



The Hon. Pedro R. Pierluisi  
Written Testimony  
“Puerto Rico: Economy, Debt, and Options for Congress”  
Senate Committee on Energy and Natural Resources  
*October 22, 2015*

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee:

The Senate Committee on Finance held a hearing on the financial and economic challenges in Puerto Rico on September 29<sup>th</sup>, and I was a witness at that hearing. The House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on Puerto Rico’s political status and economic outlook on June 24<sup>th</sup>, and I was a witness at that hearing. This Committee held a hearing on Puerto Rico’s political status on August 1, 2013, and I was a witness at that hearing. The accompanying footnote contains links to my written testimony at these three hearings, because each is relevant to the issues that the Committee is examining today.<sup>1</sup>

Rather than reiterating the specific points I made in these previous statements, I will use this opportunity to make three broad points about how local and federal policymakers can help resolve the economic, fiscal and demographic crisis in Puerto Rico.

**The Puerto Rico Government**

First, at the risk of stating the obvious, the government of Puerto Rico must do a far better job of actually *governing* the U.S. territory. Puerto Rico confronts a complex array of challenges that have accumulated over the course of many years, as a result of policy errors of both commission and omission. On balance, the actions taken by the current administration since January 2013 have made Puerto Rico’s problems immeasurably worse. Puerto Rico’s government is not regarded as credible, because it is not viewed as capable or consistent. Puerto Rico’s challenges must be confronted with candor and competence; there are no shortcuts, silver bullets or gimmicks. In this effort, there is no substitute for good, effective, ethical leadership at the local level. In our democratic system, if such leadership is not being furnished, the remedy lies at the ballot box. Anyone who claims that Puerto Rico cannot govern itself, and requires unelected and unaccountable individuals from outside of Puerto Rico to administer the territory, underestimates the capacity of my constituents.

As I detailed in my testimony before the Senate Finance Committee, the Puerto Rico government must elevate its performance. Most fundamentally, it needs to implement a comprehensive strategy to

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<sup>1</sup>See September 29, 2015 Senate Finance Committee testimony [here](#); June 24, 2015 House Subcommittee on Indian, Insular and Alaska Native Affairs Subcommittee testimony [here](#); and August 1, 2013 Senate Energy and Natural Resources Committee testimony [here](#).

generate economic growth in the private sector by attracting job-creating investment from external and internal sources. To execute this strategy, the government must become more competitive in a range of areas, such as reducing bureaucracy, streamlining the permitting process, lowering the cost of electricity, improving infrastructure, and making the local tax code more simple and more fair. If my constituents cannot find decent employment that pays them a living wage, they will continue to relocate to the states in massive numbers, making it virtually impossible to achieve economic growth. (Since 2004, over 300,000 island residents have exercised their right as American citizens and moved to the U.S. mainland. Puerto Rico's population has declined by 9 percent, from 3.8 million to 3.5 million, in this time period.)

Additionally, in order to regain the trust of the Puerto Rico public and the investment community, the government must manage its public finances in a smart, disciplined and transparent way. The current administration has failed this test, and it is no excuse for local political leaders to insist that prior administrations failed it too. As I will explain in the following section, I believe there is an important oversight role that the federal government—namely, the Comptroller General of the United States, the chief executive officer of the Government Accountability Office (GAO), the investigative arm of Congress—can fulfill in this respect.<sup>2</sup>

Finally, Puerto Rico has a sizeable and complicated debt burden—\$72 billion spread across approximately 18 distinct bond-issuing public entities. However, if the Puerto Rico government takes serious steps to cut unnecessary spending, implement a fair tax system and collect the taxes it is owed, and execute a strategy focused on economic growth, the debt situation can be made far more manageable. It is also important to emphasize that the solvency of each bond issuer and the strength of the legal protections governing each class of bonds are different. The current administration's strategy is essentially to treat the territory's debt as if it were a single monolithic sum, which I believe is ill-advised. Puerto Rico is a United States jurisdiction and, in the U.S., the facts and the law *matter*. Each credit should be considered on a case-by-case basis in light of its particular financial and legal attributes. In general, the current administration—steered by outside advisors to whom the administration has yielded far too much power—has used confrontational tactics that have created adversaries out of many creditors who should be allies of the government or, at least, should be more inclined to find common ground with the government. The current administration should interact in a more constructive manner with the institutions and individuals, hundreds of thousands of whom live and work in Puerto Rico, that have loaned the government money. Picking fights that you are unlikely to win, whether in a court of law or in the court of public opinion, is not a wise or winning strategy.

This Congress is right to expect more from the government of Puerto Rico. More importantly, the people of Puerto Rico deserve—and they should demand—far better from their elected leaders.

### **The Federal Government**

Second, while I am the first to offer constructive criticism of the Puerto Rico government, I will not silently accept such criticism from Members of Congress of either party unless that criticism is accompanied by a forthright acknowledgment that the federal government has shared responsibility for

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<sup>2</sup> The Comptroller General is appointed by the President with the advice and consent of the Senate to a 15-year term. In the event of a vacancy, Congress establishes a bipartisan, bicameral commission to recommend individuals to the President.

this crisis. Instead of piously lecturing Puerto Rico about its shortcomings, Congress and the administration ought to correct the errors in their own policy towards the territory. Action in San Juan without corresponding action in Washington, D.C. will be insufficient, just as action in Washington, D.C. without accompanying action in San Juan will be inadequate. This is an American problem, not just a Puerto Rico problem, and it requires an American solution.

Because Puerto Rico is a territory, the federal government has a license to treat the island worse than the states under federal programs. Congress does not have to use this license, but it does so with dismaying frequency. Puerto Rico is treated in discriminatory fashion, or excluded entirely from, programs like Medicaid, Medicare, the federally-subsidized health insurance exchanges established by the *Affordable Care Act*, Chapter 9 of the federal bankruptcy code, the earned income tax credit, the child tax credit, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), and the Low Income Home Energy Assistance Program (LIHEAP). When it comes to programs within this Committee's jurisdiction, Puerto Rico is treated unfairly under the Land and Water Conservation Fund (LWCF), through which the federal government provides grants to states and territories to safeguard natural areas, preserve the habitat of endangered species, and provide outdoor recreational opportunities.

I have introduced bills to eliminate or mitigate these various disparities, the cumulative impact of which has been devastating for Puerto Rico. I also recently filed legislation—H.R. 3725—that would authorize the U.S. Department of the Treasury to guarantee repayment of principal and interest on future bonds issued by government entities in Puerto Rico, but only if the Treasury Department first makes a determination that the government of Puerto Rico has demonstrated meaningful improvement in managing its public finances. The legislation is modeled on a 1975 federal law that authorized the Treasury Department to make short-term loans to New York City, which was unable to obtain loans from its customary sources. Because the Puerto Rico government has lost the trust of investors, the government is effectively locked out of the capital markets. My bill would ensure that the government has the liquid assets—cash—necessary to meet its short-term obligations, like providing essential services, paying workers and repaying loans.

I urge Congress, acting on a bipartisan basis, to swiftly enact a legislative package that includes a number of the bills I have introduced to provide more equitable treatment for Puerto Rico under federal spending and tax credit programs. Congressional action is essential, and absolutely justified. According to the U.S. Census Bureau's Consolidated Federal Funds Report, which was last published in Fiscal Year 2010, federal spending on both direct payments to individuals and grants is far higher in the 50 states than in Puerto Rico as a result of the territory's disparate treatment under federal programs. In the case of direct payments, federal spending per capita is \$5,569 in the states, versus \$3,465 in Puerto Rico. In the case of grants, federal spending per capita is \$2,187 in the states, versus \$1,695 in Puerto Rico.<sup>3</sup> Naturally, the gap is even wider when you compare federal spending per capita in the poorer states to federal spending per capita in Puerto Rico.

Parenthetically, I have heard it suggested—including by a witness at the September 29<sup>th</sup> Senate Finance Committee hearing—that residents of Puerto Rico do not pay federal taxes and therefore

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<sup>3</sup> These statistics are contained in Food and Nutrition Service, U.S. Department of Agriculture, "Examination of Cash Nutrition Assistance," at page 6 (August 17, 2015), available at <http://www.fns.usda.gov/examination-cash-nutrition-assistance-program-benefits-puerto-rico>.

should receive less federal support than their counterparts in the states. This argument deserves careful scrutiny because the truth is more complex. Congress—acting on its own volition—has chosen to exempt most residents of Puerto Rico from paying federal taxes on income they earn in the territory. Nevertheless, in Fiscal Year 2014, the U.S. Internal Revenue Service collected nearly \$3.6 billion in federal taxes from individuals and businesses in Puerto Rico, which is nearly as much as the IRS collected from several states.<sup>4</sup> Residents of Puerto Rico are required to pay federal taxes on any income that they earn in the states or in foreign countries, and employers and employees in the territory are responsible for all federal payroll taxes. Notably, nearly half of all individuals living in the states do not owe federal income taxes, and yet are treated equally under all federal programs. Finally, the reality is that federal law—through the application of refundable tax credits like the earned income tax credit and the child tax credit—provides a substantial benefit to working-class families in the states that it denies to working-class families in Puerto Rico. To illustrate, consider a married couple with two children living in a state that earns \$25,000 a year, and then consider an identical family living in Puerto Rico. Both families owe the same federal payroll taxes. But the stateside family would receive over \$6,000 in federal tax credits, for an income of over \$30,000 after all federal taxes and credits. The Puerto Rico family, because it is ineligible for these credits, takes home less than \$24,000.<sup>5</sup> This is a useful example to bear in mind when the supposed “tax advantages” of living in Puerto Rico are cited as a justification for treating residents of the territory unequally under federal programs.

With respect to a potential legislative package, I recognize that there may be a desire on the part of certain Members of Congress of good faith to couple language that provides for better treatment of the territory under specific federal programs with language that provides for some degree of federal oversight of the Puerto Rico government’s financial management practices. Although I do not believe equality for U.S. citizens should be conditioned in such a manner, I am open to this concept. However, as noted above, I would oppose any legislative provision that removes authority over taxing and spending decisions from Puerto Rico’s elected leaders and places this authority in the hands of individuals who are not accountable to voters in the territory. Such a step would be perfectly legal, but profoundly unwise. Congress treats Puerto Rico poorly, and this is the principal reason why Puerto Rico’s economic and fiscal performance has been consistently poor. The logical solution is also the moral solution: Congress should treat Puerto Rico equitably. If Puerto Rico receives fair treatment from the federal government and has more capable local leadership, I am confident we can overcome our challenges. My constituents already endure the indignity of not being able to vote for their president and commander-in-chief, U.S. senators, or voting members of the U.S. House. Further eroding democracy in the territory cannot be the answer.

With respect to federal *oversight* (which I regard as potentially appropriate), as distinct from federal *control* (which I regard as inappropriate), let me make two points. First, on July 11, 2013, I testified at a hearing held by this Committee regarding S. 1237, the *Omnibus Territories Act*. One provision in that bill as introduced—Section 8—would have required the U.S. Comptroller General to evaluate the annual estimates of revenues and expenditures of the five territory governments, including the

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<sup>4</sup> See 2014 Internal Revenue Service Data Book, at page 12, available at <https://www.irs.gov/pub/irs-soi/14databk.pdf>. In Fiscal Year 2010, the Internal Revenue Service collected more federal taxes from individuals and businesses in Puerto Rico than in Vermont. See 2010 Internal Revenue Service Data Book, at page 12, available at <https://www.irs.gov/pub/irs-soi/10databk.pdf>.

<sup>5</sup> This example is based on the federal rules for Tax Year 2013.

government of Puerto Rico, and to make recommendations for improving the process by which those estimates are developed. I testified in strong support of this provision, noting that the Puerto Rico government had a history of overestimating the amount of revenue that would be collected and underestimating the amount of expenditures that would be made in the coming fiscal year. I pointed out that when a government makes inaccurate budget projections, it has a negative cascading effect—resulting in larger-than-expected deficits, excess borrowing, loss of market confidence, credit downgrades, higher interest payments, and the diminished ability to meet pension obligations and make other important investments. I expressed the view that GAO assistance could help the government of Puerto Rico better manage its finances.<sup>6</sup>

Following that hearing, however, representatives of the Governor of Puerto Rico contacted the Committee and urged it to remove Puerto Rico from Section 8, making the argument that this provision would interfere with “the government of Puerto Rico’s fiscal autonomy.” (To clarify, under the U.S. Constitution, Congress has nearly absolute power over the territory of Puerto Rico. Over time, Congress has delegated to Puerto Rico about the same authority over local matters that the states possess. What Congress has given, Congress can take away or modify as it sees fit.) When the Committee subsequently approved S. 1237, the bill contained a revised section that covered the four other territories, but not Puerto Rico.<sup>7</sup> It is fine for this Committee to criticize the Puerto Rico government for its poor budgeting practices, just as Members of the Senate Finance Committee recently did. But a dose of humility is in order. This Committee, by acceding to the Governor’s self-interested desire to shield Puerto Rico’s budget forecasting from GAO scrutiny, has contributed to the problem it now complains about. As part of any legislative package for Puerto Rico that Congress crafts, Congress could authorize the Comptroller General to evaluate the annual estimates of revenues and expenditures made by the Puerto Rico government and to make recommendations for how those estimates can be improved. If the Governor again opposes such a provision, his objections should be duly noted and ignored.

Second, I believe there is an additional role that the Comptroller General could fulfill in Puerto Rico, and a provision to this effect could be included in any forthcoming legislative package. Specifically, in 1973, Congress enacted a law—Section 715 of Title 31 of the U.S. Code—requiring the Comptroller General to audit “the accounts and operations” of the District of Columbia government on an annual basis. Although this provision is still technically on the books, it has effectively been superseded by subsequent federal statutes, and the GAO no longer conducts such audits as a matter of practice. Under the law, the GAO was required to submit each audit report to the Mayor of the District of Columbia, the Council of the District of Columbia, and Congress. The audit report could include any recommendations that the GAO considered appropriate. Within 90 days of receiving the audit report, the Mayor was required to inform the Council and Congress of the measures the District of Columbia government was taking to comply with the GAO’s recommendations. The law provided that the District of Columbia government had to make all relevant financial and other records available to the GAO, and to provide the GAO with the facilities to conduct the audit.

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<sup>6</sup> See [http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=672238c6-3204-49c0-82f9-d63614fc4ac4.pdf](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=672238c6-3204-49c0-82f9-d63614fc4ac4.pdf).

<sup>7</sup> S. 1237 was reported by the Committee on Energy and Natural Resources on April 8, 2014 and approved by the full Senate on June 18, 2014. The Committee converted Section 8 to Section 5 at its markup session on December 19, 2013. As noted, at the Governor’s request, the Committee amended this section to exclude Puerto Rico.

Although the District of Columbia and Puerto Rico are different in important respects, I believe this statute could serve as a suitable template for the territory. A legitimate criticism leveled against the Puerto Rico government by the Puerto Rico public, the investment community and federal officials is that the government is unable or unwilling to produce timely, accurate, audited financial statements that depict the true financial condition of the territory government, including its public corporations. A federal law tasking the Comptroller General with audit responsibilities for Puerto Rico could serve a valuable purpose for all stakeholders and help the territory government rebuild its damaged credibility.

In summary, I am open to exploring different ways to fashion a legislative package that combines provisions to give Puerto Rico more equitable treatment under federal law with provisions to provide for enhanced oversight of the Puerto Rico government's financial management practices by the federal government. But I would oppose any provision that crosses the line from federal oversight to federal control.

### **Puerto Rico's Political Status**

Third, the American public and their elected representatives must come to terms with a fundamental fact, which is that the main cause of Puerto Rico's multi-faceted problems is its undemocratic and unequal political status. As then-Chairman Wyden and then-Ranking Member Murkowski both recognized during their opening statements at this Committee's August 1, 2013 hearing, a clear majority of voters in Puerto Rico rejected this status in a locally-sponsored referendum in November 2012.<sup>8</sup> My constituents are now being governed under an arrangement to which they do not consent.

Notwithstanding the mass exodus of Puerto Rico residents to the states, I still represent 3.5 million American citizens—more than 12 of the 22 Senators that serve on this Committee and more than 42 of the 100 Senators that serve in this chamber. Not a single Senator would accept territory status for his or her constituents. So why should I accept territory status for *my* constituents? I do not accept it. To the contrary, I oppose it with every fiber of my being. Puerto Rico's status as a territory is not an abstract or theoretical problem. It is a moral, social and political wrong with crushing practical consequences for the men, women and children I represent.

There will always be some people and politicians who assert, despite overwhelming evidence to the contrary, that Puerto Rico's consistent underperformance relative to the 50 states over the course of many decades has nothing to do with the unequal treatment that Puerto Rico receives as a territory. There are even people and politicians who claim that Puerto Rico's status is an advantage rather than a disadvantage, though their voices have mostly gone silent in recent years. These people and politicians can always be counted on to find some reason why *now* is not the moment to address the issue of status. They are wrong on the merits, and they are on the wrong side of history. The time has come for my constituents to have equality in this union or to have independence outside of it. If Puerto Rico

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<sup>8</sup> See opening statement of Chairman Wyden [here](#) (“[T]here is no disputing that a majority of the voters in Puerto Rico—54 percent—have clearly expressed their opposition to continuing the current territorial status.”). See opening statement of Ranking Member Murkowski [here](#) (“Now that the plebiscite has been held, it is clear to me that the majority of Puerto Ricans do not favor the current territorial status as evidenced by the first question on the ballot.”)

can be compared to a weak and fragile body, then territory status is its depleted heart. Puerto Rico has the potential to be strong and stable, but it needs a powerful new heart.

I look forward to the day when the U.S. citizens that reside in Puerto Rico, especially the hundreds of thousands of men and women who have served this nation in the armed forces, can vote for their national leaders and fully participate in debates over national policy that affect every aspect of their lives. I look forward to the day when Puerto Rico will be treated equally as a matter of right, and does not have to beg this Congress for fair treatment. I look forward to the day when *my* constituents have the exact same rights and responsibilities as *your* constituents—not better treatment, not worse treatment and not “special” treatment.

That new day is just over the horizon. As noted, in a 2012 local referendum, Puerto Rico voters rejected territory status. In that same referendum, more voters expressed a preference for statehood than for any other status option. In 2017, it is likely that voters in the territory will confirm their desire for statehood in a *federally-sponsored* yes-or-no referendum on admission, pursuant to an historic law—P.L. 113-76—enacted by Congress in 2014 at my initiative. The government of Puerto Rico will then use any and all appropriate means to petition Congress to enact legislation making the territory a state. In the immediate term, there is much that the Puerto Rico government and the federal government can and should do to help the territory manage its economic, fiscal and demographic crisis. However, for Puerto Rico to truly prosper, it must be treated equally. And to be treated equally, the territory must become a state.