



Now What? Correcting Common Retirement Plan Administration Errors

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IMPORTANT NOTICE

Educational Purpose and Scope

- This presentation is intended for educational purposes only. It is not legal advice and is not a substitute for advice from legal counsel.
- Do not act on the information presented without specific consultation regarding your plan, facts, governing documents, and applicable law.
- Attendance does not create an attorney-client relationship; such a relationship is created only by express agreement of the parties.
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TODAY'S ROAD MAP

From Error to Resolution

- Identify the failure and protect participants
- Select and implement an appropriate correction
- Determine whether reporting, tax, fiduciary, or agency action is required
- Fix the process for the future and document the result
- Case studies: autoenrollment/escalation; entry dates; loan repayments; deferral elections; excluded employee groups; late contributions



What Is Your Role in the Retirement Plan Framework?

Poll

- Plan sponsor / plan administrator
- Recordkeeper
- Trustee / custodian
- Investment advisor
- Attorney / CPA / consultant
- Other

THE GOVERNING FRAMEWORK

- ERISA
- Puerto Rico Internal Revenue Code of 2011, as amended, and applicable regulations and administrative guidance
- U.S. Internal Revenue Code of 1986, as amended, and applicable regulations
- Puerto Rico Trust Act of 2012, as amended
- Agency guidance and enforcement: Puerto Rico Treasury Department (PRTD), U.S. Department of Labor (DOL/EBSA), and Internal Revenue Service (IRS)
- Relevant judicial decisions and the plan's own terms



THE FIRST 24–72 HOURS

- Stop ongoing harm where feasible—without making an unreviewed change that creates a second error.
- Preserve payroll files, eligibility records, elections, contribution files, loan records, emails, system logs, and vendor tickets.
- Define the population, affected dates, dollars, and plan provisions; identify whether the issue is isolated or systemic.
- Notify the plan administrator and appropriate internal stakeholders; engage counsel and vendors as needed.
- Do not promise a particular correction or tell participants the issue is resolved before the facts and method are confirmed.

CORRECTION PRINCIPLES

- Restore affected participants, as closely as reasonably possible, to the position they would have occupied absent the failure.
- Follow the written plan terms and use a reasonable, appropriate method consistent with applicable correction guidance.
- Include lost earnings where required.
- Treat similarly situated participants consistently; do not favor highly compensated employees or insiders.
- Correct the root cause.
- Document the findings, corrections and changes.

CORRECTION PROGRAMS

Choose the Right Tool

- PRTD procedures: first determine whether Puerto Rico law or guidance provides a specific correction route for the issue.
- VFCP (DOL): addresses specified ERISA fiduciary violations; the DOL updated the program effective March 17, 2025, including a self-correction component for certain transactions.
- DFVCP (DOL): addresses eligible delinquent Form 5500 filings.
- EPCRS (IRS); addresses operational and plan document failures, among others.

Have You Worked With a Federal Correction Program?

Poll

- Yes—EPCRS
- Yes—VFCP
- Yes—DFVCP
- Yes—more than one
- No



CASE 1 — AUTO-ENROLLMENT / ESCALATION

The Feature Was Not Implemented—or Was Implemented Late

Scenario: The plan provides for automatic enrollment at 4% and annual escalation by 1%. A payroll-system conversion leaves 18 eligible employees unenrolled for five months; another group remains at the initial rate.

Begin correct prospective deferrals promptly after validating elections and payroll setup.

Reconstruct the deferrals that should have been withheld, employer matching contributions, and investment earnings.

Correction: use the applicable EPCRS missed-deferral method. Confirm match, earnings, notice, and deadlines.



CASE 1 — CORRECTION

Separate a missed automatic-enrollment opportunity from a failure to implement an employee's affirmative election; the correction analysis may differ.

Review required participant notices and documentation of opt-outs/elections.

Calculate missed deferrals using the actual affirmative election if one exists; otherwise use the applicable plan default.

Control: reconcile eligibility files to enrollment status; run exception reports for eligible employees with no election or no deferral.



CASE 2 — ENTRY DATE

The Employee Entered the Plan Too Late

- Scenario: An employee met the plan's age and service requirements in March but was not enrolled until September because a waiting-period field was configured incorrectly.
- Confirm the exact eligibility conditions and entry-date rule in the governing document, including any different rules for employee deferrals and employer contributions.
- Generally, contribute a QNEC equal to 50% of the prescribed missed deferral amount plus earnings, and 100% of missed match/other employer contributions plus earnings. Consider availability of reduced 0 or 25% QNEC.
- Special rule when there is no election to defer.

CASE 2 — PREVENTION

- Test payroll/recordkeeping configurations against the signed plan document after every amendment, acquisition, or system change.
- Reconcile HR eligibility reports to the recordkeeper's enrollment file every payroll or at a documented regular interval.
- Require sign-off for exception reports and track each exception to closure.

CASE 3 — MISSED LOAN REPAYMENTS

- Scenario: A participant's loan repayment deduction disappears after a payroll transfer. Four payments are missed before the issue is discovered.
- Review the loan agreement, plan document, payroll records, and any written loan policy for repayment terms and a cure period.
- Determine whether the failure remains within an applicable cure period. The maximum permitted cure period generally ends on the last day of the calendar quarter following the quarter in which the payment was due, if the plan provides for such a period.
- If still within a plan-provided cure period, collect missed installments or refinance/reamortize as permitted before the deadline; document the revised schedule. If expired, analyze deemed distribution and available correction relief.
- Assess whether a deemed distribution, Form 480.7C reporting, or other tax treatment is required if the failure cannot be corrected under the available rules.



CASE 3 — LOAN CONTROL

Loan Repayments Need Their Own Reconciliation

- At every payroll, reconcile scheduled loan deductions to actual deductions and amounts transmitted to the plan.
- Alert on a loan deduction that stops, changes unexpectedly, or remains unpaid after a payroll event.
- During payroll conversions, validate active loans individually—not only aggregate payroll totals.
- On termination, leave, disability, or a change in pay frequency, confirm how repayments will be handled under the loan terms.
- Document the decision on cure, correction, tax reporting, participant communications, and any remaining balance.



CASE 4 — DEFERRAL ELECTION. The Employee Changed the Percentage—but Payroll Did Not

- Scenario: An employee changes a deferral election from 3% to 8% in the recordkeeper portal. Payroll continues withholding 3% for two months.
- Determine when the election should have become effective under plan procedures and whether the employee's election was properly transmitted and implemented.
- Generally, make a QNEC equal to 50% of the actual missed deferral amount plus earnings and restore the full missed match/other employer contribution plus earnings. Consider the reduced 0% or 25% QNEC.
- Do not simply deduct the entire missed amount from future pay without confirming legal and operational permissibility.



CASE 5 — EXCLUDED GROUP. An Entire Eligible Class Was Left Out

- Scenario: A payroll code excludes employees at one worksite, even though the governing plan document does not exclude them.
- Determine whether the failure is operational, document-related, or both. A retroactive amendment is not a default substitute for correcting operation under the existing terms.
- Generally, calculate the missed deferral using the applicable group ADP $\times$ affected-period compensation, contribute 50% (or reduced 0, 25%) of that amount as a QNEC plus earnings, and restore 100% of missed employer contributions plus earnings.



CASE 6 — LATE CONTRIBUTIONS

Withheld Money Was Not Remitted Promptly

- Scenario: Employee deferrals were withheld from pay but remained in the employer's operating account for several days due to a cash-management or approval issue.
- Deposit principal immediately; calculate lost earnings from the earliest reasonably segregable date (using the DOL VFCP calculator or permitted method) and restore lost earnings/profits as applicable.
- Assess the ERISA prohibited transaction/fiduciary implications, required reporting, and whether V FCP relief or its self-correction component is available for the particular transaction.
- Do not treat the 15th business day of the following month as a general safe harbor for large plans; the governing standard is generally the earliest date reasonably segregable.



CASE 6 — LATE CONTRIBUTIONS. Aftermath

- Make the plan whole for lost earnings using a defensible calculation and retain the supporting data.
- Review Form 5500 reporting; assess prohibited-transaction/excise-tax issues and whether VFCP application is available.
- Document the cause: approval bottleneck, payroll vendor delay, insufficient funding, bank issue, or unclear ownership.
- Prevent recurrence with a remittance calendar, backup approver, exception alert, and reconciliation of payroll withholding to trust deposits.

BEYOND THE SIX CASES

Tax Withholding, Year-End Reporting, and Rollovers

- Incorrect Puerto Rico income-tax withholding at source: identify the payment type, applicable withholding rules, amount withheld, and whether a correction or refund process applies.
- Rollovers: verify eligibility, source and destination of funds, rollover requirements, and reporting.
- Potential tools may include corrected informative returns, participant communications, tax deposits or refunds, and—where appropriate—closing agreements or agency consultation.
- Coordinate PRTD and federal reporting separately; do not assume a correction to one return fixes the other.

WHO IS WATCHING?

- Puerto Rico Treasury Department: local plan qualification and tax administration within its authority
- U.S. Department of Labor / EBSA: ERISA fiduciary, reporting, disclosure, and participant-protection enforcement where applicable
- Internal Revenue Service: federal tax qualification and tax-reporting matters within its jurisdiction
- External auditors: financial statement and plan audit findings
- Participants and beneficiaries: complaints, benefit inquiries, and claims can surface failures
- Courts and regulators: disputes may examine both the original failure and the response after discovery

CLOSING TAKEAWAYS

- Act promptly, preserve evidence, and quantify the affected population.
- Follow the governing plan terms and identify the applicable Puerto Rico and federal frameworks.
- Restore participant benefits and earnings using a documented, legally supportable method.
- Use the method that fits: EPCRS for eligible operational failures; VFCP for eligible ERISA fiduciary transactions; DFVCP for eligible late Form 5500 filings; and PRTD procedures for local qualification/tax issues.
- Correct the underlying process and test whether the fix worked.



QUESTIONS

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