



Background

Employers are responsible for reporting employee and employer contributions to the third-party administrator (TPA) for the Commonwealth of Virginia (COV) 457 Deferred Compensation Plan and the Virginia Cash Match Plan, if applicable. Employers must reconcile their payroll to the TPA at least once a month to identify discrepancies. From time to time, errors may occur in the process, requiring employers to take corrective measures. This policy addresses corrections for errors made under the COV 457 Deferred Compensation Plan and the Virginia Cash Match Plan. Employers are responsible for following the corrective methods outlined in this policy.

Compliance

The corrective measures provided here follow Internal Revenue Service (IRS) Revenue Procedure 2021-30, as amended by the SECURE 2.0 Act of 2022, adjusted to take into consideration the constraints of VRS-participating employers' payroll and tax-reporting systems. Employers will be responsible for any "penalties, interest, compliance fees or other charges" associated with the failure to follow state and federal laws that may be imposed under the *Code of Virginia* Section 51.1-124.22(A)(14). There may be a fee charged in the future for processing corrections.

Time Frames

It is important to correctly report contributions to the COV 457 Deferred Compensation Plan and the Virginia Cash Match Plan each pay period. Contributions should be made as soon as administratively possible following the pay date but no later than 15 business days following the end of the month in which the amount is withheld from the participant's compensation.

Missed contributions found within 90 days can be corrected immediately by the employer through payroll. After 90 days the employer must complete the Defined Contribution Plans Request for Account Review form. Corrections may require the employer to pay penalties, fees and/or missed earnings.

Excess contributions found within 14 business days from the trade date posted to the participant's account can be returned directly to the employer by contacting the third-party administrator. After 14 business days, corrections will follow the corrective methods outlined in this policy and employers must complete the Request for Account Review Form. Corrections may require the employer to pay penalties and/or fees.

Processing Guidelines

- 1. Correction Requests Not in Good Order** – Request for Account Review forms require the employer to provide details of the error and amounts withheld in payroll. In the absence of this information, VRS will consider requests to remove excess contributions to be Not in Good Order (NIGO) and will not proceed with the correction until additional details are provided by the employer. Corrections involving funding for account shortages will still be processed without error details or payroll information; however, VRS will assume that the missing contributions were not withheld from the employee, and the employer will be charged a Qualified Non-Elective Contribution (QNEC) for the employee source funds.
- 2. Thresholds for Overages/Shortages** – VRS will only process Request for Account Review forms for discrepancies greater than +/- \$50.



Forfeitures, Gains and Missed Earnings

The COV 457 Deferred Compensation Plan and Virginia Cash Match Plan are subject to an “exclusive benefit rule” under the Internal Revenue Code. The exclusive benefit rule generally prohibits the return of contributions to an employer once they have been made to the Plan. Rather, contributions made in error should remain in the Plan and will offset future contributions or plan expenses.

- 1. Employer Excess Contributions and Gains:** When there are excess contributions or gains, the funds will be transferred from the participant’s account to a forfeiture account that the employer must use to either offset future contributions or pay plan expenses. Periodically, employers can direct that the forfeiture account be used to offset an upcoming employer contribution.
- 2. Missed Earnings:** The employer will be required to fund missed earnings if the amount calculated is \$10 or more for each correction. A fee may be charged for missed earnings calculations for late contributions.

Corrections for Late Contributions

Employer delayed submitting contributions to third-party administrator (TPA).

Example A: An employer remits required contributions to the TPA outside of the required time frame.

COV 457 Plan Contributions	CMP Contributions
Employee Contributions	Employer Match on Employee Contributions
If the employer fails to remit contributions to the TPA within 90 days* of the applicable payroll date, VRS will direct the TPA to calculate missed earnings on the late contributions. The employer is required to pay missed earnings.	

* Note: The requirement for the employer to pay missed earnings on contributions is subject to change to fewer than 90 days.

Negative Corrections to Remove Excess Contributions

Contributions were remitted in excess of what is permitted or required under plan.

Example B: An employer makes excess employee contributions on behalf of a participant based on incorrect compensation in payroll.

COV 457 Plan Contributions	CMP Contributions
Employee Contributions	Employer Match on Employee Contributions
Excess employee contributions, adjusted for earnings, are paid directly to the participant who will receive a Form 1099-R after calendar year end. The employer does not adjust the employee’s W-2.	Employer match contributions attributable to the excess employee contribution, net of losses or fees, are credited to the employer-level forfeiture account.
Participant retains any gains. Gains are distributed.	Gains are forfeited to plan-level forfeiture account.

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Example C: An employee makes contributions in excess of the annual IRS limit.

COV 457 Plan Contributions Employee Contributions	CMP Contributions Employer Match on Employee Contributions
Excess employee contributions, adjusted for earnings, are paid directly to the participant who will receive a Form 1099-R after calendar year end.* The employer does not adjust the employee's W-2.	Employer match contributions attributable to the excess employee contribution, net of losses or fees, are credited to the employer-level forfeiture account.
Participant retains any gains. Gains are distributed.	Gains are forfeited to plan-level forfeiture account.

* If excess contributions are distributed on or after January 1 of the following year, the participant will receive two Forms 1099-R, one reporting the principal and one reporting the earnings, if any.

Example D: An employer makes employer contributions on behalf of an ineligible employee.

COV 457 Plan Contributions Discretionary Employer Contributions	CMP Contributions Employer Match on Employee Contributions
Discretionary employer contributions, net of losses or fees, are credited to the plan-level forfeiture account.	Employer match contributions, net of losses or fees, are credited to the employer-level forfeiture account.
Gains are forfeited to plan-level forfeiture account.	Gains are forfeited to plan-level forfeiture account.

A non-covered employee was automatically enrolled in the COV 457 Plan.

Example E: An employer automatically enrolls a non-covered employee, who was otherwise eligible, in the COV 457 Plan and withholds automatic contributions from the non-covered employee's pay.

COV 457 Plan Contributions Employee Contributions	CMP Contributions Employer Match on Employee Contributions
Excess employee contributions, adjusted for earnings, are paid directly to the participant who will receive a Form 1099-R after calendar year end. The employer does not adjust the employee's W-2.	Employer match contributions, net of losses or fees, are credited to the employer-level forfeiture account.
Participant retains any gains. Gains are distributed.	Gains are forfeited to plan-level forfeiture account.

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Employee contributions deducted and remitted to TPA in error.

Example F: An employer fails to stop or fails to decrease participant's employee contributions in accordance with the participant's direction.

COV 457 Plan Contributions Employee Contributions	CMP Contributions Employer Match on Employee Contributions
Excess employee contributions, adjusted for earnings, are paid directly to the participant who will receive a Form 1099-R after calendar year end. The employer does not adjust the employee's W-2.	Employer match contributions, net of losses or fees, are credited to the employer-level forfeiture account.
Participant retains any gains. Gains are distributed.	Gains are forfeited to plan-level forfeiture account.

Example G: An employer sends employee contributions to the COV 457 Plan instead of the employer-sponsored 403(b).

COV 457 Plan Contributions Employee Contributions	CMP Contributions Employer Match on Employee Contributions
Excess employee contributions, adjusted for earnings, are paid directly to the participant who will receive a Form 1099-R after calendar year end. The employer does not adjust the employee's W-2. Employer is responsible for making appropriate correction under its 403(b) plan.	Employer match contributions, net of losses or fees, are credited to the employer-level forfeiture account.
Participant retains any gains. Gains are distributed.	Gains are forfeited to plan-level forfeiture account.

Positive Corrections to Make Up Missed Contributions

Employee contributions not deducted from participant's paycheck.

Example H: An employer fails to automatically enroll a covered employee in the COV 457 Plan or fails to implement the covered employee's affirmative election to make elective contributions to the COV 457 Plan.

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COV 457 Plan Contributions Employee Contributions	CMP Contributions Employer Match on Employee Contributions
<p>If correct employee contributions begin no later than the first payment of compensation made on or after the last day of the 9½ month period after the end of the plan year in which the failure occurred (or, if earlier, the end of the month after the month the employee notifies the employer of the failure), then the employer is not required to make up missed employee contributions and/or earnings. The employer must provide a notice to affected employee no later than 45 days after the date on which correct employee contributions begin that satisfies content requirements of Rev. Proc. 2021-31.</p> <p>For failures that are not made within the 9½ month period after the end of the plan year in which the failure occurred, see Example I for required correction.</p>	<p>Employer required to remit missed match contributions plus any missed earnings. The missed match contributions are based on the employee contributions that would have been made under the COV 457 Plan if not for the error.</p>

Example I: An employer fails to start or increase participant’s contributions in accordance with the participant’s direction, or the employer improperly excludes a non-covered employee from the plan.

COV 457 Plan Contributions Employee Contributions	CMP Contributions Employer Match on Employee Contributions
<p>If correct employee contributions begin no later than the first payment of compensation made on or after three months from the date that the failure occurred (or, if earlier, the end of the month after the month the employee notifies the employer of the failure), the employer is not required to make up missed voluntary contributions and/or earnings. The employer must provide a notice* to affected employee no later than 45 days after the date on which correct deferrals begin that satisfies content requirements of Rev. Proc. 2021-31.</p>	<p>Employer required to remit missed match contributions <i>plus</i> any missed earnings. The missed match contributions are based on the employee contributions that would have been made under the COV 457 Plan if not for the error.</p>
<p>If correct employee contributions <i>do not</i> begin within three months from the date the failure occurred, the employer is required to remit a QNEC equal to 50% of the missed contribution amount <i>plus</i> any missed earnings. The employer must provide a notice* to affected employee no later than 45 days after the date on which correct deferrals begin that satisfies content requirements of Rev. Proc. 2021-31.</p>	

*A template for this notification is available for employer use.

Note: When a participant transfers between VRS-participating employers, with or without a break in service, the participant is responsible for ensuring employee contributions restart with the new employer, pursuant to Commonwealth of Virginia 457 Deferred Compensation Plan Section 3.03. There will be no corrective action if the participant fails to re-elect a contribution amount.

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Employer contributions not made on behalf of participant.

Example J: The employer fails to make match contributions or discretionary employer contributions on behalf of an eligible participant.

COV 457 Plan Contributions Discretionary Employer Contributions (if applicable)	CMP Contributions Employer Match on Employee Contributions
Employer required to remit missed discretionary employer contributions <i>plus</i> any missed earnings.	Employer required to remit missed match contributions <i>plus</i> any missed earnings. The missed match contributions are based on the employee contributions that would have been made under the COV 457 Plan if not for the error.

General Information

Corrections by negative contributions sent by payroll office to TPA.

Occasionally there are payroll adjustments that cause current pay period contributions to be negative. Certain errors may be corrected by sending a negative contribution to the TPA for the participant. However, this method is only allowed if the correction is made within **14 business days** in which the error occurred. In cases such as this, the focus is to ensure tax reporting for the participant is correct.

The following situation in which the negative contribution could be used:

- Voided check/no reissue – employee should have received no compensation for the pay period and there should have been no contribution made to the COV 457 Plan.

Terms

COV 457 Plan — Commonwealth of Virginia 457 Deferred Compensation Plan

Covered employee – An employee who is subject to the automatic enrollment contribution arrangement under the COV 457 Plan.

CMP — Virginia Cash Match Plan

QNEC — Qualified Non-Elective Contribution

TPA — Third-Party Administrator

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