADA**

There appears to be consensus that the discretion applied in bankruptcy cases regarding Rule 2014 would apply in the application of PRRADA. As was discussed at the hearing, there appears to be an expectation that Rule 2014(a) will be applied under PRRADA as it is in cases under the Bankruptcy Code. Specifically as it is applied in “Mega” cases, the Court would have the discretion to use an interested party list limited by dollar amount, limited to litigants in the cases,

or other criteria as found by the Court to be reasonable under the facts and circumstances of the case in addressing the implementation of Rule 2014(a).

The concerns I expressed in my written statement and at the hearing are allayed if the Title III court has the discretion that courts have in bankruptcy cases in addressing Rule 2014 application and enforcement. It appeared to me that there was consensus at the hearing in this regard; therefore if this is the case, it arguably may not be necessary to clarify this issue. However, I believe it would be prudent to make a reference in the Bill to this issue by an insertion in Section 2(a)(1) such as: Nothing herein is intended to limit discretion of the Court in its implementation, enforcement and interpretation of Rule 2014(a) as such discretion is exercised in bankruptcy cases. Or perhaps a general statement or savings clause that PRRADA should be interpreted consistent with PROMESA and the application of Rule 2014(a) in bankruptcy cases.