

Bond Case Briefs

Municipal Finance Law Since 1971

Nonpayment on Bonds Would Have Consequences for Puerto Rico.

Debt-ridden Puerto Rico faces its next big test in just a few days, when \$58 million in bond payments come due — and already the government is mounting a defense against the possibility that it will not have the cash.

Government advisers on the island have been sending memos to the news media over the last several days suggesting that even if the government cannot make the payments, it will not technically be in default — something Puerto Rico is desperately trying to avoid. A default would have enormous legal and financial consequences, putting the United States commonwealth in the uncomfortable company of Greece.

The payments coming due are on so-called moral obligation bonds, which the government can issue without any legal requirement to repay.

Despite the advisories from Puerto Rican officials, however, independent financial experts said even a small nonpayment, whether it is technically a bond default or not, would have major reverberations. Failing to pay the moral obligation debt would taint the credibility of all other types of Puerto Rican debt, they said, which in turn would drive down the value of other bonds and raise the cost of whatever money the commonwealth might still be able to borrow at that point.

“This may be a little bit like ‘beauty is in the eye of the beholder,’ ” said James E. Spiotto, a specialist in Chapter 9 municipal bankruptcy law, who is not advising Puerto Rico or any of its creditors. He said Puerto Rico was correct in saying that it had no legal obligation to pay the bonds. But, he added: “From a bondholder’s perspective, there was a promise to pay, a moral obligation, and that promise was not lived up to.” Therefore, he said, the market would say that Puerto Rico was in default, even if bondholders could not do anything about it.

Moral obligation bonds were created in the 1960s by John N. Mitchell, who later became President Richard Nixon’s attorney general. Mr. Mitchell devised them at the behest of Nelson Rockefeller, who was then governor of New York.

It was the failure of a moral obligation bond in New York in 1975 that ushered in the financial crisis that engulfed the city that year.

Puerto Rico now seems to be veering down a similar path. The commonwealth is facing overall bond-related debts of \$72 billion and an estimated \$40 billion of unfunded retirement benefits that it owes its public workers. In June, Gov. Alejandro García Padilla began calling the debts “unpayable” and advocating a “negotiated moratorium” on payments.

Since then, a working group created by the governor has been recommending sweeping changes in Puerto Rico’s economy — such as an exemption from the federal minimum wage and lower welfare payments. An investor group issued a report this week that said that the commonwealth could climb out of its crisis by raising its tax collection rate — which it said was lower than the average of any of

the 50 states — and obtaining bridge loans for the next two years.

So far, the United States government has declined to come to Puerto Rico's rescue. Jacob J. Lew, the Treasury secretary, said in a letter on Tuesday to Senator Orrin G. Hatch, chairman of the Senate Finance Committee, that there should be no bailout of Puerto Rico but that its financial situation was "urgent" and Congress should consider some orderly process to restructure the island's "unsustainable liabilities." Under current laws, Puerto Rico has no access to federal bankruptcy courts.

Despite the governor's pronouncement in June, Puerto Rico has continued making bond payments on time, and officials have even said the commonwealth might borrow another \$500 million.

"They're trying to pay their debts, but they don't have enough cash flow," Mr. Spiotto said. "It's like musical chairs. Ultimately, the music is going to stop, and there's going to be somebody who doesn't have a chair."

The official deadline for payment of the \$58 million is Aug. 1, a Saturday. If the first nonpayment occurs on Monday, the first business day after the deadline, the losers will be the holders of bonds issued by Puerto Rico's Public Finance Corporation.

The corporation, created in 1984 to help Puerto Rico finance various governmental activities, has a little more than \$1 billion of bonds outstanding. It cannot raise taxes, and instead relies on the legislature to appropriate enough money every year to repay the debts as they come due.

But when the legislature completed the current fiscal year's budget, no such appropriation was made. As a result, the corporation did not transfer the payment to the trustee who would, in turn, pay the bondholders.

Independent legal experts confirmed that moral obligation bondholders had no way of enforcing their claims. But they stopped short of saying that Puerto Rico would not be in default.

"It is extremely rare for a government to consider not paying" moral obligation bonds, said Timothy Blake, a managing director at Moody's Investors Service. "Most governments would view that as very negative to their reputation in the capital markets."

Rhode Island considered not repaying a \$75 million moral obligation bond in 2013, after the project being financed — a video game company led by Curt Schilling, the former Boston Red Sox pitcher — went bankrupt. After extensive debate, Rhode Island decided to keep paying the bondholders to protect its credit rating.

States that issue moral obligation bonds often do so because their constitutions strictly limit the issuance of general obligation bonds, which an entity is legally required to repay. Bondholders could, for example, seek a court-ordered tax increase if that was what it took to get their money.

Because the general obligation bond pledge is so powerful, states have also made it hard to issue too many of the bonds. In many states, they cannot be issued without approval by the voters.

That is why Mr. Mitchell came up with the moral obligation bond. At the time he was seeking to help Governor Rockefeller, who was trying to fight the loss of manufacturing jobs by mounting huge building projects and did not want to go through the unpredictable process of letting voters approve general obligation bonds.

Mr. Blake said lawmakers usually take their moral obligation bonds seriously and appropriate the

money each year. But in rare cases where they do not, the bondholders have no way of forcing them.

“The losses can be very severe,” he said. Moody’s has assigned the bonds of Puerto Rico’s Public Finance Corporation the rating of Ca, meaning not only that default is likely but also that any recovery will be small. It is Moody’s second-lowest rating.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JULY 29, 2015

Copyright © 2025 Bond Case Briefs | bondcasebriefs.com