H.R. 5278 — Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) (Rep. Duffy, R-WI)

CONTACT: Jennifer Weinhart, 202-226-0706; Brittan Specht, 202-226-9143

FLOOR SCHEDULE:

Scheduled for consideration on June 9, under a structured rule.

TOPLINE SUMMARY:

H.R. 5278 would establish an oversight board with the power to approve and set the fiscal plan and budget of any covered territory, and provide veto power over any action of the territorial government not in compliance with such plan. The bill would also allow a territory, at the discretion of the oversight board, to potentially restructure and discharge debts through an involuntary proceeding, though not explicitly through an existing chapter of the Bankruptcy Code. Creditors would be able to seek voluntary restructuring agreements through a collective action process under Title VI. The bill would also enact an automatic, retroactive stay against any litigation seeking to enforce liens against Puerto Rico lasting through February, 2017. Finally, the bill would provide for a number of provisions aimed at revitalizing the economy of Puerto Rico.

COST:

The Congressional Budget Office (CBO) estimates that the bill would have no effect on the federal deficit

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that the bill would allow for the involuntary restructuring of debt contracts that were not eligible for bankruptcy-style treatment when issued.

Some conservatives may be concerned that granting such *post facto* access to bankruptcy-style restructuring, including general obligation debts backed by the full faith and credit pledge of the territorial government, may set a precedent for similar treatment of State debt, which is backed by similar full faith and credit pledges.

Conservatives may be supportive of the pro-growth provisions in the bill including: potential reduction in the minimum wage for individuals under the age of 25; exemption from the new Department of Labor Overtime Rule; expedited permitting for revitalization projects; and, increased fiscal certainty as a result of oversight board management. However, conservatives may be concerned that the bill does not enact sufficient mandatory pro-growth reforms that would enable Puerto Rico to return to economic growth and avoid a similar future situation where Congress would need to readdress Puerto Rican debt.

- **Expand the Size and Scope of the Federal Government?** No. The oversight board is created as an entity within the territorial government and no federal funds are committed by the bill.
- **Encroach into State or Local Authority?** No. Puerto Rico and all U.S. territories are subject to the exclusive jurisdiction of Congress.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

In February, the RSC Steering Committee unanimously adopted the following position:

> *"The RSC opposes granting access to Chapter 9 bankruptcy for Puerto Rico or access to similar forced restructuring of debt. The RSC does support enacting pro-growth reforms that would alleviate the burden that current federal policies place on the territory."*

In April, the Steering Committee and Chairman Flores further articulated six principles for evaluating any legislation related to Puerto Rico's debt crisis, while remaining neutral on the proposed discussion draft of PROMESA. How PROMESA comports with these principles is detailed below.

1. Parties to credit negotiations must have a reasonable counterparty representing Puerto Rican debtors, subject to the supervision of an oversight board.
   a. PROMESA would place the oversight board in control of any involuntary restructuring. Voluntary negotiations would be carried out with debtors, but the oversight board could approve a voluntary restructuring offer for solicitation via the collective action process allowed under Title VI.
2. No federal taxpayer funds may be committed to bail out Puerto Rican debt.
   a. No federal funds are committed by PROMESA.
3. The relative priorities and legal continuity of claims and the general rule of law must be respected.
   a. The priority and continuity of claims would generally be subject to the same risks as those faced by creditors in standard bankruptcy proceedings. Any restructuring would be heard in an Article III court, rather than by a bankruptcy judge, where pension obligations might receive preferential treatment over other higher priority creditors. The sections of the bankruptcy code incorporated by PROMESA allow for cram-down proceedings that could provide favorable treatment to relatively junior claims, including pensions, at the expense of more senior claims, such as general obligation bonds.
4. Bankruptcy-style, involuntary restructurings must be avoided, as must other impairments of contracts.
   a. Title III of the bill is substantially similar to current law bankruptcy proceedings. One exception to this similarity is that cases would be heard by an Article III court rather than in Bankruptcy Court. While PROMESA would be codified by direction in Title 48 (Territories and Insular Possessions) of the US Code, it incorporates by reference substantial portions of the bankruptcy code, including 75 separate sections of law from Title 11 (Bankruptcy).
5. The oversight board must have powers sufficient to promote sound governance in the territory.
   a. The oversight board would have the authority to approve – and in the event of failure by the local government, develop – fiscal plans and budgets for the territory, as well as to veto any act of the local government not in compliance with such plan and budget. The oversight board would not have any power to act of its own initiative to implement government

reforms or other policies, but would be dependent on its negative checking power over the local government.

6. Pro-growth policies must be included, with the aim of restoring prosperity and opportunity to the people of the territory.
    a. PROMESA could allow for the enactment of some pro-growth polices under certain circumstances including: the authority for the Governor of Puerto Rico to lower the starting minimum wage for individuals under the age of 25 for up to four years; temporary exemption from the new Department of Labor overtime rule pending an analysis of the impact of the rule; and, potential expedited permitting process for revitalization projects. Some conservatives may believe that these pro-growth provisions are insufficient to alter the economic trajectory of the territory.

Background

Puerto Rico, an American island territory of 3.5 million American citizens, is over $70 billion in debt—more than any U.S. state other than New York and California. In 2015, Puerto Rico's Governor, Alejandro Garcia Padilla, declared the island's debt unpayable, with the Puerto Rican government subsequently defaulting on debt payments multiple times. Unlike bonds issued in U.S. states, those issued in Puerto Rico are statutorily exempt from access to bankruptcy proceedings, but the bonds enjoy other benefits that are not available to mainland issued bonds, like tax-exempt status at the local, state, and federal levels. These bonds have been extremely attractive for purchase, with an estimated 30% of the debt held by middle class Puerto Ricans and at least an estimated 15% held by mainland Americans investing for their retirement.

In addition to indebtedness struggles, Puerto Rico is also facing a governance, employment, and demographic crisis. The territory has roughly 73 mayors, representing the 3.5 million person population. Government employment makes up 23% of total employment on the island, compared to 15% in the rest of the US. Many Puerto Rican individuals and businesses receive tax waivers, and a large portion of taxes simply remain uncollected. Because of the situation on the island, Puerto Ricans are leaving for the mainland United States at an unprecedented rate—with over 200,000 Puerto Ricans leaving in the last five years, taking with it a large portion of the tax base. Roughly half of the nation is in poverty, only about 40% of the nation is even in the workforce, and roughly half of Puerto Rican families collect welfare, compared to 20% in the rest of the US.

Magnifying the issue, as Puerto Rican municipalities are not subject to bankruptcy, a number of services typically provided on the mainland by private enterprises are held and serviced by the Puerto Rican government and are similarly in debt. Major debtors include the Puerto Rico Sales Tax Financing Corp (Cofina), the Puerto Rico Electric Power Authority (PREPA), the Highway Authority, and the Aqueduct and Sewer Authority. In addition to other municipal debt, Puerto Rico has over $12 billion in constitutionally backed general-obligation debt, and over $45 billion dollars of unfunded, unbacked pension liability.

To address the fiscal crisis on the island, PROMESA would establish an oversight board to navigate the restructuring of a bankruptcy-like proceeding for the island's and its municipalities' debt. The oversight board would also oversee the development and enforcement of a fiscal plan and budget for the territory, as well as make a number of policies aimed at improving economic growth on the island.

A detailed title-by-title of PROMESA is set forth below:

Title I

Title I would provide for the establishment for a Financial Oversight and Management Board ("oversight board"), pursuant to the territories clause of the U.S. Constitution. It would allow for an oversight board for

any territory of the United States that requests and approves its adoption by resolution, but would mandate the immediate creation of an oversight board for Puerto Rico.

The oversight board would be comprised of 7 individuals, appointed by the president. The president could either choose individuals from each of the following categories, or choose nominees without regard to the categories but subject to Senate confirmation:

- One individual chosen by the President of the United States
- Two individuals may be chosen from two separate, non-overlapping lists provided by the Speaker of the House, one from each list. One of the lists must include individuals that either have a primary residence or place of business in Puerto Rico. Three possible selections must be on each list.
- Two members may be chosen from a list submitted by the Majority Leader of the Senate. Four possible selections must be on this list.
- One member may be chosen from a list submitted by the Minority Leader of the House. Three possible selections must be on this list.
- One member may be chosen from a list submitted by the Minority Leader of the Senate. Three possible selections must be on this list.

Following this process, the administration could attempt stack the board because the president is ***not*** obligated to pick from these lists if he can secure Senate confirmation of his proposed nominees. Should the president decide not to choose from any of the supplied lists, whoever submitted the lists may supplement them with additional candidates. One member still must have a primary residence or place of business in Puerto Rico. Should the president still choose not to appoint members from the supplied lists, he is free to pick whomever he wants, with the advice and consent of the Senate. Only the individuals not chosen from the lists must be confirmed by the Senate. The president retains this ability until September 30, 2016. After September 30, 2016, should the president still have vacancies on the board, he must fill the board with individuals from their corresponding lists provided by December 1, 2016.

Individuals appointed are required to have knowledge and expertise in finance, municipal markets, law or the operation business or government, and are not permitted to be an employee, official, or candidate for territorial office prior to appointment. Voting members are permitted to serve on the Oversight Board for a term of three years and can be reappointed. Vacancies to the board would be filled in the same manner as they were originally chosen. Members of the Oversight Board would not be paid for their service on the board. The Oversight Board would be required to adopt bylaws and procedures, with an affirmative majority vote of the full membership required to approve a fiscal plan, a budget, to veto a legislative act, or to deem an infrastructure project to be a critical project.

The oversight board would also allow for the governor, or a designee of the governor, to serve in an ex officio capacity, without voting rights. The board could, however, conduct executive sessions without the presence of the ex officio member.

The oversight board would be established within the territory, in addition to having offices in any other location as seen necessary. It would be staffed by an executive director, a revitalization coordinator, and any other necessary staff. Staff members could be designated from the territorial or federal governments. The oversight board would be permitted to hold hearings, obtain data from the government and creditors, enter into contracts, and perform other services. It would also be permitted to issue subpoenas, certify voluntary agreements between creditors and debtors, provide protections for existing agreements, file petitions to restructure, submit or modify plans of adjustment, impose penalties for violations, ensure prompt payment of taxes, and enable the enforcement of territorial law to prohibit public sector employees from striking.

Title I would permit any non-Title III actions to be pursued in the district court for the covered territory. It would require the board to submit an annual budget to the President and Congress, and would require the territorial government to provide funding for the operations of the oversight board. It would prohibit the

territorial government from exercising any control over the oversight board as an autonomous unit, and would not permit the territorial government to implement or enact any law that would impair the ability of the board to carry out its work and the purposes of this legislation.

Title II—Responsibilities of the Oversight Board

Approval of Fiscal Plans

This section outlines the methods for which the Oversight Board would approve territorial fiscal plans.

The government and instrumentalities would develop fiscal plans with advice from the Oversight Board. The board would set a schedule by which the governor must provide an approvable fiscal plan, including any revisions. An approvable fiscal plan must cover at least five fiscal years from the time it is certified by the board and:

(1) include estimates of revenues and expenditures;
(2) ensure funding of essential services;
(3) provide adequate funding for public pension systems;
(4) provide for the elimination of structural deficits;
(5) for fiscal years that do not have an effective stay, provide a sustainable debt burden;
(6) improve fiscal governance and accountability;
(7) enable the achievement of fiscal targets;
(8) create forecasts for revenue;
(9) include a debt sustainability analysis;
(10) provide capital expenditures and investments necessary for economic growth;
(11) adopt appropriate oversight board recommendations;
(12) include other information the oversight board deems necessary;
(13) ensure territorial instrumentality assets are not loaned, transferred, or used to benefit a covered territory or instrumentality, unless done so in accordance with the Puerto Rican Constitution, a certified voluntary restructuring agreement, a plan of adjustment, or a qualified modification. This provision would prevent secured collateral from being transferred between debtors; and
(14) respect the lawful priorities or lawful liens in the constitution, laws, or other agreements of covered territories or their instrumentalities.

Should the fiscal plan not meet the requirements described, the governor would be made aware of violations in the plan and would be given the opportunity to submit a revised plan. Should the governor not submit an approved plan within the scheduled period, the oversight board would develop and submit to the governor and legislature a fiscal plan that would be deemed approved, or the governor and the Oversight Board would also be permitted to jointly develop a fiscal plan that could be deemed approved.

Nothing in this section describes what would constitute adequate funding of the pension system, and would provide a great deal of deference to the oversight board in making this determination. Some conservatives may be concerned that this language extends a preference for fully funding pension obligations while funding only "sustainable" levels of debt service.

Approval of Budgets

Title II would also provide for the board's approval of annual budgets for the territory and for instrumentalities. Budget approval would follow a similar structure to that of the approval of fiscal plans, providing a schedule and process, including the opportunity for the governor and the oversight board to develop a plan in concert with one another. If the budget submitted by the governor is not in compliance, the governor would have the opportunity to amend the budget. A similar process would apply to budgets approved by the legislature. Should a budget not be approved within the given timeframe, the oversight board would develop a budget that would be deemed approved. Budgets must be in compliance with the

approved fiscal plan. The oversight board would be required to submit a revenue forecast for the period in which the budget would apply.

Should the governor and legislature submit an approved territorial budget before the date it is due, the board would issue a compliance certification. Similarly, if the governor and legislature submit an approved instrumentality budget prior to the due date, the board would issue a compliance certificate. Should the governor and legislature fail to produce territorial and instrumentality budgets by their assigned dates, the oversight board would submit budgets that would be deemed approved and would be in full force and effect.

Budget Non-Compliance

The governor would be required to submit annual reports each fiscal quarter detailing revenues, expenditures, and cash flow. If these are out of compliance with the certified budget(s), the governor will have an opportunity to correct the noncompliance. Should the governor fail to correct any inconsistency, the oversight board would make reductions in non-debt expenditures to ensure compliance with the certified budget. For instrumentality budgets not in compliance, the board would be permitted to make reductions in non-debt expenditures, institute hiring freezes, or prohibit instrumentalities from entering contracts or other financial transactions.

Review of Activities to Ensure Compliance with Fiscal Plan

The governor and legislature would be required to submit a cost estimate of each territorially enacted law, including certification that the law is in compliance with the approved fiscal plan. Should the law be deemed inconsistent with the fiscal plan or lack a cost estimate, the board may direct the legislature to provide the requested information. Should the law still remain inconsistent, the oversight board would be permitted, though not required, to take actions to force compliance with the fiscal plan, including the ability to prevent the enforcement of the law. At the request of the legislature, the board would be able to perform a preliminary review of proposed acts. The board would be permitted to, but not required to, establish policies for the board to review contracts, executive orders, rules, and regulations prior to their execution.

The oversight board would be required to work with the territorial government to provide transparency in contracting. It would require a registry of contracts executed.

Similar to the compliance of laws, should the oversight board find a contract not in compliance to oversight board policies, the board could choose to ensure that the contract would not negatively impact the territory's compliance with the fiscal plan, including preventing execution of the contract.

This section would prohibit the enactment of new laws that would authorize budgetary transfers between instrumentalities between the time this legislation is enacted and when the board comes to full membership. If funds or assets are transferred in that period, they would be subject to board review. Any reprogramming of funds following that time period is subject to board approval.

The board would not be permitted to impede territorial actions that are taken to: comply with court-ordered consent decrees or injunctions, administrative orders, or settlements with federal agencies pursuant to federal programs; implement federally authorized programs; or implement territorial laws that are consistent with the fiscal plan and execute federal requirements.

Recommendations on Financial Stability and Management Responsibility

The oversight board may make recommendations to the legislature or the governor of a territory in an effort to secure compliance with the fiscal plan and budgets, and to encourage economic growth, financial stability, and efficiency in the territory. The oversight board would be permitted to, but is not required to, make recommendations pertaining to alternatives for funding pensions and for the privatization of entities within the territorial government. The territorial government is not required to provide pension alternatives or privatize instrumentalities, however.

In the event recommendations are made, the governor and legislature must, within 90 days, respond to the Oversight Board, Congress and the president as to how the recommendations will be implemented, or why they will be ignored. The oversight board would have the authority to incorporate any recommendations, adopted or not, into the fiscal plan, but could not impose implementing legislation.

Oversight Board Duties Related to Restructuring

Prior to issuing a restructuring certification for an entity, which is required to initiate involuntary restructuring proceedings under Title III, the oversight board would be required to determine that: (1) the entity has made a good-faith effort to reach a consensual agreements; (2) the entity has audited financial statements and made the financial information public; (3) the entity is a covered territory or instrumentality that has adopted a certified fiscal plan; and (4) has no order approving a voluntary qualified modification per Title VI, or if a qualifying modification is in place, the entity is not able to make its debt payments notwithstanding such qualifying modification. A minimum of five of seven board members are required to vote in the affirmative to issue a restructuring certification that these requirements have been met.

Oversight Board Authority Related to Debt Issuance

This section would prohibit the territorial government from issuing debt without approval of the oversight board.

Required Reports

This section would require the oversight board to submit a report to the president, Congress, the governor, and the legislature, detailing progress made, assistance by the board, recommendations, the manner in which funds are allocated to the board, and other activities. It would also require the governor to submit a report to the oversight board on all discretionary tax abatement or relief agreements; however, nothing in the act would be interpreted to limit the power of the territorial government to modify the tax abatement or relief agreements. Finally, the oversight board would be required to, when possible, make quarterly reports on cash flow available for debt payments.

Termination of the Oversight Board

The oversight board would terminate upon certification that: (1) the territory has adequate access to long and short-term credit markets at reasonable rates; (2) the territorial government has had complying budgets for four consecutive years; (3) the territorial government has had a balanced budget during each of the four consecutive years.

No full faith and credit of the United States

This section would prohibit the full faith and credit of the United States from being pledged to any bond issued by the covered territory during the time which an oversight board is in effect. Any claim for which the United States is found to be liable would be subject to the appropriations process. Finally, it would prohibit the authorization of any federal funds for payments of liabilities of the territorial government.

Analysis of Pensions

This section would require the oversight board to analyze the pension obligations of the territorial government, if the oversight board determines the pension system is underfunded.

Intervention in Litigation

This section would authorize the oversight board to intervene in any litigation filed against the territorial government.

Title III- Adjustment of Debts

Though there does not exist in the U.S. code an instrument for territories and their municipalities to file for bankruptcy, Title III effectively allows them to do so with limited variance to the standard bankruptcy process. This title is comprised of 75 sections spanning multiple chapters of the U.S. Bankruptcy code,

including substantial portions of Chapter 9, and cram-down (11 USC 1129(b)), which is an involuntary process in which debt reorganization is forced, despite the opposition of majorities of some classes of creditors. It would allow for all types of debt to be subject to adjustment, regardless of priority of claims—though it does allow the oversight board to determine if creditors within an entity are substantially similar, based on whether claims are secured and whether they have priority over other claims. The Federal Rules of Bankruptcy Procedure would apply to cases brought under Title III.

Under this title, only entities that are subject to an oversight board may be debtors. Territorial power to control the territory and its instrumentalities is preserved and maintained by the territory, save for the exceptions enumerated in other Titles, like the moratorium on the issuance of new debt. It would preempt any unlawful executive orders that would amend or modify the rights of debt holders, and it would prohibit an executive order from diverting funds from one instrumentality to another.

The oversight board is the sole authority authorized to initiate a proceeding for an involuntary debt restructuring of an entity. It would also permit the joint filing of petitions if the debtors are determined to be related, and would allow for the joint administration of related cases. In the event of objection, the court may dismiss the petition if it does not meet Title III requirements, except during the first 120 days after a case is commenced. This section would not prevent a claim holder from voting on a modification under Title VI of this act.

The court would not be permitted to interfere with: (1) the political or governmental powers of the debtor; (2) the property or revenues of the debtor; or (3) the use of income-producing property by the debtor.

Title III also provides for exclusive and original jurisdiction for all cases originating under this title. It would also allow for appeals to be handled in a similar manner in which proceedings are typically taken to the court of appeals from the district court.

Unlike standard bankruptcy proceedings, cases would not be heard in Bankruptcy Court but in an Article III federal court. Venue under this title would either be the Federal District Court for the covered territory or instrumentality, or, if the oversight determines necessary, venue is also permissible in a location in which the oversight board maintains an office. In the case of Puerto Rico, this could be the District of Columbia should the oversight board establish an office there.

The Chief Justice of the United States is authorized to select a presiding judge. If he chooses not to do so, the designation is left to the chief judge for the court of appeals. This section would allow for a district court to abstain in the interest of justice, from hearing certain proceedings.

Once the board has issued a certification pursuant to Title I, only the oversight board would be permitted to file a plan of adjustment. The oversight board is permitted to repeatedly change a plan of adjustment prior to confirmation, so long as the changes are consistent with Title III.

The court must confirm a plan if: (1) the plan complies with the 75 incorporated provisions of the bankruptcy code; (2) the plan complies with the provisions of Title III of this act; (3) the debtor is not prohibited from undertaking actions necessary to carry out the plan; (4) unless otherwise agreed to, the holders of claims pursuant to section 507(a)(2) of the bankruptcy code will receive cash equal to the allowed amount of the claim; (5) the debtor has received the necessary approval of the plan, or the provision is conditioned on the securing of approval; (6) the plan is both feasible and in the best interest of the creditors and whether non-bankruptcy alternatives may yield a better outcome; (7) the plan is consistent with the fiscal plan.

The makeup of the oversight board will have a substantial influence on the potential outcomes from this title. Whether the territory has fulfilled its obligation to negotiate in good faith is at the discretion of the board, as is whether the priorities of liens are respected. General-obligation debt, backed by the full faith

and credit of the local constitution would also be subject to forced restructuring. Finally, the board has a great deal of discretion in determining whether the plan is feasible and in the best interest of the creditors. Due to the inherent ambiguities of the appointment process for the board, conservatives may lack confidence in the board's ability to discharge its duties in accordance with Congressional intent.

The oversight board would operate as the representative of the debtor, and can take action on behalf of the debtor to file a submission of modification or plan of adjustment.

Title IV—Miscellaneous Provisions

Title IV provides for several miscellaneous provisions, including changes to the minimum wage and the automatic stay of litigation. It would prohibit the ability of the act to limit Congress's authority to legislate over the territories and would maintain the right of Puerto Rico to determine its future political status.

This title would give the governor the authority, with the approval of the oversight board, to allow for a time period of up to four years, for employers to pay employees hired after the enactment of PROMESA, a wage that is less than the minimum wage for individuals up to 25 years of age. This ability would extend only to the duration of the oversight board. The ability to adjust the minimum wage is at the discretion of the governor, not the oversight board, as many conservative members had initially requested.

This title would also exempt Puerto Rico from the Department of Labor overtime rule for executive, administrative, professional, outside sales, and computer employees, until the Government Accountability Office has completed a study on the economic condition of Puerto Rico. The Secretary of Labor, following receipt of the study, would then be able to determine if the rule should apply to Puerto Rico. This section would also include a sense of Congress that the U.S. Census Bureau includes Puerto Rico and other American territories in its data collection efforts.

This title would provide for an automatic, retroactive stay of litigation upon enactment against Puerto Rico and its instrumentalities, for actions following enactment, or those commenced after December 18, 2015, until the later of six months following enactment, or February 15, 2017. This would prohibit the ability of creditors from enforcing their rights in court during the duration of the stay. The stay would apply retroactively, meaning it would also be applicable to proceedings that were commenced prior to the enactment of PROMESA. An extension would be permitted by the oversight board for 75 days, if the board certifies the time is needed to complete a Title VI voluntary modification, or for 60 days, if the U.S. District Court for the District of Puerto Rico makes a similar determination.

If a party were to suffer irreparable damage due to the stay provision, the District Court may, at its discretion, grant relief from the stay to certain parties.

Title IV would also grant creditors the right to sue if any property is transferred between instrumentalities in violation of an agreement or law that a creditor has a security interest in or lien on, following the completion of the stay and during the tenure of the oversight board.

The stay provision would not authorize the government of Puerto Rico to cease payment on its liabilities. To the extent the oversight board determines is feasible, the Government of Puerto Rico must continue to make scheduled interest payments throughout the duration of the stay.

Nothing in this title would prevent the holder of a liability claim from voting on or consenting to a modification under Title VI of PROMESA.

This title would also allow the territories to make purchases through the General Services Administration.

Title IV would also require a GAO study on Small Business Administration programs in Puerto Rico.

Title IV would allow for the creation of a bipartisan, bicameral Congressional Task Force of eight members—four from the House of Representatives, four from the Senate, split evenly between the major political parties. It would be required to provide a report to Congress on difficulties in current law to produce economic growth to Puerto Rico, including access to health care programs, the economic consequences of a Puerto Rico Department of Health Regulation, and any other information.

Title IV would also require the GAO to submit a report to Congress on the conditions of Puerto Rico that led to the level of debt, the actions of the government in improving the fiscal situation of the territory, and recommendations to prevent similar situations.

Title V—Puerto Rico Infrastructure Revitalization

Title V would authorize a series of infrastructure revitalization initiatives by establishing a revitalization coordinator under the Oversight Board, but appointed by the Governor of Puerto Rico. Prior to the appointment of the coordinator and within 60 days of the appointment of the full membership of the Oversight Board, the Oversight Board would be directed to submit to the governor no less than three nominees for appointment. If the governor fails to select a Revitalization Coordinator among the three nominees, the Oversight Board would be required, by majority vote, to appoint a Revitalization Coordinator from the list of nominees provided.

The Oversight Board would be mandated to only nominate persons who: have substantial knowledge and expertise in the planning, predevelopment, financing, development, operations, engineering, or market participation of infrastructure projects; do not currently provide, or in the preceding three calendar years provided, goods or services to the government of Puerto Rico; have never been an officer, employee of, or former officer or employee of the government of Puerto Rico in the preceding three calendar years.

Title V would outline specified criteria for a project to be designated as a critical project. In doing so, any project sponsor would be authorized to submit any existing, ongoing, or proposed project to the Revitalization Coordinator. Each submission would be required to include: (1) the impact the project will have on an emergency; (2) the availability of immediate private capital or other funds; (3) the cost of the project and amount of Puerto Rico government funds available; (4) the environmental and economic benefits provided by the project, including the number of jobs to be created that will be held by residents of Puerto Rico; and (5) the status of the project if it is existing or ongoing.

The Revitalization Coordinator would be authorized to require, at his discretion, submissions to include any or all of the following criteria that assess how the project will: reduce reliance on oil for electric generation in Puerto Rico; improve performance of energy infrastructure and overall energy efficiency; expedite the diversification and conversion of fuel sources for electric generation from oil to natural gas and renewables in Puerto Rico; promote the development and utilization of energy sources found on Puerto Rico; contribute to transitioning to privatized generation capacities in Puerto Rico; and support the Energy Commission of Puerto Rico in achievement of its goal of reducing energy costs and ensuring affordable energy rates for consumers and business.

All Puerto Rico agencies that will have a role in the permitting, approval, and authorizing project submissions would be required to submit to the Revitalization Coordinator the agency's expedited permitting process. If an agency fails to do so, the governor and the Revitalization Coordinator would be directed to develop an expedited process.

For each submitted project, the Revitalization Coordinator in consultation with the governor and relevant Puerto Rico agencies would be directed to develop a Critical Project Report within 60 days of the project submission and submit it to the Oversight Board. The board would thus be directed to approve or disapprove of the project as a Critical Project by majority vote, not later than 30 days of receiving the submission.

Title V would establish the Interagency Environmental Subcommittee to evaluate environmental documents required under Puerto Rico law for any Critical Project within the expedited permitting process established by the Revitalization Coordinator. The bill would further ensure that a Critical Project approved prior to the termination of the Oversight Board continue to receive expedited service. A Critical Project Sponsor may, in writing, notify the Oversight Board of the failure of a Puerto Rico agency or the Revitalization Coordinator to adhere to the expedited permitting process. In doing so, the Oversight Board would be required to direct the offending party to comply with the expedited permitting process. The governor would be required to submit to the Oversight Board any law duly enacted during any fiscal year in which the board is in operation that may affect the expedited permitting process. Title V further stipulates that no Puerto Rico agency may include in any certificate, right-of-way, permit, lease, or other authorization issued for a Critical Project any term or condition that may be permitted, but is not required, by any applicable Puerto Rico law, if the Revitalization Coordinator determines the term or condition would prevent or impair the expeditious construction, operation, or expansion of the Critical Project.

At the request of the Revitalization Coordinator and within 30 days of receiving such a request, each federal agency with jurisdiction over the permitting, or administrative or environmental review of private or public projects in Puerto Rico, would be directed to name a point of contact who will serve as that agency's liaison with the Revitalization Coordinator. The Revitalization Coordinator and the relevant point of contact would be required to cooperate with each other to ensure the expeditious review of a loan guarantee application for each Critical Project.

Any legal claim arising under Title V would be required to be brought no later than 30 days after the decision or action giving rise to such claim. The District Court for the District of Puerto Rico would be authorized to set any action brought under Title V for expedited consideration, taking into account the interest of enhancing Puerto Rico's infrastructure for electricity, water and sewer services, roads and bridges, ports, and solid waste management to achieve compliance with local and federal environmental laws, regulations, and policies. Title V further clarifies that nothing in this bill would be intended to change or alter any federal legal requirements or laws.

<u>Title VI—Creditor Collective Action</u>

Title VI would provide for a voluntary process, prior to a Title III restructuring, that debtors and creditors may use to achieve a modification without entering the bankruptcy process. This title is entirely voluntary. Modifications may be proposed by the issuer, or by one or more holders of the issuer's outstanding bonds.

In order to consent to a qualifying modification, the oversight board would be required to divide the creditors or each debtor into different pools. If a pool contains one or more secured bond, the pool would be deemed a secured pool. These pools would be divided through the consideration of criteria including the governing priority of arrangements, whether they were issued with a constitutional pledge of the full faith and credit of the territory, and whether senior or subordinate bonds were issued. For each issuer that has issued multiple bonds with different levels of priorities, separate pools would be established corresponding to the priority arrangements of each bond holder against each issuer. For issuers with senior and subordinate bonds, separate pools shall be established with relative priority arrangements. Separate pools will be created for issuers that have guaranteed and non-guaranteed bonds. For issuers with dedicated revenue streams, separate pools will also be created. Each pool would be permitted to vote on a qualifying modification, which constitutes a voluntary plan to restructure debt.

Any preexisting voluntary agreement classifying insured and uninsured bonds into different pools would be considered valid if the agreement has been agreed to by the holders of a majority of the principal amount of all uninsured bonds in the modified pool, and holders of a majority in amount of all insured bonds.

For a plan to be accepted, a two-third majority of the outstanding principal amount must vote in favor of the proposed modification. Parties dissenting may be forced into accepting the modification by a district

court. Every pool of debtors must achieve the two-thirds voting threshold in order for a Qualifying Modification to be deemed approved.

Title VII—Sense of Congress Regarding Permanent Pro-Growth Fiscal Reforms
This title would provide a sense of Congress that any solution to Puerto Rico's fiscal crisis should be comprised of lasting pro-growth solutions, including those that feature a free flow of capital between U.S. possessions and the rest of the United States.

The Committee report can be found here.

OUTSIDE GROUPS IN SUPPORT:

Americans for Tax Reform
Citizens Against Government Waste
Americans for Limited Government
R Street
James Madison Institute

OUTSIDE GROUPS IN OPPOSITION:

Heritage Action (KEY VOTING NO)
Frontiers of Freedom
60-Plus Organization/Mainstream Bondholders
Center for Individual Freedom
Conservative Action Project (Memo to the Movement – 43 signatories)

OUTSIDE GROUPS—OTHER ANALYSIS:

National Taxpayers Union
FreedomWorks
National Review Editors

COMMITTEE ACTION:

H.R. 5278 was introduced on May 18, 2016, and was referred to the House Committees on Natural Resources, Judiciary, Education and the Workforce, and Small Business. It was reported as amended by the Natural Resources Committee by a vote of 29-10, on May 25, 2015.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article IV, Section 3, Clause 2.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*