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## Congress Was Just Handed a Blueprint for Solving Puerto Rico's Debt Crisis.

A recent report concludes that the factors that contributed to Puerto Rico's debt crisis were inadequate management and oversight practices by the government. This included poor policy decisions by government leaders with regards to public debt financing and public pension funding, and a prolonged economic contraction, which has cut across all economic sectors in the island. Puerto Rico has an estimated $70 billion in public debt and close to 50 billion in unfunded liabilities.

In summary, General Accountability Office (GAO) report recommendations released May 9 include:

- modifying the federal tax exempt status for Puerto Rico municipal debt
- applying federal investor protection laws to Puerto Rico
- modifying the Securities and Exchange Commission's (SEC) authority over municipal bond disclosure requirements

From a practical point of view these recommendations may seem untimely. The government of Puerto Rico is currently under the jurisdiction of a congressionally mandated oversight board and in bankruptcy-like proceedings in the Federal District Court. The government also will not have access to the municipal bond markets for the foreseeable future,.

It should be noted that Rep. Nydia Velázquez (D-N.Y.) recently presented H.R. 1366 to amend the Investment Company Act of 1940 to protect mutual fund investors in Puerto Rico as other American citizens in the mainland. The House approved the bill with bipartisan support. In the previous Congress, the bill had also been approved by the House, but was blocked by the Senate.

This report comes on the heels of a series of pronouncements made in the last few weeks by various congressional members on Puerto Rico's financial crisis and political future.

Just last week Rep. Rob Bishop (R-Utah) as chairman of the House Energy and Natural Resources Committee, declared that he favored statehood for Puerto Rico. Sen. Bill Nelson (D-Fla.), who is up for reelection in the 2018 midterm elections, declared he would favor statehood if Puerto Ricans asked for it, apparently ignoring that in the last two local plebiscites the statehood alternative won.

Florida's Republican Gov. Rick Scott, who is running against Nelson for the Senate seat, also declared that he favors statehood for Puerto Rico. As a political commentator ironically noted, it would appear that the next elected Florida senator will also represent Puerto Rico.

On the other hand, both Sens. Marco Rubio (R-Fla.) and Lisa Murkowski (R-Alaska) have argued that statehood for Puerto Rico is not currently on the discussion table, and that economic and financial recovery are the main concerns. Of course, statehood and economic and financial recovery are not mutually exclusive, and it is possible to address both simultaneously.

In fact, GAO'S recommendations on modifying the federal tax exemption enjoyed by Puerto Rico municipal bonds silently underlines the status question. It is precisely because Puerto Rico is an

unincorporated territory — belonging to, but not a part of the United States.

As a matter of constitutional law, any other stateside municipal bond which hypothetically enjoyed a federal tax exemption would run afoul of the Uniformity Clause. This is the same issue that was raised by the December 2017 amendments to the Federal Tax Code, which classified Puerto Rico as a foreign jurisdiction for purposes of imposing a 20 percent taxation rate on American Controlled Foreign Corporations earnings at the time of entering the United States.

The GAO report is correct in pointing out that Puerto Rico's current fiscal and economic woes are due to the mismanagement by elected officials in Puerto Rico throughout the years.

Puerto Rico's government addiction to public debt financing, concurrent with a private sector dependent on federal and territorial tax incentives, has until recently benefited the financial goals of investors, manufacturers, and certain political sectors in Puerto Rico at the expense of long-term stability and growth.

As to be expected, the GAO report studiously avoids making any political or constitutional recommendation. Historically speaking Congress shoulders some of the responsibility by statutorily facilitating this state of affairs. In this context, PROMESA is a belated recognition by Congress that the unincorporated territorial model for Puerto Rico is spent.

Only when the political underpinnings of the current relationship between Puerto Rico and the United States are addressed can real progress be achieved on the social and economic fronts. Congress should act on GAO's recommendation as a step in the right direction, formally incorporating the territory of Puerto Rico, and treating in all matters it as any other state jurisdiction.

THE HILL

BY ANDRÉS L. CÓRDOVA, OPINION CONTRIBUTOR — 05/14/18

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