

**Questions for the Record**  
**Senator Orrin G. Hatch**  
**Senate Judiciary Committee**  
**Hearing: “Puerto Rico’s Fiscal Problems:**  
**Examining the Source and Exploring the Solution”**  
**Tuesday, December 1, 2015**

**Questions for all Panel II Witnesses**

1. Would extending Chapter 9 to Puerto Rico carry any negative consequences for the island? I’m not talking just about bondholders. I’m talking about the commonwealth as an entity. If Congress extended Chapter 9 to Puerto Rico and island municipalities began taking advantage of Chapter 9, how would that impact the island’s bond rating, its creditworthiness, its attractiveness as an investment location, etc.? Is there a scenario under which extending Chapter 9 to Puerto Rico would actually make the island’s fiscal situation worse?

Answer: I do not believe extending Chapter 9 to Puerto Rico would worsen the current state of affairs. It is difficult to see how the Commonwealth’s bond ratings or creditworthiness would fall to lower levels than what they currently stand at. On the contrary, Chapter 9 would provide order and certainty to a currently uncertain process. It would allow eligible entities to reorganize themselves and their operations in a manner that would allow them to better provide services to citizens while servicing their corresponding debt and meeting obligations within existing limitations. The extension of Chapter 9 should also not affect the Commonwealth as an investment destination. On the contrary, the application of federal laws and the operation of federal courts in Puerto Rico has always been touted as one of the advantages of doing business in Puerto Rico. This extension will further serve to provide certainty in an area that is currently devoid of the benefits that many investors perceive federal laws add to the investment environment in Puerto Rico.

2. We’ve heard arguments that extending Chapter 9 to Puerto Rico would be unfair to bondholders because it would reduce their return on their investments. Some have argued that any Chapter 9 extension should apply only to future debts. As an initial matter, it would be helpful to know whether past bankruptcy code reforms have applied to existing debts, or whether bankruptcy reforms have typically applied only to future debts. Can you offer any insight on this matter? And if past reforms have applied to existing debts, have any of those reforms been analogous to what we’re considering here—namely, extension of bankruptcy access to entities who previously had no such access? I asked this question at the hearing, but I didn’t get a complete answer and I believe it’s extremely important.

Answer: There is ample precedent showing that U.S. Bankruptcy Code amendments have typically been applied to existing debts, thereby modifying or impairing existing contractual obligations. Please see attached articles on the subject of applying new bankruptcy provisions to existing debts. In the case of “Municipal Bankruptcy: A Guide for Public Finance Attorneys,” please see chapter 2.

3. Another question on Chapter 9 and retroactivity: If Congress steps in and changes the rules of the game after the fact to allow municipalities to discharge existing debts, do we need to worry about the message that sends to other debtors and other creditors across the country? Parties negotiate contracts according to existing laws. If we step in and suddenly change the rules, does that tell parties in other situations that the rules are actually more up for grabs than they might think? Does that tell other states or other municipalities outside Puerto Rico that if things get bad enough, Congress will simply change the rules to help ease the pressure?

Answer: The enactment of federal laws that change the rules of the game is commonplace and municipal finance should not be the exception. For example, changes in law applicable to healthcare and other highly regulated industries consistently affect entities that entered into contracts with such companies under a set of rules. When Congress sees fit to change those rules (either through direct legislation or executive delegation), such entities must adapt to a new set of rules that may not be consistent with what they originally bargained for.

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