

HEDGE PAPERS NO. 61

THE GOLDEN REVOLVING DOOR

*A Planned Debt Restructuring Agreement Could
Block Legal Accountability of Individuals Behind
Puerto Rico's Debt Crisis*

Revolving door bankers have negotiated a debt restructuring deal that will shut down options for legal accountability, leave credit unions unable to secure valuable financial damages, and stick cities with the tab.

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EXECUTIVE SUMMARY

*The Hidden Costs of the
Government Development Bank
Restructuring Deal*

An agreement nearing approval as part of Puerto Rico's debt restructuring process could block many forms of legal accountability for a key set of government officials and bankers that oversaw the creation of the debt – and stick credit unions and municipalities with the tab.

The restructuring agreement for \$4 billion in Government Development Bank (GDB) debt was negotiated quietly and behind closed doors, as part of PROMESA's (The Puerto Rico Oversight, Management, and Economic Stability Act) out-of-court Title VI process, by conflicted players – revolving door figures who were previously officials at the GDB, have played some oversight role with respect to the debt, and/or have close ties to financial institutions that have profited from debt issuances over the years.

The agreement is now in the voting stage, and will need to secure votes in favor from two-thirds of GDB creditors. Once the agreement is final, little-noticed provisions in the agreement itself and in the GDB Restructuring Act of 2017 will take effect that will block significant forms of legal action against these officials and related institutions. **In other words, people who oversaw and profited from the creation of Puerto Rico's massive debt have negotiated releases from legal accountability for themselves and their associates.**

One of these revolving door bankers was Gerardo Portela, Governor Ricardo Rosselló's lead

representative in negotiating the agreement. Until July, Portela was executive director of Puerto Rico's fiscal agency (AAFAF) and was formerly an executive with oversight of public finance deals at Santander, a bank which profited heavily from the creation of the debt. Rosselló removed Portela from his position in July, creating the appearance of distance between this conflicted network and the final deal.

Puerto Rico's credit unions and municipalities are key parties to the agreement, and many will need to vote in favor for it to go through. The restructuring could result in significant financial damage to both:

- **CREDIT UNIONS** invested in Puerto Rico's debt early on and have suffered significant financial harm as a result of the debt crisis. As a result of the releases in the agreement, these credit unions will give up their ability to secure valuable financial damages that could outstrip their recoveries. The solicitation statement for the agreement warns bondholders of this risk.
- **MUNICIPALITIES** will face major financial consequences if the agreement goes through. They will be required to provide the majority of the payment stream that the refinanced bonds will depend on: payments on GDB loans, which are largely sourced from property and sales taxes. These loans have not been written down substantially, unlike the GDB bonds. As they face growing deficits, hurricane recovery costs, and funding cuts, municipalities will likely struggle to meet these obligations, and tax hikes, more aggressive collections, layoffs, privatizations, and support from the Commonwealth could result.

The agreement provides for a 55% recovery on existing GDB bonds. This is a significant haircut for early investors in the debt like credit unions. On the other hand, hedge fund speculators that purchased the debt at low prices could secure massive profits (some GDB bond prices have more than tripled

since March 2017, before the first Restructuring Support Agreement, RSA, was announced). These profits are, however, far from certain, as long as investors do not sell out of their positions. Notably, the bond document warns that investors should not expect to receive full payment on the new bonds' principal and interest, given insufficient underlying payment streams.

Two key aspects of the restructuring agreement provide broad releases from legal liability for government officials and bankers involved in creating the debt:

1. Once the restructuring deal closes, the GDB and GDB officials, as well as other "agents or representatives" of the GDB – which could include banks, law firms, and other outside parties – will be shielded from civil legal action brought by Puerto Rico government authorities. This is due to a little-noticed article in the GDB Debt Restructuring Act of 2017. The law could be interpreted to apply not only to GDB-issued debt, but all GDB actions.
2. The legal releases provided for in the agreement are broad, and block many forms of legal action with respect to not just the GDB and creditors, but also their current and former officers and directors – as well as attorneys, investment bankers, financial advisors, and a host of other associated individuals and entities. The solicitation statement acknowledges that these legal releases could block potentially valuable claims.

Taken together, these releases are especially significant because they shut down important paths to legal accountability: credit unions and government institutions are among the few entities in Puerto Rico with standing to bring civil claims against those involved in creating and issuing the debt.

The agreement has been negotiated, on both the government and creditor side, by a tightly-networked group of revolving door bankers with current and

former roles at the Government Development Bank and Wall Street banks involved in overseeing, driving, and profiting from the creation of the debt:

- **Gerardo Portela:** AAFAF's recently demoted Executive Director worked for many years for Santander Securities, and was involved in \$5 billion in public financing deals in Puerto Rico. As AAFAF executive director, he oversaw the GDB restructuring process for the government, and so is at least partially responsible for the broad releases from legal liability included in the agreement.
- **Jorge Irizarry Herrans:** Irizarry is participating in the negotiations around the GDB restructuring as Executive Director of Bonistas del Patio, a nonprofit organization that is representing Puerto Rican bondholders. As GDB president in 2007-2008, he authorized three disastrous Employees Retirement System bond issues. Irizarry had family ties to an executive at UBS involved in the bond issues.
- **Paul Hopgood:** The two credit union coalitions that are parties to the deal are being advised by Hopgood, a former Santander executive.
- Additionally, the agreement requires approval from the federal oversight board to move forward, and several members of the board potentially gain new protections from some forms of legal action as part of the deal, since they are former GDB officials and/or have close ties to financial institutions that were heavily involved in creating the debt. The most prominent example of this is Carlos Garcia, who was a central figure in the revolving door between Santander and GDB and is now a member of the oversight board.

SOLICITATION STATEMENT



SOLICITATION OF QUALIFYING MODIFICATION IN RESPECT OF

SENIOR NOTES, 2006 SERIES B,
SENIOR NOTES, 2010 SERIES A,
SENIOR NOTES, 2010 SERIES B,
SENIOR NOTES, 2010 SERIES C,
SENIOR NOTES, 2010 SERIES D,
SENIOR NOTES, 2011 SERIES B,
SENIOR NOTES, 2011 SERIES H,
SENIOR NOTES, 2011 SERIES I,
SENIOR NOTES, 2012 SERIES A,
SENIOR NOTES, 2016 SERIES A, AND
THE OTHER GDB BOND CLAIMS (AS DEFINED HEREIN) AND
SENIOR GUARANTEED NOTES (2013) SERIES B-1,

IN EACH CASE, OF

BANCO GUBERNAMENTAL DE FOMENTO PARA PUERTO RICO (THE GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO, HEREIN "GDB")

THIS SOLICITATION STATEMENT IS IMPORTANT AND NEEDS YOUR IMMEDIATE ATTENTION

This Solicitation will expire at 5:00 P.M., New York City time, on September 12, 2018, unless such time or date is extended by GDB (such time and date, as the same may be extended, the "Voting Deadline"). Eligible Voters (as defined herein) should be aware that the deadlines set by any custodian, intermediary or clearing system may be earlier than the Voting Deadline. Ballots (as defined herein) may be revoked at any time prior to the Voting Deadline.

Upon the terms and subject to the conditions set forth in this Solicitation Statement (as defined herein) and the related ballots (as they may be supplemented and amended from time to time, the "Ballots" and, together with this Solicitation Statement, the "Solicitation Package"), GDB is soliciting votes from its creditors that are Eligible Voters (such solicitation of votes, the "Solicitation") to approve the qualifying modification described in "The Qualifying Modification" in this Solicitation Statement (such qualifying modification as so certified by the Oversight Board (as defined herein) under Section 601(g)(2) of PROMESA (as defined herein), the "Qualifying Modification") pursuant to Title VI of PROMESA. If the Qualifying Modification is approved pursuant to this Solicitation and the other conditions to its consummation are satisfied, the consummation of the Qualifying Modification will result in a financial restructuring of certain of GDB's indebtedness, pursuant to which all Participating Bond Claims (as defined herein), whether or not the holders thereof have voted in this Solicitation to approve the Qualifying Modification, will be mandatorily exchanged at a discount for New Bonds (as defined herein) issued by a newly formed statutory public trust and governmental instrumentality, the GDB Debt Recovery Authority (the "Issuer"), created by the Legislative Assembly of the Commonwealth of Puerto Rico (the "Commonwealth"). The New Bonds will be special limited obligations of the Issuer and secured by, and payable solely from, Collections (as defined in the Preliminary Offering Memorandum attached as Exhibit E hereto (the "Offering Memorandum")) on certain assets of GDB that will be transferred by GDB to the Issuer. For additional information on the Qualifying Modification, see "The Qualifying Modification" in this Solicitation Statement.

All beneficial owners of Participating Bond Claims in each of the two GDB Pools (as defined and further described herein) (each, an "Eligible Voter" and, collectively, the "Eligible Voters" or "you") as of July 31, 2018 (such date, the "Voting Record Date") are entitled to vote in this Solicitation to approve or reject the Qualifying Modification. Your vote is important regardless of the amount of Participating Bond Claims that you hold. For additional information on the qualifications to be an Eligible Voter, see "Principal Terms of this Solicitation—Eligible Voters" in this Solicitation Statement.

Eligible Voters holding GDB Bond Claims (as defined herein) and Eligible Voters holding Guaranteed Bond Claims (as defined herein) will vote separately in this Solicitation to approve or reject the Qualifying Modification, and each such group of Eligible Voters must vote to approve the Qualifying Modification for it to be approved and consummated. For additional information on the separate voting pools, see "Principal Terms of this Solicitation—Voting Pools" in this Solicitation Statement.

If GDB receives votes approving the Qualifying Modification from Eligible Voters holding as of the Voting Record Date (i) not less than a majority of the aggregate amount of Participating Bond Claims in each GDB Pool (which, as described herein, includes only Participating Bond Claims for the Outstanding (as defined herein) principal amount of Outstanding Participating Bonds) and (ii) not less than 66 2/3% of the aggregate amount of Participating Bond Claims in each GDB Pool (which, as described herein, includes only Participating Bond Claims for the Outstanding principal amount of Outstanding Participating Bonds) for which Ballots are validly delivered and not validly revoked in this Solicitation, and certain other conditions precedent described herein are satisfied, all holders of Participating Bond Claims will mandatorily receive New Bonds in exchange for such claims and will not be able to retain their Participating Bond Claims. For additional information on the requisite approvals required for the Qualifying Modification, see "Description of PROMESA—Title VI of PROMESA" and "Principal Terms of this Solicitation—Requisite Approvals" in this Solicitation Statement.

Based on information provided to GDB by the parties to the Restructuring Support Agreement (as defined herein), holders of at least a majority of the amount of the GDB Bond Claims in the GDB Bond Claims Pool (as defined herein) and 100% of the amount of the Guaranteed Bond Claims in the Guaranteed Bond Claims Pool (as defined herein) have agreed to vote to approve the Qualifying Modification, subject to certain terms and conditions contained in the Restructuring Support Agreement. For additional information on the Restructuring Support Agreement, see "The Qualifying Modification—The Restructuring Support Agreement" in this Solicitation Statement.

This Solicitation and the Qualifying Modification involve complex financial decisions and agreements that involve substantial risks. Prior to making any decision with respect to this Solicitation and/or voting to approve or reject the Qualifying Modification, you should carefully read the entire Solicitation Statement, the Offering Memorandum attached hereto and all exhibits, appendices and attachments to each and consult with your legal, financial and tax advisors to analyze the terms and risks of this Solicitation and the Qualifying Modification. For additional information on certain of the risks relating to this Solicitation, see "Risk Factors" in this Solicitation Statement.

The Solicitation Agents for this Solicitation of Qualifying Modification are:

BoFA Merrill Lynch
Lead Solicitation Agent

Barclays
Co-Solicitation Agent

THE DEAL

*The Debt Restructuring Deal
Blocks Legal Accountability*

THE RESTRUCTURING PROCESS



GOVERNMENT OF PUERTO RICO
Puerto Rico Fiscal Agency and Financial Advisory Authority

Monday, April 9, 2018

AAFAF, GDB and the requisite bondholders authorize the GDB restructuring support agreement amendment

(San Juan, Puerto Rico) - Today, the Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF, by its Spanish acronym) and the Government Development Bank for Puerto Rico (GDB) announced that the requisite number of holders of GDB's Participating Bond Claims (as defined in the RSA) have signed the previously announced amendment to the GDB Restructuring Support Agreement (RSA), which became effective pursuant to its terms on Friday, April 6, 2018. AAFAF and GDB believe that this strong indication of support from GDB's creditors continues to represent significant progress towards the consensual restructuring of GDB under Title VI of PROMESA.

As previously announced on March 27, 2018, the amendment will simplify the GDB restructuring transaction while simultaneously providing additional relief to municipalities as they recover from the severe damage and devastation caused to Puerto Rico and its municipalities in the wake of Hurricanes Irma and María. The amendment to the RSA provides that, upon consummation of the transaction, each municipality will be authorized to apply the full amount of deposits held at GDB against the balance of any loan owed by such municipality to GDB. Additionally, to provide municipalities with immediate liquidity, the amendment to the RSA gives each municipality the opportunity to receive immediate payment, before consummation of the transaction, of 55% of such municipality's undisbursed certified Excess CAE held at GDB in exchange for releases.

The amendment also results in a simplified structure whereby GDB's financial creditors will exchange their claims for only one tranche of new bonds at an upfront exchange ratio of 55%. The RSA amendment is available on the Electronic Municipal Market Access website.

PRESS RELEASE

The GDB restructuring blocks many forms of legal accountability for people who caused debt crisis.

The GDB debt restructuring could have been developed in a way that created openings for greater transparency and accountability for the people and institutions involved in causing the current debt crisis in Puerto Rico. It could have provided only limited legal releases for parties to the agreement, and it could have been used to implement transparency measures that would create a path towards legal accountability – and the potential recovery of damages from these individuals and institutions.

Instead, it does the opposite, providing those who played a central role in causing the debt crisis with broad releases from legal liability. It also includes no measures that would support the public's access to information regarding the GDB and its debt deals, revolving door GDB officials, and banks and law firms involved in originating the debt.



GOVERNMENT OF PUERTO RICO
Puerto Rico Fiscal Agency and Financial Advisory Authority

Forward-Looking Statements

This press release includes forward-looking statements, which include, but are not limited to, expectations with respect to the transactions described in the RSA. AAFAF and GDB cannot provide assurances that future developments affecting AAFAF, GDB, the RSA or the transactions described therein will be as anticipated. Actual results may differ materially from those expectations due to a variety of factors. Any forward-looking statement made in this release speaks only as of the date hereof and AAFAF and GDB do not undertake any obligation to publicly update any forward-looking statement, whether as a result of new information, future developments or otherwise.

###

THE GDB RESTRUCTURING PROCESS

The GDB restructuring process surrounds a \$4 billion pool of debt issued by the GDB. The restructuring of the debt is being negotiated under PROMESA Title VI, an out-of-court process that provides for voluntary

negotiations among creditors and debtors, and as such it is a relatively opaque negotiating process. Since March 2017, successive Restructuring Support Agreements (RSAs) and amendments have been developed by a group of participating bondholders and government entities.¹ These parties include:²

- **The Ad Hoc Group of GDB Creditors**, a group of hedge funds that have speculated on GDB debt, buying at low prices in the interest of receiving high payouts on the debt. This group includes Avenue Capital, Brigade Capital Management, Fir Tree Partners, and Solus Alternative Asset Management.³
- **Bonistas del Patio**, or Backyard Bondholders, a group which claims to represent many bondholders in Puerto Rico.
- **Alianza de Cooperativistas**, a coalition of credit unions with GDB bonds.
- **Grupo Encuentro Solidario**, another coalition of credit unions.
- The Government Development Bank (GDB).
- Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF).

For the agreement to move forward to a full creditor vote, it had to obtain certification from the Federal Oversight and Management Board (referred to as the Oversight Board in this document) as a Qualifying Modification and achieve the support of a majority of creditors. Subsequently, on August 9, 2018, the GDB and AAFAF announced the commencement of vote solicitation on the proposed Qualifying Modification.⁴ During this stage, the agreement will need to obtain votes in favor from two-thirds of beneficial owners of GDB bond claims, which includes both creditors and municipal depositors. After that it will need approval from the Oversight Board and District Court.

The current agreement provides GDB bondholders with a 55% recovery. This is a very generous level of payment for hedge funds that purchased GDB debt at low price points, while investors that purchased the debt before prices collapsed will incur significant losses. In March 2017, for example, before the first RSA was announced, some GDB bonds were trading as low as 12% of par.⁵ If hedge fund speculators purchased at the low point, they would be looking at returns of 200-300% as a result of this agreement.

Notably, however, bond documents explicitly, repeatedly warn bondholders that they “should not expect to receive payment in full in cash of principal and interest due on the New Bonds.”⁶

¹ See here for proposals and amendments:

<https://www.drinkerbiddle.com/capabilities/services/bondholders/government-development-bank/restructuring-proposals>

² See June 2017 agreement for redacted signatures:

<https://www.drinkerbiddle.com/-/media/files/services/bondholders/government-development-bank-for-puerto-rico/updated-version-of-gdb-restructuring-support-agreement-posted-on-emma-june-19-2017-with-redacted-signature-pages2.pdf?la=en>

³ <http://prfaa.pr.gov/governor-announces-restructuring-agreement/>

⁴ <https://www.scribd.com/document/385825551/AAFAF-and-GDB-announce-the-Launch-of-the-Solicitation-of-Votes-to-Approve-the-GDB-Qualifying-Modification>

⁵ At their low point in March 2017, many GDB bonds were trading at between 12% and 20% of par, and are as of August 2018 trading in the low 40s.

See, for instance: <https://emma.msrb.org/Security/Details/AE106986EAD8E5873ADFC242203AE145D>

⁶ The Solicitation Statement, including the preliminary offering memorandum and other attachments, can be accessed here:

<https://emma.msrb.org/ES1189608-ES929035-ES1329995.pdf>

See page 10, for example: “Holders of New Bonds should not expect to receive payment in full in cash of principal and interest due on the New Bonds. While there are scenarios that may result in full payment of principal and interest on the New Bonds in accordance with their terms, there is considerable uncertainty as to whether the Restructuring Property will provide sufficient cash flow to pay interest in cash on the New Bonds and amortize the principal amount (and any PIK Amounts) thereof completely.” This is repeated six times in the document.

HOW THE CURRENT GDB RSA UNDERMINES LEGAL ACCOUNTABILITY

Several key aspects of the GDB debt restructuring could block paths to legal accountability for the GDB, GDB officials, and bankers and lawyers involved in creating the debt.



First, when the restructuring transaction becomes final, Puerto Rico government authorities will no longer have the right to bring some forms of legal action against a host of individuals and institutions involved in causing the debt crisis. This is due to a

largely unnoticed article in the GDB Restructuring Act of 2017, Puerto Rico Law 109, which reads as follows:⁷

“Article 702”—Binding Effect of Restructuring Transaction on Government Entities

All transactions effected pursuant to this Act (including, without limitation, pursuant to determinations made by AAFAF or GDB under this Act) shall be valid and binding with respect to all Government Entities as of the Closing Date. Other than as expressly provided in this Act, in the Ancillary Agreements and the Public Entity Deed of Trust, no Government Entity shall have any further rights or claims against GDB, the Recovery Authority and the Public Entity Trust, and any officers, directors, employees, agents and other representatives thereof, of whatsoever nature and kind, whether now existing or hereinafter arising, based, in whole or in part, on facts, whether known or unknown, existing or occurring on or prior to the Closing Date. Each Government Entity is hereby deemed to forever waive, release and discharge GDB, the Recovery Authority and the Public Entity Trust, and any officers, directors, employees, agents and other representatives thereof from any and all such claims.

⁷ <http://www.lexjuris.com/lexlex/Leyes2017/lexl2017109a.htm>

In other words, when the GDB restructuring deal is final, Puerto Rico government entities will no longer have “rights and claims” against a range of GDB-associated parties – not just the GDB, but “any officers, directors, employees, agents and other representatives thereof.” The inclusion of “agents and other representatives” suggests that banks, law firms, and outside advisors that worked closely with the GDB and profited from the creation of the debt will no longer face legal action. Additionally, it appears to cast an extremely broad net regarding what will no longer be subject to legal action once the agreement is final – covering facts “known or unknown,” for instance.

Second, the restructuring agreement, if it becomes final, will result in broad releases from legal liability for parties to it. These “Mutual Releases” are detailed in the Solicitation Statement for the Qualifying Modification, on pages 57-60.⁸

The releases will prohibit parties to the transaction from taking legal action against one another related to the GDB bonds or the restructuring process. They cover a broad range of deeds, including, for instance, “fraud” and “violations of federal or state securities laws,” whether “known or unknown, foreseen or unforeseen, then-existing or thereafter arising.”

Additionally, the releases define the released parties broadly, and include not only the GDB and bondholders but a wide array of associated entities and individuals, including not just officers and directors, but also “financial advisors,” “investment bankers,” “agents,” “arrangers,” and “representatives.”⁹ This applies “whether current or former.”

In other words, bondholders could be barred from taking legal action against those who created the debt, including current and former GDB officials and bankers.

The releases are especially consequential for credit unions, which invested heavily in GDB debt at high prices. The financial damages associated with their purchases of GDB bonds could be greater than their recoveries through the current deal. If they vote in favor of the agreement or do not proactively opt out of the releases, they will not be able to bring many forms of legal action.

The Solicitation Statement warns of this risk, noting that bondholders voting in favor of the agreement would forego claims to financial damages that could potentially outstrip recoveries:

In addition, voting to approve the Qualifying Modification entails granting the Mutual Releases (as defined herein), which could result in the release of valuable claims that could ultimately provide a better outcome for the holders of Participating Bond Claims.¹⁰

⁸ See pages 57-60 of the Solicitation Statement (also attached). The Solicitation Statement, including the preliminary offering memorandum and other attachments, can be accessed here: <https://emma.msrb.org/ES1189608-ES929035-ES1329995.pdf>

⁹ See definition of “Defined Terms – Release Parties” in the Solicitation Statement, page 60.

¹⁰ See page 26 of the Solicitation Statement: <https://emma.msrb.org/ES1189608-ES929035-ES1329995.pdf>

ADDRESSING DEAL DEVELOPMENT + PATHWAYS TO ACCOUNTABILITY

The GDB restructuring agreement could have been developed in a way that protects the interests of credit unions and promotes accountability + transparency

The restructuring agreement could have been written in a way that protected the interests of parties to the deal suffering the most significant losses, like credit unions, and preserved paths to legal accountability and transparency.

For example, it could have explicitly limited releases from liability granted to current and former GDB officials and financial institutions that profited from the creation of the debt. The June 2018 agreement in principle reached around COFINA debt, for instance, included this clause:

For the avoidance of doubt, there shall be no release of any claims by any party against the underwriters of the COFINA bonds or the GO bonds, including their current and former officers, directors, agents, attorneys, employees, affiliates, advisors, consultants, attorneys, and members.¹¹

Additionally, the broad release provided for in Article 702 of the GDB Restructuring Act could have been amended legislatively (parts of the law were amended in July 2018¹²), or the restructuring negotiations could have at least explicitly addressed and clarified these releases.

Finally, parties to the agreement could have negotiated transparency measures that would protect the public's right-to-know with respect to the GDB. The agreement could have provided for the release of information and documents relating to the GDB and its activities over the period when it was issuing debt.

The agreement did none of this, instead blocking important paths to legal accountability. Proposals such as calls to audit the debt will be harder to achieve as these legal openings are closed off.

¹¹ <https://cases.primeclerk.com/puertorico/Home-DownloadPDF?id1=NzYzNzU2&id2=0>

¹² <http://caribbeanbusiness.com/law-for-puerto-rico-government-development-banks-debt-restructuring-signed/>

REVOLVING DOOR PLAYERS

*Individuals with Significant
Conflicts of Interest Have
Played a Central Role in Deal
Negotiation and Oversight*



Gerardo Portela, Executive Director at AAFAF during restructuring negotiations



Jorge Irizarry Herrans, Bonistas del Patio



Paul Hoppgood: The two credit union coalitions that are parties to the deal are being advised by Hoppgood, a former Santander executive.



Carlos Garcia, an oversight board member and perhaps the most infamous example of Santander's revolving door with the GDB

Bankers with significant conflicts of interest have played a central role in negotiating and overseeing the deal

The people that negotiated the GDB restructuring agreement on behalf of the government and creditors have significant conflicts of interest, having once been high-level executives at both the Government Development Bank and financial institutions, such as Santander, that profited heavily from the creation of the debt.

For years, the GDB has been plagued by conflicts of interest, as revolving door figures have moved back and forth between positions at private financial institutions and the GDB. Since its creation in 1942, the GDB, as the financial advisor and fiscal agent for the government, was central for the economic development of Puerto Rico. For example, all bond issues from the agencies that could issue debt were authorized and supervised by the GDB. Being on its board of directors or working there as an executive gave individuals a great deal of economic and political leverage.

Perhaps the best-known example of this pattern of conflicts was the revolving door between Santander and the GDB, where Santander executives moved back and forth between roles at the GDB and oversaw deals that benefited Santander at the public expense. Santander/GDB officials underwrote, bought and sold billions in bonds, which led to huge fees for Santander. A host of former Santander executives have played a role with respect to the GDB restructuring agreement, as advisors, government representatives, and oversight board members.

GERARDO PORTELA, EXECUTIVE DIRECTOR AT AAFAF DURING RESTRUCTURING NEGOTIATIONS

Former Santander executive Gerardo Portela has played a key role in the debt restructuring process. Gerardo Jose Portela Franco was designated by Governor Rosselló to be Executive Director and Chairman of the Board of the Fiscal Agency and Financial Advisory Authority (known by its Spanish acronym, AAFAF). AAFAF is the government agency that inherited the functions of the GDB. AAFAF is also the authority in charge of negotiating with the bondholders and the Fiscal Board.

Portela started his career at Santander in September 2008, when he became associate in investment banking for Santander Securities, the conglomerate's brokerage firm.¹³ Upon joining Santander Securities, he worked under Juan Carlos Batlle, who was then managing director.¹³ Batlle was one of the key figures moving between Santander and the GDB, eventually taking the place of former Santander executive and oversight board member Carlos Garcia as president of the GDB.¹⁴ On April 2011, two months after Batlle moved to the presidency of the GDB, Portela was promoted to vice president of investment banking, and in 2014 became director of the same department.

According to a February 2012 presentation, as a Santander executive Portela had been involved in \$5 billion worth of “financings for the Commonwealth of Puerto Rico, its public

corporations and municipalities” as of that date.¹⁵

Additionally, the presentation notes that “Mr. Portela has been actively involved with Santander Asset Management in the origination of structured products for the First Puerto Rico Family of Funds.” The First Puerto Rico Family of Funds was identified as a creditor signatory to the GDB Restructuring Support Agreement published in June 2017.¹⁶ Following oversight board member and former GDB president Carlos Garcia's practice of bringing his Santander colleagues to the public sphere, Portela moved to AAFAF with two other former Santander executives, Jesus D. Mattei Perez, Investment Portfolio Manager at Santander Asset Management from 2011 to 2017, and Alejandro Camporreale Mundo, Sub-Director of Legal Collections (2009-2014) and Director of Mortgage Banking (2014-2017) at Santander Bank.^{17 18 19}

Recently, Governor Rosselló removed Portela from his executive position in AAFAF, replacing him with Christian Sobrino.²⁰ Rumors have been circulating about the reason for this decision.

Considering the context of the move – that is, the negotiations around the GDB and the approval of broad legal releases – it is clear that Portela's background and conflicts made him a problematic choice to be an official government signatory to the final deal. Though he has been heavily involved in putting the deal together, and it is still very much his creation, Rosselló's move creates the appearance of distancing Portela from the final deal.

¹³ <https://www.bloomberg.com/research/stocks/private/person.asp?personId=27461842&privcapId=290557872>

¹⁴ <http://www.gdb.pr.gov/communications/documents/2011-02-16-GovernorAppointsJCBPresidentofGDB.pdf>

¹⁵ <http://www.camarapr.org/Presentaciones-Calaf/Energia/Energia-Inclan.pdf>

¹⁶ <https://www.drinkerbiddle.com/-/media/files/services/bondholders/government-development-bank-for-puerto-rico/updated-version-of-gdb-restructuring-support-agreement-posted-on-emma-june-19-2017-with-redacted-signature-pages2.pdf?la=en>

¹⁷ <https://www.elnuevodia.com/negocios/economia/nota/buscanrestaurarlaconfianzacrediticia-2284940/>

¹⁸ <https://www.linkedin.com/in/alejandro-camporreale-3a826613/>

¹⁹ <https://www.linkedin.com/in/jesus-mattei-cfa-12951a1b/>

²⁰ <https://www.noticel.com/ahora/gobierno/nuevos-sombreros-para-portela-y-sobrino/775682771>

JORGE IRIZARRY HERRANS, BONISTAS DEL PATIO

Jorge Irizarry has been another key player on the other side of the negotiating table, on behalf of creditors. He is executive director of Bonistas del Patio, an organization whose stated purpose is to represent Puerto Rican bondholders in the restructuring process, but which is run by insiders like Irizarry.

Irizarry's career has been characterized by conflicts of interest and involvement in disastrous bond issuances.

Between April 2005 and December 2008 Irizarry occupied some of the most powerful financial posts in Puerto Rico's government. He was appointed by Governor Anibal Acevedo Vila to the presidency of the GDB in December 2007, after serving as Interim President for three months.²¹ He also served as Executive Director of the Industrial, Tourist, Educational, Medical, And Environmental Control Facilities Financing Authority (AFICA), as Director of the Sales Tax Financing Corporation (COFINA) and as President of the Board of Trustees of the Employees Retirement System (ERS).

During his presidency of the GDB and the ERS, the pension system issued three controversial bonds that profoundly aggravated the public pension crisis. In spite of Irizarry's financial experience, he authorized the three transactions (totaling almost \$3 billion) during the height of the Wall Street crisis, when markets were volatile. Those financings were done through UBS, even though the Swiss investment bank was selling its bond operations in the United

States.²² UBS advised in all three issues, but also underwrote the bonds. Irizarry presided over the investment committee of the ERS, where he met with UBS advisers, including Juan Guillermo Herrans Barreras, with whom he has family ties.²³ In spite of these conflicts of interest and irregularities, as well as a House of Representatives investigative report which was sent to the US Justice Department, Puerto Rico's Justice Department, and the Securities and Exchange Commission, Irizarry was able to avoid legal action.

Ten years later, he is on the other side of the table, advising private investors in the negotiations with the GDB, including the legal releases that current and former GDB officials and bankers like him may get when the agreement is final.

PAUL HOPGOOD, ATLAS ASSET MANAGEMENT

Both credit union coalitions retained Atlas Asset Management as financial advisor during the GDB negotiating process.²⁴ Its founder and principal is former Santander executive Paul X. Hopgood Morales. Hopgood has played a key role in negotiations around debt restructuring.²⁵

Hopgood started working in Santander Asset Management in 2004, and served as chief investment officer and senior vice president from 2008 to 2014.²⁶ As CIO of Santander Asset Management he was in charge of developing investment strategies for Santander's First Puerto Rico Family of Funds. A Securities Litigation and Consulting Group report (SLCG) tallied huge losses for the funds, almost \$1

21 <https://www.businesswire.com/news/home/20070829005935/en/Jorge-Irizarry-Named-Acting-President-Government-Development>

22 <https://www.reuters.com/article/puertorico-bonds-ubs-idUSN0720110920080507>

23 *In February 29, 2009 Puerto Rico's House of Representatives approved Resolution 417 ordering the Retirement System Commission to do an investigation about the bond emissions of the ERS. All these findings came up during the public hearings and are part of the three reports that the Commission published. 3er Informe Preliminar rendido de Sistemas de Retiro del Servicio Público (CAMARA)*

24 <https://www.telemundopr.com/noticias/destacados/Puerto-Rico-logra-un-acuerdo--con-los-acreedores-422302333.html>

25 <https://www.elnuevodia.com/negocios/economia/nota/lapropuestaderenegociaciondelbgfnoeliminaposibletituloiii-2328974/>

26 <https://www.linkedin.com/in/paul-hopgood-cfa-caia-7aa78214/>

billion from 2013 to 2015.²⁷ Hopgood oversaw and directed these funds during their expansion but also as they began to suffer significant losses. As noted above, Santander's First Puerto Rico Family of Funds are now part of the GDB debt restructuring process.

In 2014, he left Santander to found Atlas Asset Management, along with former Santander portfolio manager Jaime Pandal.²⁸ Atlas is reportedly not investing in Puerto Rico government bonds.²⁹

OTHER REVOLVING DOOR FIGURES

A host of other revolving door figures will potentially benefit from the legal releases provided for in the restructuring agreement:

- **Carlos Garcia**, an oversight board member and perhaps the most infamous example of Santander's revolving door with the GDB. Garcia left his executive role at Santander to become president of the GDB from January 2009 to March 2011, during which time the GDB authorized the issuance of approximately \$19.7 billion in public debt. This translated into a total of around \$236 million in commissions paid for the underwriters, including Santander.³⁰ He also presided over the Fiscal Restructuring and Stabilization Board, a board created by Act 7, which managed the firing of thousands of public sector workers.

His return to Santander coincided with the acceleration of the bank selling its investment funds that had a high level of exposure to bonds of the Puerto Rico government.³¹ Even as Santander as an institutional investor stopped buying Puerto Rico's bonds, it continued to

encourage its clients to invest in government debt.³²

As an oversight board member, Carlos Garcia has the power to approve the GDB deal that will provide him and his associates with legal releases. Another oversight board member, Jose Ramon Gonzalez, is also a former Santander and GDB executive.

- **Fernando and Juan Carlos Batlle**. The Batlle brothers were also key players in Santander's revolving door with the GDB. During Carlos Garcia's presidency of the GDB, Fernando Batlle was his second in command, and Juan Carlos Batlle oversaw Santander Securities, which underwrote many of the bonds the GDB was authorizing.³³ Fernando was also Executive Director of COFINA, where he oversaw the biggest bond issue in the history of Puerto Rico, a \$4.1 billion debt issue in June 2009.³⁴ When Carlos Garcia and Fernando Batlle resigned from the GDB in March 2011 and returned to Santander, Governor Fortuño named Juan Carlos as the new GDB President. While presiding over the GDB, Juan Carlos Batlle authorized six bond issuances totalling approximately \$4.6 billion. He also authorized another four bond emissions from COFINA totalling approximately \$1.9 billion. Santander acted as underwriter for the majority of these bonds.

The Batlle brothers are now Senior Managing Directors of Ankura Consulting Group, a firm that provides management consulting and expert services to businesses, including on bankruptcy and restructuring.³⁵ Days after Juan Carlos joined Ankura in 2017, Ankura signed its first contract

27 <http://blog.slcg.com/2017/03/santanders-first-puerto-rico-family-of.html>

28 https://www.santander.pr/es/docs/securities/Communications/Santander_Asset_Management_Communication_Sep2014.pdf

29 <https://www.elnuevodia.com/english/english/nota/atlasassetmanagementlaunchesnewfund-2097551/>

30 <https://www.scribd.com/document/351067058/El-Esquema-Santander-fraude-inspirado-por-Carlos-Garcia>

31 <https://www.elnuevodia.com/english/english/nota/atlasassetmanagementlaunchesnewfund-2097551/>

32 https://www5.fdic.gov/crapes/2015/20828_150527.PDF

33 <http://www.gdb.pr.gov/PRCC/documents/Jan.292009CBFront-PageStory.pdf>

34 http://www.gdb.pr.gov/investors_resources/documents/2009-06-16-COFINA-4MilMillones.pdf

35 <https://ankura.com/people/fernando-l-batlle/>

with the government of Puerto Rico, a contract with the GDB to work as its financial advisor.³⁶ That contract was for four months for a total of \$1.6 million. Since then Ankura has signed another eight contracts, another with the GDB, three with PREPA, and four with AAFAF.³⁷



³⁶ <https://www.businesswire.com/news/home/20170214005506/en/Ankura-Consulting-Announces-Opening-Office-Puerto-Rico> and <http://caribbeanbusiness.com/gdb-grants-1-6-million-contract-to-consulting-firm/>

³⁷ As reported by the Comptroller's Office.

THE FINAL OBSTACLE

*Credit unions and municipalities
could suffer significant financial
damages as a result of the deal –
and are a final obstacle to approval*

Credit unions and municipalities could suffer significant financial damages as a result of the deal—and are a final obstacle to approval

Credit unions, which hold GDB bonds, and municipalities, which have deposits at and loans from the GDB, are among the final obstacles to a deal going through. Many of them will need to join in approving the deal for it to become final. Both could also suffer significant financial harm when the restructuring becomes final.

CREDIT UNIONS

Credit unions are part of a cooperative financial system comprised of around 115 credit unions. Taken as a whole they are the third largest financial institution in Puerto Rico.³⁸ They are supervised and regulated by COSSEC (Corporacion Publica para Supervision y Seguro de Cooperativas), which also insures the shares and deposits held by members and depositors up to \$250,000. Many working people and small business owners have their deposits in credit unions, and they are a fundamental part of many communities.

In 2009, credit unions were encouraged by the government to invest in the Commonwealth's debt. COSSEC issued a circular letter authorizing investment in the bonds that were offered at the time, especially those issued by the GDB, calling them “excelentes garantías” (excellent guarantees).³⁹ Another letter was issued in 2012 increasing the investment limit.⁴⁰ As a consequence, credit unions increased their investments in Puerto Rico bonds

significantly, from approximately \$400 million in 2008 to \$1.6 billion in 2014, tripling their exposure in six years. In March 2018, a group of credit unions filed a federal lawsuit against the government and the oversight board, which summarizes the pressure brought to bear on them to align with the investment policies of the government and invest in the debt.⁴¹

It is important to note that COSSEC's board of directors includes representatives from the GDB and the Treasury Department, positions designated by the governor. As a consequence, the governor and the GDB, with all of their ties to underwriters like Santander, played a major role in shaping COSSEC's decisions and policies. For example, former Santander/GDB executives Carlos Garcia and Juan Carlos Battle (or their representatives) were both part of COSSEC's board of directors.

Currently, credit unions and cooperatives in general have a strong public reputation in Puerto Rico. If they approve the deal, their support could be used by revolving door negotiators as evidence that the agreement is a good deal for the public, even though they will lose their power to take many forms of legal action and secure financial damages.

As noted above, the Solicitation Statement warns that these damages may provide for better financial outcomes than the recoveries under the deal. Credit unions could suffer significant financial harm as a result of agreeing to the deal, which could result in adverse impacts for their customers – limiting their lending, for instance. Credit unions that agree to it will be partly responsible, as well, for closing down some openings for accountability and transparency surrounding the GDB's past dealings, and could suffer reputational harm as a result. A debt audit, for instance, will be much harder to achieve.

38 <http://www.aafaf.pr.gov/assets/cossec-revised-fiscal-plan-march-2018---draft.pdf>

39 [CC-09-03](#)

40 [Carta Circular 2012-02](#)

41 <https://cases.primeclerk.com/puertorico/Home-DownloadPDF?id1=NzI0MjEx&id2=0>

MUNICIPALITIES

Municipalities, similarly, lose options for legal recourse as a result of the deal, but more importantly, the restructuring relies heavily on payments from municipalities. They could suffer significant financial harm as a result.

Municipalities are both borrowers from and depositors at the GDB. They pay a special additional tax (known by its Spanish acronym, CAE) to the GDB, which is used to guarantee their payments on loans from GDB. The ultimate source of this revenue is a tax on real and personal property in the municipalities. The tax is not capped, and municipalities are required to raise this tax in order to meet their loan obligations, though this requirement has not been tested in the courts.⁴² Other municipal loans from GDB are backed by a 1% municipal sales and use tax.

The preliminary offering memorandum notes that “a substantial majority of Collections to be generated by the Restructuring Property is expected to be derived from the Municipal Loan Assets.”⁴³ This is due to the fact that the municipal loans are the only performing assets included in the restructuring property. According to the GDB’s 2018 fiscal plan, municipal loan payments represent 92% of all projected payments on GDB loans.⁴⁴ **In other words, the agreement hinges on municipalities’ repayment capacity.**

This could result in a disastrous scenario for cities that are struggling in the wake of the hurricane, failing to meet significant other obligations (such as pension funding), and facing significant funding cuts from the Commonwealth.⁴⁵ Additionally, they will no

longer have access to new loans from the Government Development Bank. Municipalities currently face an operating deficit of \$260 million, which could increase to \$500 million, according to the preliminary offering memorandum and the oversight board’s fiscal plan.⁴⁶ A declining economy and accelerating emigration have not helped.

The need to provide payments on GDB loans could result in more aggressive collections, property tax hikes, municipal spending cuts, firings, privatizations, and new backup funding from the Commonwealth. The central government may also try to merge municipalities, a proposal that has been floating around for some time.⁴⁷ In any case hedge funds – general obligation bondholders, for instance – are going to be very attentive to this deal since it has the potential to reduce their profits.

While GDB bonds have been written down by 45%, municipal loans from the GDB are not being substantially written down, though municipalities have deposits at the GDB that will be applied against the loans. Some of these deposits exceed required debt service (known as “Excess CAE,” or special additional tax) and 55% of this amount will be returned to municipalities.

The recent passage of Senate Bill 908 amending the GDB Restructuring Act allowed for the disbursement of this cash prior to the closing date of the restructuring.⁴⁸ The change was framed by the governor as providing much-needed assistance to municipalities. Notably, these pre-closing date disbursements are only accessible to municipalities that enter into a broad legal release similar to that provided by

⁴² See page E-96 of the preliminary offering memorandum: “There is no judicial precedent in the Commonwealth for the enforcement of a municipal pledge of its good faith, credit and taxing power and it is unclear whether a court could order a municipality and its municipal legislature to increase taxes in order to pay its General Obligations.”

See page E-43 of the preliminary offering memorandum.

⁴³ <https://cases.primeclerk.com/puertorico/Home-DownloadPDF?id1=NzI0MjEx&id2=0>

⁴⁴ See page 21: <http://www.aafaf.pr.gov/assets/gdb-new-fiscal-plan-03.21.18.pdf>

⁴⁵ See further reporting on this here:

<https://www.noticel.com/economia/credito-de-pr/gobierno-admite-cuadro-tetrico-para-los-municipios/781092204>

⁴⁶ See page 21: <http://www.aafaf.pr.gov/assets/gdb-new-fiscal-plan-03.21.18.pdf>

⁴⁷ <https://www.elnuevodia.com/noticias/politica/nota/seasomalareducciondelosmunicipios-2400606/>

⁴⁸ <http://caribbeanbusiness.com/law-for-puerto-rico-government-development-banks-debt-restructuring-signed/>

Article 702 of the GDB Restructuring Act. This is specified in the fourth amendment to the restructuring agreement, released in March 2018, which requires a municipality with excess CAE to enter a settlement agreement “substantially similar to the release provided under Article 702 of the GDB Restructuring Act.”⁴⁹

The Solicitation Statement also explicitly requires these settlement agreements, in order for municipalities to receive pre-closing cash disbursements.⁵⁰ And so, only municipalities that agree to a broad liability release prior to the closing date are granted the cash disbursement. The amendment effectively leverages the cash disbursement owed to municipalities to block further legal action by them against the GDB and potentially a broad array of associated individuals and institutions (if these settlement releases are written similarly to Article 702).

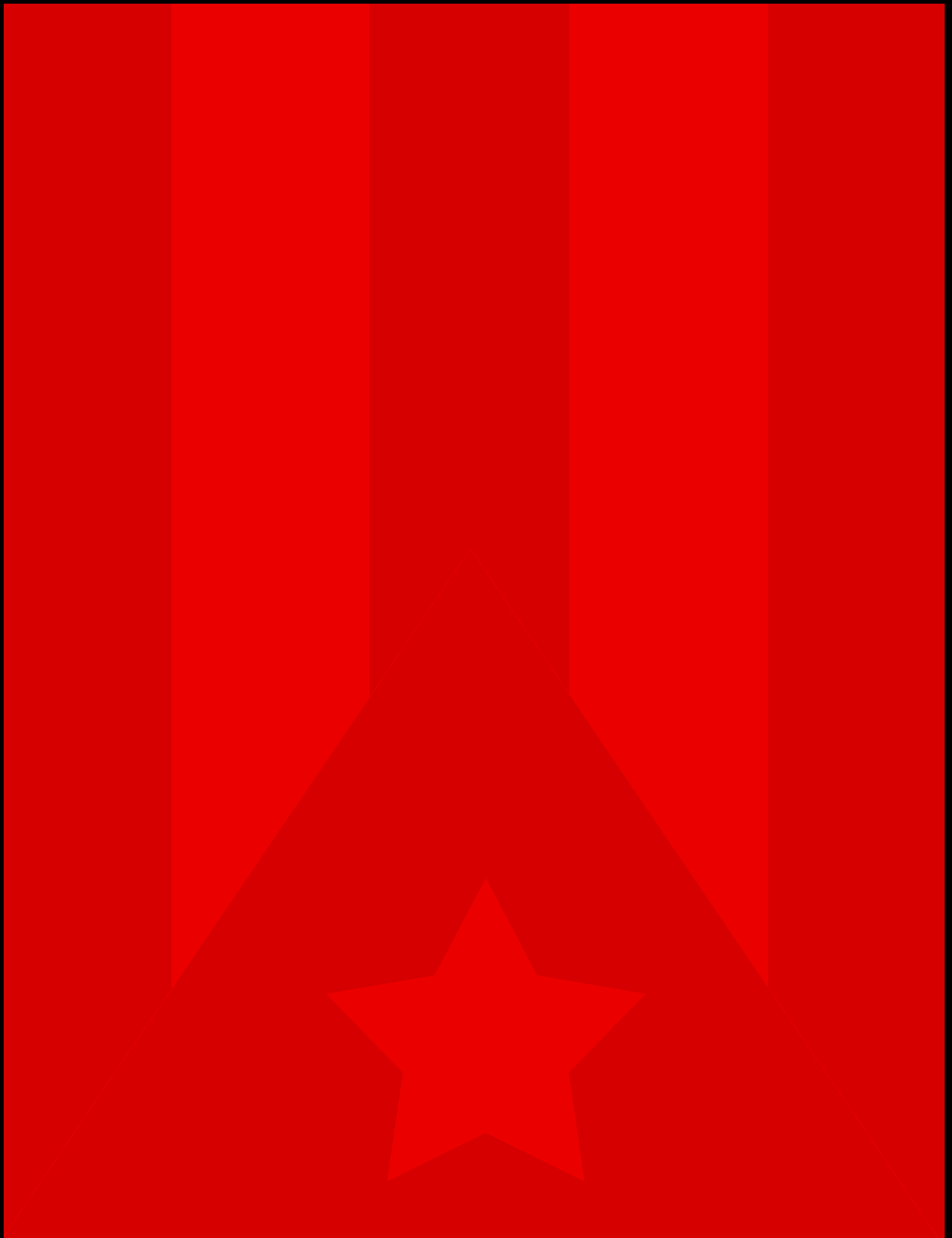
Credit unions and municipalities could ultimately suffer significant financial consequences as a result of this deal.

They also have the power to stop the current agreement and preserve a path for transparency, legal accountability, and a restructuring that protects the interests of Puerto Ricans over hedge fund speculators



⁴⁹ <https://www.drinkerbiddle.com/-/media/files/services/bondholders/government-development-bank-for-puerto-rico/draft-fourth-amendment-to-gdb-rsa-released-march-27-2018.pdf?la=en>

⁵⁰ See page 12 of the Solicitation Statement.



WHO ARE THE HEDGE CLIPPERS?

Every day, the most unscrupulous hedge fund managers, private equity firms and Wall Street speculators impact the lives of Americans. They play an outsized role in our political process, our education system, and our economy. Hedge Clippers is a national campaign focused on unmasking the dark money schemes and strategies the billionaire elite uses to expand their wealth, consolidate power and obscure accountability for their misdeeds. Through hard-hitting research, war-room communications, aggressive direct action and robust digital engagement, Hedge Clippers unites working people, communities, racial justice organizations, grassroots activists, students and progressive policy leaders in a bold effort to expose and combat the greed-driven agenda that threatens basic fairness at all levels of American society.

The Hedge Papers are researched, written, edited, reviewed and designed by a distributed, networked team of researchers, writers, academics, attorneys, industry experts, community organizers and designers from around the United States, with contributions from international activists.

We welcome contributions from whistleblowers, industry insiders, journalists, lawmakers and regulatory officials as well as from regular Americans who have felt the destructive impact of hedge funds, private equity funds and the billionaire class in their daily lives.

Our collective includes individuals associated with labor unions, community organizations, think tanks, universities, non-governmental organizations, national and international organizing and advocacy networks, student and faith groups as well as non-profit and for-profit organizations.

The Hedge Clippers campaign includes leadership and collaborative contributions from labor unions, community groups, coalitions, digital activists and organizing networks around the country, including: the Strong Economy for All Coalition, New York Communities for Change, Alliance for Quality Education, VOCAL-NY and Citizen Action of New York; Make the Road New York and Make the Road Connecticut; New Jersey Communities United; the Alliance of Californians for Community Empowerment (ACCE) and Courage Campaign; the Grassroots Collaborative in Illinois; the Ohio Organizing Collaborative; ISALAH in Minnesota; Organize Now in Florida; Rootstrikers, Every Voice, Color of Change, 350.org, Greenpeace, the ReFund America Project and United Students Against Sweatshops; the Center for Popular Democracy and the Working Families Party; the United Federation of Teachers and New York State United Teachers; the American Federation of Teachers, the National Education Association, and the Communication Workers of America.

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