

# PROMESA MYTH-BUSTER

## THE PROBLEM WITH THE GO BONDHOLDER CRITIQUE:

### *New Attacks are on Old Version of Bill*

**Myth #1:** PROMESA is almost identical to Chapter 9 because it borrows 105 provisions from Chapter 9.

**Myth Busted:** PROMESA is not Chapter 9.

PROMESA's "fair and equitable," "no unfair discrimination," and "best interests of creditors" tests come from battle-tested precedent that protects creditors.

PROMESA installs a federal oversight board with the **exclusive power** to install fiscal discipline and pave the road to recovery for creditors.

The oversight board is controlled by members nominated by congressional Republicans.

This unique game-changing protection for creditors is made possible because Puerto Rico is a U.S. territory and not a State. PROMESA is bespoke legislation under the U.S. Constitution's "**Territories Clause.**"

The **10th Amendment** prevents PROMESA from ever becoming applicable to States.

Pushing instead for untested solutions (or no solution at all) will result in more litigation and expose the federal government to potential claims and an ultimate tax-payer funded, cash bailout.

**Myth #2:** PROMESA violates the rule of law in three ways—Puerto Rico constitutional priorities are not recognized, creditor litigation is stayed, and excessive debts can be issued.

In fact, PROMESA does the opposite.

**Nothing in PROMESA alters priorities between and among creditors.** It provides a single forum where priorities can be enforced in an efficient and holistic process—PLUS, the bill would ensure senior claims (including GO full faith and credit bonds) must be paid before junior creditors. However, it is important to note these GOs bonds DO NOT have a security interest in any of the Commonwealth's assets. These Commonwealth GOs are in no way implied obligations of the

Federal Government nor do they represent a property interest, therefore PROMESA does not violate the Takings Clause.

It requires **classification of only “substantially similar” claims** and expressly respects the priority of claims in Section 301(e). Unlike the bankruptcy laws that led to Detroit, the federal court has **no discretion to deviate from those priorities**.

The myth about the non-bankruptcy stay is also based on a **prior draft of the bill**. This stay has been shortened to just 6 months in order to allow the federal oversight board members to get up to speed and develop a way forward.

The GO bondholders prefer a **litigation free-for-all strategy** against the Government of Puerto Rico.

**Litigation against our U.S. territory is value-destructive—period.** Puerto Ricans will continue to leave and move state-side (likely to Florida) rather than live in a litigation state where the delivery of essential services could be at risk. With fewer Puerto Ricans, there will be fewer people to tax, and less money to go around.

**At the end of the day, each and every creditor is guaranteed under PROMESA the “best interests of creditors” test is satisfied. This means every creditor must get at least as much as it would have gotten without federal law intervening. The test comes from SCOTUS precedent insulating the government from takings claims.**

**The critique of Sections 211-215 (Issuance of Bonds) is from an old draft of the bill. It is not in H.R. 4900.**

**Myth #3:** Non-bankruptcy stay (i) ensures creditor negotiations will be put on hold, (ii) allows funds earmarked for GO bondholders to be diverted to other creditors, and (iii) results in a bailout.

The non-bankruptcy actually **facilitates consensual negotiations** prior to a bankruptcy and PROMESA provides tools to implement any agreements.

The oversight board will control negotiations, not Puerto Rico’s local government. PROMESA will also allow creditors to propose their own solutions to the oversight board—it will be a two-way process.

PROMESA has no impact on Puerto Rico Constitutional priorities and just changes the gate-keeper to a neutral control board who is less likely to favor local interests and who will ensure creditors are treated fairly.

The status quo is an invitation for island-wide litigation and leaves Puerto Rico's fate to those who have mismanaged it. People will leave.

**PROMESA is not a bailout and there is no use of U.S. taxpayer dollars to solve Puerto Rico's financial crisis.** Americans for Tax Reform, National Review, Council for Citizens Against Government Waste, Americans for Limited Government, and R Street Institute **all agree with House Speaker Ryan.**

**Myth #4:** PROMESA is "contagious" and will increase borrowing costs for States.

Nuveen—the leading manager of tax-exempt municipal bonds—had this to say:

"If the proposed legislation were to become Law, **this would be a Territory specific law, and therefore not applicable to 98% of the municipal bonds in the marketplace** as they are issued by entities that are on the mainland."

"**It is our opinion there is no legal, budgetary or market-based reason to believe that this Territorial-specific legislation would set a precedent for even the most fiscally stressed states.**"

"**Since the draft legislation began to circulate . . . , the municipal bond market has generally been steady and has actually strengthened . . . .**"

**Myth #5: PROMESA will result in future federal funding.**

This is a tautology based on the above myths.

*The Coalition of COFINA Seniors is a group of creditors made up of retirees and individual investors in Puerto Rico and throughout the United States, as well as asset managers GoldenTree Asset Management LP, Merced Capital LP, Tilden Park Capital Management, Whitebox Advisors LLC, and others. The Coalition has come together in support of the "Puerto Rico Oversight, Management, and Economic Stability Act," legislation released by the House Natural Resources Committee. The framework ensures that creditors are treated fairly and equitably based on their legal standing and provides a strong foundation for federal legislation to address the Commonwealth's economic crisis.*