

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

THE GOVERNMENT DEVELOPMENT BANK  
FOR PUERTO RICO,

Applicant.

PROMESA  
Title VI

Case No. 18-1561-LTS

**NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION'S NOTICE OF  
INTENTION TO OBJECT TO THE QUALIFYING MODIFICATION FOR THE  
GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO WITH RESPECT TO  
THE SIB FUNDS**

National Public Finance Guarantee Corporation (“National”) files this *Notice of Intention to Object to the Qualifying Modification for the Government Development Bank for Puerto Rico with Respect to the SIB Funds* (the “Notice”) pursuant to this Court’s Order, dated August 10, 2018. ECF No. 7.

National insures approximately \$626<sup>1</sup> million of outstanding bonds (the “PRHTA Bonds”) issued by the Puerto Rico Highway and Transit Authority (“PRHTA”), including certain of the Subordinated Transportation Revenue Bonds (Series 1998) (the “1998 Subordinated Bonds”) issued pursuant to PRHTA Resolution No. 98-06, as amended, and PRHTA Resolution 98-31. In connection with the issuance of the 1998 Subordinated Bonds, a Puerto Rico State Infrastructure Bank Trust Fund (the “PR SIB Trust Fund”) was created at the Government Development Bank for Puerto Rico (“GDB”).<sup>2</sup> A subaccount within the PR SIB Trust Fund was thereafter capitalized

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<sup>1</sup> This number excludes the amounts of principal and interest paid or other amounts incurred by National under its insurance policies.

<sup>2</sup> The PR SIB Trust Fund was established through (i) a cooperative agreement entered among the Federal Highway Administration (the “FHWA”), the Federal Transit Administration (the “FTA”), the Puerto Rico Department of Transportation and Public Works (“the Department”), and PRHTA on December 22, 1997 (the “Cooperative Agreement”), and (ii) an agreement, the Puerto Rico

with approximately \$15 million (the “SIB Funds”), which serve as collateral for the 1998 Subordinated Bonds.<sup>3</sup> Pursuant to the Bank Agreement that established and governs the PR SIB Trust Fund, GDB is the trustee of the PR SIB Trust Fund and the monies held therein, including the SIB Funds. The Bank Agreement provides that all SIB Funds are to “be held in the custody of GDB in *trust*, separate and apart from all other funds of the Department, PRHTA, and GDB.” Bank Agreement at 1, § 101 (emphasis added). Notwithstanding these express terms, in June 2016, GDB asserted for the first time that the SIB Funds were held in a *deposit* account, rather than a trust account. Consequently, GDB refused to release the SIB Funds to cover a series of defaults on the 1998 Subordinated Bonds.<sup>4</sup> As a result of those defaults, National was forced to pay approximately \$12.6 million in bond insurance payments that should have been paid with the SIB Funds.

On January 16, 2018, National moved this Court pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for an order authorizing limited discovery of GDB regarding the existence, historical treatment, and status of the PR SIB Trust Fund (the “National Rule 2004 Motion”). *See* Case No. 17-03567, ECF No. 371. National and GDB thereafter filed a Joint Motion to Hold in Abeyance the National Rule 2004 Motion (*Id.*, ECF No. 380), which was so

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Infrastructure Bank Agreement (the “Bank Agreement”), between the Department, PRHTA, and GDB, dated June 12, 1998.

<sup>3</sup> *See* Puerto Rico Highway and Transportation Authority Subordinated Transportation Revenue Bonds (Series 1998) Official Statement (July 15, 1998) at 11 (“The agreement, among the Department, the Authority, the 1998 Fiscal Agent and the SIB Trustee, enables the 1998 Fiscal Agent to request funds from the SIB Trustee, up to the full amount on deposit in the 1998 Subordinated Bonds Highway Subaccount of the SIB Trust Fund, in the event it is necessary to apply moneys in the 1998 Subordinated Bonds Reserve Account to pay debt service on the 1998 Subordinated Bonds.”).

<sup>4</sup> PHRTA defaulted on debt service payments due on the 1998 Subordinated Bonds in July 2016, January 2017, July 2017, January 2018, and July 2018.

ordered by Magistrate Judge Judith Dein on January 30, 2018. *Id.*, ECF No. 381 (the “Abeyance Order”). Pursuant to the Abeyance Order, GDB agreed to produce documents concerning the PR SIB Trust Fund responsive to National’s discovery requests, and to produce for examination a designated individual with knowledge of the PR SIB Trust Fund. Abeyance Order at 2. GDB’s document production remains ongoing; it most recently produced a revised privilege log on August 9, 2018. National has not yet exercised its right to depose a GDB designated individual. The discovery produced by GDB to date does not support its position that the PR SIB Trust Fund is a deposit account rather than a trust account as set forth in the express language of the Bank Agreement.

It is unclear as to how GDB will treat the SIB Funds in its Title VI restructuring. If GDB uses the SIB Funds for any purpose other than to service debt payments on the 1998 Subordinated Bonds or reimburse National for its insurance payments, GDB will be in direct breach of its obligation to maintain the SIB Funds in trust for the benefit of the holders of the 1998 Subordinated Bonds, “separate and apart from all other funds of...GDB” (Bank Agreement at § 101). Moreover, the SIB Funds are the property of the PRHTA subordinated bondholders, not GDB, and are therefore not available for distribution in GDB’s Title VI restructuring. The SIB Funds should be carved out of the Title VI restructuring to afford National the opportunity to litigate the issue of whether the SIB Funds belong to GDB or whether they belong to the holders of the 1998 Subordinated Bonds, and must therefore be distributed to National as repayment for its \$12.6 million in insurance payments on those bonds.

Accordingly, National intends to file a limited objection requiring GDB to respect its obligation to separately hold the SIB Funds in trust by carving out the SIB Funds from the Title VI restructuring so that they are not available for restructuring and/or distribution to GDB’s

bondholders. Such a carve out is appropriate and necessary to protect National's interests at least until the outstanding dispute regarding the nature of the PR SIB Trust Fund and the appropriate use of the SIB Funds is resolved.

**RESPECTFULLY SUBMITTED**, this 20th day of August, 2018.

**CERTIFICATE OF SERVICE:** We hereby certify that on this same date the foregoing notice was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants, and served by hand delivery to GDB and AFFAF at Minillas Government Center, Avenida de Diego, Parada 22, San Juan, PR 00907; and to O'Melveny & Myers LLP, at Times Square Tower, Seven Times Square, New York, NY 10036.

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By: /s/ Eric Pérez-Ochoa  
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