INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2020–47
November 16, 2020

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

Announcement 2020-19, page 1070.

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

Notice 2020-76, page 1058.

This notice extends the due dates under sections 6055 and 6056 from January 31, 2021, to March 2, 2021, for insurers, self-insuring employers, applicable large employers, and certain other providers of minimum essential coverage to furnish to individuals the 2020 Form 1095-B, Health Coverage, and the 2020 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. Additionally, this notice provides that the IRS will not impose a penalty under section 6722 for failures to furnish a Form 1095-B to responsible individuals and also provides a final extension of transitional good-faith relief from section 6721 and 6722 penalties to the 2020 information reporting requirements under sections 6055 and 6056.

EMPLOYEE PLANS

Notice 2020-80, page 1060.

This notice requests comments on the application of the annuity and spousal rights provisions of section 205 of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended (ERISA), in connection with a distribution of an individual custodial account (ICA) in kind from a terminating § 403(b) plan. Although no § 403(b) plans are subject to the annuity and spousal rights provisions of §§ 401(a)(11) and 417 of the Internal Revenue Code (Code), some § 403(b) plans that are subject to ERISA (such as a plan of a non-church tax-exempt employer that provides for matching contributions) are subject to the parallel annuity and spousal rights provisions of section 205 of ERISA. Revenue Ruling 2020-23, 2020-47 I.R.B., issued contemporaneously with this notice, provides guidance regarding termination of a § 403(b) plan that is funded through the use of § 403(b)(7) custodial accounts and distribution of an ICA in kind to a participant or beneficiary of the plan. The revenue ruling does not, however, address the application of the annuity and spousal rights provisions under section 205 of ERISA in connection with a distribution of an ICA in kind as part of a plan termination.

Rev. Rul. 2020-23, page 1028.

Under the situations in the revenue ruling, the plan is terminated in accordance with the rules of § 1.403(b)-10(a). Distribution of an individual custodial account (ICA) in kind to a participant or beneficiary is not includible in gross income until amounts are actually paid to the participant or beneficiary out of the ICA, so long as the ICA maintains its status as a § 403(b)(7) custodial account. Any other amount distributed from a custodial account to a participant or beneficiary to effectuate plan termination is includible in gross income, except to the extent the amount is rolled over to an IRA or other eligible retirement plan by a direct rollover or by a transfer made within 60 days.

Finding Lists begin on page ii.

INCOME TAX

REG-119890-18, page 1063.

These proposed regulations set forth guidance on the average income test under § 42(g)(1)(C) of the Internal Revenue Code for purposes of the low-income housing credit.

T.D. 9927, page 1031.

This document contains final regulations under section 1502 of the Internal Revenue Code (the Code). The final regulations would update existing regulations under section 1.1502-21 to reflect statutory changes made to section 172 of the Code by the Tax Cuts and Jobs Act, P.L. 115-97 (Dec. 22, 2017) and the Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-36 (Mar. 27, 2020). The final regulations affect taxpayers that file consolidated returns.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I

Distribution of individual custodial accounts in kind upon termination of a § 403(b) plan.

Rev. Rul. 2020-23

ISSUES

Whether a § 403(b) retirement plan funded through the use of § 403(b)(7) custodial accounts that takes the actions described in this revenue ruling has been terminated in accordance with the rules of § 1.403(b)-10(a), and whether distributions made to participants or beneficiaries in connection with termination of the plan are includible in gross income.

FACTS

Situation 1. Plan A is a defined contribution plan that includes both nonelective employer contributions and elective deferrals. Section 205 of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended (ERISA), applies neither to Plan A generally nor to any participant under Plan A.[1] Plan A satisfies the requirements of § 403(b) and §§ 1.403(b)-2 through 1.403(b)-10. Plan A permits benefits to be paid only after termination from employment or upon plan termination. Plan A is funded solely through the use of § 403(b)(7) custodial accounts maintained under individual agreements.[2] All amounts held under Plan A are attributable to employer contributions, including elective deferrals as defined in § 1.403(b)-2(b)(7), and no amounts held under Plan A are attributable to designated Roth contributions or after-tax contributions. Neither the sponsoring employer, nor any other entity that is treated as the same employer under § 414(b), (c), (m), or (o) on the date of plan termination, makes contributions to any § 403(b) contract that is not part of Plan A, including during the period beginning on January 1, 2021, and ending on the date that is 12 months after distribution of all assets from Plan A.

On January 1, 2021, the employer sponsoring Plan A takes action to terminate Plan A. That action includes the employer executing a binding resolution to cease future contributions to custodial accounts under Plan A and to terminate Plan A, effective January 1, 2021 (the date of plan termination). The resolution also provides that all benefits held under Plan A are fully vested and nonforfeitable as of January 1, 2021, and directs that all benefits be distributed as soon as practicable thereafter. Participants and beneficiaries in Plan A are notified of the plan termination.

Distributions pursuant to the terms of Plan A and the termination resolution are made as soon as administratively practicable after the date of plan termination. For a participant or beneficiary who affirmatively elects to receive a distribution, depending on the participant's or beneficiary's election, a distribution equal to that participant's or beneficiary's account balance is made either to that participant or beneficiary, or to an individual retirement account or annuity under § 408 (an IRA) established for that participant or beneficiary, or another eligible retirement plan (in accordance with the rules of § 1.403(b)-7(b)(1) under which an eligible rollover distribution may be made to an IRA established for the participant or beneficiary or to another eligible retirement plan). Each custodial account provider permits any distribution that is an eligible rollover distribution (as described in § 402(c)(4)) to be paid by a direct transfer to an IRA or other eligible retirement plan (as defined in § 401(a)(31)(E)) in a manner that satisfies § 401(a)(31), including to an IRA established by the same provider that permits investment in the same mutual funds in which the participant's or beneficiary's custodial account is or may be invested. The plan administrator provides a notice to each participant describing the participant's rollover rights, as required by § 402(f) and § 1.403(b)-7(b)(3), withholds in accordance with § 3405 and § 1.403(b)-7(g), and reports the distribution on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., as required by § 6047(d).

For a participant or beneficiary who does not affirmatively elect to receive a distribution, so that a distribution of the participant's or beneficiary's account balance is not made as described in the preceding paragraph, a distribution pursuant to the terms of Plan A and the termination resolution is made as soon as administratively practicable after the date of plan termination and is effectuated by the distribution of an individual custodial account (ICA) in kind to the participant, beneficiary who is an alternate payee, or beneficiary of a deceased participant.

As part of the process of distributing an ICA in kind to a participant or beneficiary, the plan administrator notifies the participant or beneficiary that, after the distribution of the ICA in kind, the custodial account is being maintained as an ICA of the participant or beneficiary and is no longer part of Plan A. The distributed ICA is maintained by the custodian as a § 403(b)(7) custodial account that adheres to the requirements of § 403(b) in effect at the time of the distribution of the ICA

[1] Section 205 of ERISA includes annuity and spousal rights provisions that are parallel to the annuity and spousal rights provisions under §§ 401(a)(11) and 417 of the Internal Revenue Code. Section 205(a) of ERISA generally provides that a distribution must be provided either as a qualified joint and survivor annuity in the case of a participant who does not die before the annuity starting date, or as a qualified preretirement survivor annuity in the case of a participant who dies before the annuity starting date. Because section 205 of ERISA does not apply to Plan A generally or to any participant under Plan A, this revenue ruling does not address any annuity and spousal rights issues that may arise under section 205 of ERISA in connection with distributions of individual custodial accounts in kind. Notice 2020-80, 2020-47 I.R.B., issued contemporaneously with this revenue ruling, requests comments relating to these annuity and spousal rights issues.

[2] Pursuant to § 8 of Rev. Proc. 2007-71, 2007-51 I.R.B. 1184, certain contracts issued before 2009 are not required to be covered by the terms of a § 403(b) plan document. This revenue ruling does not apply to those contracts.

until amounts are actually paid to the participant or beneficiary. Additionally, the employer has no material retained rights under the distributed ICA after it has been distributed.

Situation 2. The facts are the same as in *Situation 1*, except that Plan A is funded not only by custodial accounts maintained under individual agreements, but also by custodial accounts maintained under group agreements. With respect to custodial accounts maintained under individual agreements, the facts are the same as in *Situation 1*.

With respect to custodial accounts maintained under group agreements, distributions pursuant to the terms of Plan A and the termination resolution are made as soon as administratively practicable after the date of plan termination. For a participant or beneficiary who affirmatively elects to receive a distribution, depending on the participant's or beneficiary's election, a distribution equal to the participant's or beneficiary's account balance is made either to the participant or beneficiary or to an IRA established for the participant or beneficiary or another eligible retirement plan (in accordance with the rules of § 1.403(b)-7(b)(1)).

For a participant or beneficiary whose account balance is held all or in part in custodial accounts maintained under a group agreement and who does not affirmatively elect to receive a distribution described in the prior paragraph, a distribution of an amount from the custodial accounts maintained under the group agreement is made as soon as administratively practicable after the date of plan termination and is effectuated by the distribution of an ICA in kind to each participant, beneficiary who is an alternate payee, or beneficiary of a deceased participant in the custodial accounts maintained under a group agreement. Distribution of an ICA in kind from the custodial accounts maintained under a group agreement is accomplished by distributing a document that evidences the ICA, including the accumulated nonforfeitable value of the participant's or beneficiary's interest in the custodial accounts maintained under a group agreement, and associated rights and responsibilities of the participant or beneficiary and custodian. A distributed ICA is maintained by the custodian as a § 403(b)(7) custodial account that adheres to the requirements of § 403(b) in effect at the time of the distribution of the ICA until amounts are actually paid to the participant or beneficiary. Additionally, the employer has no material retained rights under an ICA after it has been distributed.

LAW

Section 403(b) – In General

Section 403(b) applies to contributions made for employees who are performing services for a public school of a State or a local government or for employees of employers that are tax-exempt organizations under § 501(c)(3). Section 403(b) also applies to contributions made for certain ministers. Under § 403(b)(1), (7), and (9), contributions are excluded from gross income only if made to one or more of the following funding arrangements: (1) contracts issued by an insurance company qualified to issue annuities in a State that includes payment in the form of an annuity, (2) custodial accounts that are exclusively invested in stock of a regulated investment company (as defined in § 851(a) relating to mutual funds), or (3) retirement income accounts for employees of a church-related organization (as defined in § 1.403(b)-2) (collectively referred to as § 403(b) contracts). Additionally, under § 403(b)(1)(C), an employee's rights under the § 403(b) contract must be nonforfeitable.

Final regulations under § 403(b) (TD 9340) were published in the Federal Register (72 FR 41128) on July 26, 2007. Subject to a number of special applicability date rules, § 1.403(b)-11(a) provides that those final regulations generally apply for taxable years beginning after December 31, 2008.

Freezing and Terminating § 403(b) Plans

Section 1.403(b)-10(a) provides that an employer may amend its § 403(b) plan to eliminate future contributions for existing participants or to limit participation to existing participants and employees (to the extent consistent with § 1.403(b)-5). A § 403(b) plan also may include provisions that provide for plan termination and that allow accumulated benefits to be distributed on plan termination.

Under § 1.403(b)-10(a), in the case of a § 403(b) contract that is subject to the distribution restrictions in § 1.403(b)-6(c) or (d) (relating to custodial accounts and § 403(b) elective deferrals), termination of a § 403(b) plan and distribution of accumulated benefits is permitted only if the employer (taking into account all entities that are treated as the same employer under § 414(b), (c), (m), or (o) on the date of termination) does not make contributions to any § 403(b) contract that is not part of the plan (these contracts are referred to in this revenue ruling as "another § 403(b) plan"). For rules relating to entities that are treated as the same employer under § 414(c), see § 1.414(c)-5; for controlled group rules relating to governmental entities, see Notice 89-23 (1989-1 CB 654), as modified by Rev. Rul. 2009-18, 2009-2 C.B. 1; and, for special rules applicable to church plans for entities under common control, see § 414(c)(2).

For purposes of the requirement that, after plan termination, the employer make no contributions to any other § 403(b) plan, the employer makes contributions to another § 403(b) plan only if the employer makes contributions to a § 403(b) contract during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. However, if at all times during the period beginning 12 months before the plan termination and ending 12 months after distribution of all assets from the terminated plan, fewer than two percent of the employees who were eligible under the terminating § 403(b) plan as of the date of plan termination are eligible under another § 403(b) plan, that other § 403(b) plan is disregarded. To the extent a contract fails to satisfy the nonforfeitability requirement of § 1.403(b)-3(a)(2) as of the date of plan termination, the contract is not, and cannot later become, a § 403(b) contract.

For a § 403(b) plan to be terminated under § 1.403(b)-10(a), all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan.[3] For this purpose, delivery of a fully paid individual insurance annuity contract is treated as a distribution. The mere provision for, and making of, benefit distributions to participants or beneficiaries upon plan termination does not cause a contract to cease to be a § 403(b) contract. Section 1.403(b)-7 provides rules regarding the tax treatment of benefit distributions, including rules in § 1.403(b)-7(b)(1) under which an eligible rollover distribution is not included in gross income if paid in a direct rollover to an eligible retirement plan or if transferred to an eligible retirement plan within 60 days.

Rev. Rul. 2011-7, 2011-10 I.R.B. 534, provides that a plan may be terminated in accordance with the rules of § 1.403(b)-10(a) by the delivery to participants or beneficiaries of a fully paid individual annuity contract or an individual certificate evidencing fully paid benefits under a group annuity contract. Rev. Rul. 2011-7 further provides that the delivery of a fully paid individual annuity contract to a participant or beneficiary, or of an individual certificate evidencing fully paid benefits under a group annuity contract, is not included in gross income until amounts are actually paid to the participant or beneficiary out of the contract, so long as the contract maintains its status as a § 403(b) contract. Finally, Rev. Rul. 2011-7 provides that any other distribution to a participant or beneficiary to effectuate plan termination is included in gross income, except to the extent the amount is rolled over to an IRA or other eligible retirement plan by a direct rollover or by a transfer made within 60 days.

Section 110 of the SECURE Act

Section 110 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019) known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), provides that the Secretary of the Treasury shall issue guidance providing that, if an employer terminates a plan under which amounts are contributed to a custodial account under § 403(b)(7), the plan administrator or custodian may distribute an ICA in kind to a participant or beneficiary of the plan. It also provides that the distributed custodial account will be maintained by the custodian on a tax-deferred basis as a § 403(b)(7) custodial account, similar to the treatment of fully paid individual annuity contracts under Rev. Rul. 2011-7, until amounts are actually paid to the participant or beneficiary. The legislation further directs that the guidance provide (1) that the § 403(b)(7) status of the distributed custodial account generally is maintained if the custodial account thereafter adheres to the requirements of § 403(b) that are in effect at the time of the distribution of the account, and (2) that a custodial account is not considered distributed to the participant or beneficiary if the employer has any material retained rights under the account (but the employer is not treated as retaining material rights merely because the custodial account was originally opened under a group contract). Finally, the legislation directs that the guidance be retroactively effective for taxable years beginning after December 31, 2008.[4]

ANALYSIS

The employer in *Situation 1* adopts a resolution to cease contributions and terminate the plan at a specified date, including full vesting for all benefits as of that date. Because the plan satisfies the applicable requirements under § 403(b) and the employer takes action to fully vest any participants with respect to amounts not otherwise fully vested as of the date of plan termination, all custodial accounts under the plan are § 403(b) contracts upon plan termination. See § 1.403(b)-10(a)(1).

Distributions of accumulated benefits under the plan in *Situation 1* are made either (1) by payment to the participant or beneficiary, or to an IRA established by the participant or beneficiary or another eligible retirement plan (in accordance with § 1.403(b)-7(b)); or (2) by distribution of an ICA in kind to each participant or beneficiary as soon as administratively practicable after the date of plan termination. Because the plan is funded solely through custodial accounts maintained under individual agreements, no further action is required to be taken in order to distribute the ICA in kind. In addition, neither the sponsoring employer nor any other entity that is treated as the same employer under § 414(b), (c), (m), or (o) on the date of plan termination makes contributions to any § 403(b) contract that is not part of Plan A, including during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. Accordingly, the employer's actions to terminate the plan and distribute accumulated benefits satisfy the requirements of § 403(b) and § 1.403(b)-10(a) for plan termination. Following termination of the plan, a participant or beneficiary who holds an ICA is entitled to payments in accordance with the terms of the ICA (which may permit single-sum payments in connection with plan termination).

In *Situation 2*, the same actions are taken, except that the employer distributes an ICA in kind to a participant or beneficiary whose accumulated benefits are funded by a custodial account maintained under a group agreement by providing a document to the participant or beneficiary that evidences the ICA, including the accumulated nonforfeitable value of the participant's or beneficiary's interest in the custodial accounts maintained under the group agreement, and associated rights and responsibilities of the participant or beneficiary and custodian. The distribution of the ICA in kind to the participant or beneficiary constitutes a distribution of the participant's or beneficiary's accumulated benefit in the custodial accounts maintained under a group agreement for purposes of § 1.403(b)-10(a).

In both *Situation 1* and *Situation 2*, the employer has no material retained rights under an ICA after it has been distributed (and the employer is not treated as retaining material rights merely because the ICA was originally opened under a group contract). Accordingly, with respect to

[3] For rules relating to the requirement that distributions to all participants and beneficiaries be made as soon as administratively practicable after plan termination in the case of a plan qualified under § 401(a), see Rev. Rul. 89-87, 1989-2 C.B. 81.

[4] Because SECURE Act section 110 provides that the guidance is retroactively effective only for taxable years beginning after December 31, 2008, this revenue ruling does not apply to any action that occurred in taxable years beginning on or before December 31, 2008.

Situation 1 and *Situation 2*, the distribution of an ICA in kind to a participant or beneficiary is not immediately includible in gross income, but rather amounts are includible in income only when actually paid to the participant or beneficiary from the custodial account, so long as the ICA maintains its status as a § 403(b)(7) custodial account; the § 403(b)(7) custodial account status of the ICA generally is maintained if the ICA continues to adhere to the requirements of § 403(b) that are in effect at the time of the distribution of the ICA. Any other amount paid to a participant or beneficiary, such as a single-sum payment, is includible in the gross income of the participant or beneficiary, except to the extent the amount is rolled over to an IRA or other eligible retirement plan by a direct rollover or by a transfer made within 60 days.

HOLDING

In *Situation 1* and *Situation 2*, Plan A is terminated in accordance with the rules of § 1.403(b)-10(a). Distribution of an ICA in kind to a participant or beneficiary is not includible in gross income until amounts are actually paid to the participant or beneficiary out of the ICA, so long as the ICA maintains its status as a § 403(b)(7) custodial account. Any other amount distributed from a custodial account to a participant or beneficiary to effectuate plan termination is includible in gross income, except to the extent the amount is rolled over to an IRA or other eligible retirement plan by a direct rollover or by a transfer made within 60 days.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 2011-7 is modified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Patrick T. Gutierrez of the Office of Associate Chief Counsel, Employee Benefits, Exempt Organizations, and Employment Taxes. For further information regarding this revenue ruling, please contact Patrick T. Gutierrez at (202) 317-4148 (not toll-free).

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26 CFR 1.1502-21: Net Operating Losses

T.D. 9927

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 1502 and 1503 of the Internal Revenue Code (Code). These regulations provide guidance implementing recent statutory amendments to section 172 of the Code relating to the absorption of consolidated net operating loss (CNOL) carryovers and carrybacks. These regulations also update regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes. These regulations affect corporations that file consolidated returns.

DATES: *Effective Date*: These regulations are effective on December 28, 2020.

Applicability Date: For dates of applicability, see §§1.1502-1(l), 1.1502-21(h)(10), 1.1502-47(n), and 1.1503(d)-8(b)(8).

FOR FURTHER INFORMATION CONTACT: Justin O. Kellar at (202) 317-6720, Gregory J. Galvin at (202) 317-3598, or William W. Burhop at (202) 317-5363.

SUPPLEMENTARY INFORMATION:

Background

This Treasury decision amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502-1(h) (defining the term "consolidated group"). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502-1.

On July 8, 2020, the IRS published a notice of proposed rulemaking (REG-125716-18) in the **Federal Register** (85 FR 40927) under section 1502 of the Code (proposed regulations). The proposed regulations provided guidance implementing recent statutory amendments to section 172, relating to net operating loss (NOL) deductions, and withdrew and re-proposed certain sections of proposed guidance issued in prior notices of proposed rulemaking relating to the absorption of CNOL carryovers and carrybacks. In addition, the proposed regulations updated regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes.

In connection with the proposed regulations, the IRS published on the same date temporary regulations under section 1502 (TD 9900) in the **Federal Register** (85 FR 40892) (temporary regulations). The temporary regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 for certain losses attributable to the acquired members. The text of the temporary regulations also serves as the text of §1.1502-21(b)(3)(ii)(C) and (D) of the proposed regulations.

The IRS received seven comments in response to the proposed regulations. Copies of the comments received are available for public inspection at http://www.regulations.gov or upon request. No public hearing was requested or held.

This Treasury decision adopts the proposed regulations, other than proposed §1.1502-21(b)(3)(ii)(C) and (D), as final regulations with the changes described in the following Summary of Comments and Explanation of Revisions. The Treasury Department and the IRS expect to finalize proposed §1.1502-21(b)(3)(ii)(C) and (D) at a later date and welcome further comments on these provisions.

Summary of Comments and Explanation of Revisions

I. *Comments on and Changes to Proposed §1.1502-21*

A. *Overview of section 172*

These final revisions implement certain statutory amendments to section 172 made by Public Law 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), and by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (March 27, 2020). See generally the Background section of the preamble to the proposed regulations. As amended, section 172(a)(2) allows an NOL deduction for a taxable year beginning after December 31, 2020, in an amount equal to the sum of (A) the aggregate amount of pre-2018 NOLs that are carried to such taxable year, and (B) the lesser of (i) the aggregate amount of post-2017 NOLs that are carried to such taxable year, or (ii) the "80-percent limitation." The 80-percent limitation is equal to 80 percent of the excess (if any) of (I) taxable income computed without regard to any deductions under sections 172, 199A, and 250 of the Code, over (II) the aggregate amount of pre-2018 NOLs carried to the taxable year. See section 172(a)(2)(B)(ii). For purposes of the foregoing computation, the term "pre-2018 NOLs" refers to NOLs arising in taxable years beginning before January 1, 2018, and the term "post-2017 NOLs" refers to NOLs arising in taxable years beginning after December 31, 2017.

The 80-percent limitation does not apply to the offset of income by NOLs in taxable years beginning before January 1, 2021. Section 172(a)(1). The 80-percent limitation also does not apply to limit the use of pre-2018 NOLs. Section 172(a)(2)(A).

Moreover, the 80-percent limitation does not apply to insurance companies other than life insurance companies (nonlife insurance companies). Section 172(f). Therefore, the taxable income of nonlife insurance companies may be fully offset by NOL deductions. In addition, under section 172(b)(1)(C) and (b)(1)(D)(i), losses of nonlife insurance companies arising in taxable years beginning after December 31, 2020, may be carried back two years and carried over 20 years. In contrast, losses (aside from farming losses) of other taxpayers arising in such taxable years may not be carried back but may be carried forward indefinitely. Section 172(b)(1). Thus, nonlife insurance companies are subject to special rules under section 172 both with respect to the amount of taxable income that may be offset by NOL deductions and with respect to the taxable years to which NOLs may be carried.

B. *Overview of the proposed approach and the alternative approach*

To implement the special rules under section 172 for nonlife insurance companies for a consolidated return year beginning after December 31, 2020, the proposed regulations provided that the application of the 80-percent limitation within a consolidated group to post-2017 NOLs depends on the status of the member that generated the income being offset. The proposed regulations further provided that the amount of post-2017 CNOLs that may be absorbed by one or more members of the group in such a consolidated return year (post-2017 CNOL deduction limit) is determined by applying the 80-percent limitation, section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income (CTI) for that year. See proposed §1.1502-21(a)(2)(ii)(A) and (B).

For consolidated groups comprised of both nonlife insurance companies and other members for a consolidated return year beginning after December 31, 2020, the proposed regulations adopted a two-factor computation (proposed approach). In general, under the proposed approach, the post-2017 CNOL deduction limit for such a group equals the sum of two amounts. The first amount, which relates to the income of those members that are not nonlife insurance companies (residual income pool), is subject to the 80-percent limitation. The second amount, which relates to the income of those members that are nonlife insurance companies (nonlife income pool), is not subject to the 80-percent limitation. See proposed §1.1502-21(a)(2)(iii)(C). Thus, the proposed approach divides a consolidated group's nonlife insurance companies and its other members into two separate "pools" for purposes of determining the amount of CTI that is available to be offset by post-2017 CNOLs after applying the 80-percent limitation.

In formulating the proposed regulations, the Treasury Department and the IRS considered another approach (alternative approach). This alternative approach would have required a group to first offset income and loss items within a pool of nonlife insurance companies and a pool of other members for all purposes of section 172 applicable to taxable years beginning after December 31, 2020. In other words, the alternative approach would have applied a pooling concept beyond merely determining the group's post-2017 CNOL deduction limit, but would have required a group's CTI to be allocated between the operations of its nonlife insurance company members, which can be offset fully by CNOL deductions, and the operations of its other members subject to the 80-percent limitation. This alternative approach would also have applied similar rules to allocate CNOLs within groups including both nonlife insurance companies and other members to consistently identify the portions of CNOLs allocable to nonlife insurance company members, which are subject to different carryover rules than those of other members.

The alternative approach would have contrasted with the historical application of §1.1502-21(b)(2)(iv)(B), under which a CNOL for a taxable year is attributed pro rata to all members of a group that produce net loss, without first netting among entities of the same type. In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments regarding both the proposed approach and the alternative approach.

C. *Comments on the proposed approach and the alternative approach*

In response to the request for comments, the Treasury Department and the IRS received comments that uniformly approved the proposed approach. For example, two commenters commended the proposed regulations as implementing the statutory amendments to section 172 in a reasonable manner that is consistent with both the statute and consolidated return principles. Specifically, both commenters supported the proposed regulations' approach to computing a group's post-2017 CNOL deduction limit as well as the proposed regulations' retention of the historical pro rata approach under §1.1502-21(b)(2)(iv)(B) to determine the amount of nonlife insurance company losses that can be carried to other taxable years.

In support of the proposed regulations, one commenter asserted that the proposed approach is more consistent with the treatment of CNOLs as consolidated items and with the current CNOL use and absorption rules in §1.1502-21 than the alternative approach. The commenter further asserted that, because the alternative approach would depart from the general pro rata rules of §1.1502-21 by first netting income and loss among entities of the same type within a consolidated group, the alternative approach could result in computational and compliance complications in circumstances that may be difficult to anticipate.

In response to the comments received, these final regulations retain the proposed approach to computing a consolidated group's post-2017 CNOL deduction limit.

D. *Application of the proposed approach to life-nonlife groups*

One commenter recommended that, for consolidated groups with both nonlife insurance companies and life insurance companies, the amounts of the residual income pool and the nonlife income pool in proposed §1.1502-21(a)(2)(iii)(C)(*2*) and (*3*) be clarified to refer only to the items of income, gain, deduction, or loss of members of the nonlife subgroup (as defined in §1.1502-47(b)(9) of these final regulations). The commenter further recommended that, in making this clarification, the Treasury Department and the IRS should not prevent nonlife CNOLs from offsetting life subgroup income where permitted by the Code and §1.1502-47. The commenter noted that this outcome appears to be the intent of the cross-reference to §1.1502-47 in proposed §1.1502-21(b)(2)(iv)(E), but the commenter indicated that clarification would be useful. The Treasury Department and the IRS agree with the commenter regarding the purpose of the cross-reference to §1.1502-47 in proposed §1.1502-21(b)(2)(iv)(E) and have revised the regulations to more clearly confirm this outcome.

E. *Consolidated capital gain net income*

Section 1.1502-11(a)(3) provides that the CTI for a consolidated return year is determined by taking into account, among other enumerated items, any consolidated capital gain net income. See generally §1.1502-22(a) (providing rules for determining consolidated capital gain net income). Under §1.1502-22(a), the determinations for a consolidated group under section 1222, including capital gain net income, are not made separately. Instead, such consolidated amounts are determined for the group as a whole.

Section 1.1502-11 does not provide explicit rules for allocating consolidated capital gain net income among members. Thus, one commenter requested that the final regulations clarify that, for groups that include nonlife insurance companies, consolidated capital gain net income under §1.1502-11(a)(3) is allocated to the residual income pool and the nonlife income pool using a pro rata method based on the principles of §1.1502-21(b)(2)(iv), as reflected in the general rule in §1.1502-21(b)(1), for the use and absorption of CNOLs.

Section 1.1502-11 also does not provide explicit rules for determining the amount of each member's income that is offset by losses (whether incurred in the current year or carried over or back as a part of a CNOL or consolidated net capital loss). However, the Treasury Department and the IRS understand that, in the absence of express rules, consolidated return practitioners generally apply the principles of §1.1502-21(b)(2)(iv) to make such determinations. The methodology for computing a consolidated group's post-2017 CNOL deduction limit is intended to implement the changes made to section 172(a) by the TCJA and the CARES Act in a manner that is flexible for taxpayers to apply and administrable for the IRS. The Treasury Department and the IRS have determined that specific rules regarding the allocation of consolidated capital gain net income to the residual income pool and the nonlife income pool under §1.1502-21(a)(2)(iii)(C)(*2*) and (*3*) would exceed the scope of these final regulations. Accordingly, the Treasury Department and the IRS continue to reflect on the commenter's recommendation but have not incorporated that recommendation into the final regulations.

F. *Example 6 in proposed §1.1502-21(b)(2)(v)(F)*

Proposed §1.1502-21(b)(2)(v)(F) (Example 6) contains an example that illustrates the application of section 172 to a CNOL incurred by a consolidated group (P group) that includes P, an includible corporation under section 1504(b) of a type other than a nonlife insurance company, and PC1, a nonlife insurance company. Both P and PC1 were incorporated in Year 1, a year beginning after December 31, 2020. In Year 1, the P group has $45 of CTI, $20 of which is attributable to P and $25 of which is attributable to PC1. In Year 2, the P group incurs a $16 CNOL that is attributable to PC1 and that is carried back to Year 1 under section 172(b)(1)(C)(i).

The example illustrates that, under proposed §1.1502-21(a)(2)(iii)(C), the P group's post-2017 CNOL deduction limit for Year 1 is $41, which is the sum of the residual income pool ($16) and the nonlife income pool ($25), as described in proposed §1.1502-21(a)(2)(iii)(C)(*2*) and (*3*), respectively. More specifically, the amount of the residual income pool equaled the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 ($16), or 80 percent of the excess of P's taxable income for that year ($20) over the aggregate amount of pre-2018 NOLs allocable to P ($0), which also was $16 (80 percent × ($20−$0)). See proposed §1.1502-21(b)(2)(v)(F)(*3*). The amount of the nonlife income pool equaled the excess of PC1's taxable income for Year 1 ($25) over the aggregate amount of pre-2018 NOLs allocable to PC1 ($0). Id.

Two commenters requested clarification as to how much taxable income in each pool is offset by a CNOL carryover or carryback if each pool has positive taxable income, as in Example 6. Specifically, commenters contended that a specific absorption rule is needed to determine how much taxable income in the residual income pool (which is subject to the 80-percent limitation) can be offset by subsequent CNOL carryovers or carrybacks to the same year. For example, assume the same facts as in Example 6, but that the P group also incurs a $30 CNOL in Year 3 that is entirely attributable to PC1 and that is eligible to be carried back to Year 1. Absent a rule specifying how much taxable income in each pool was offset in Year 1 by the $16 Year 2 CNOL carryback, the commenters questioned how to compute the residual income pool for purposes of determining how much of the P group's Year 3 CNOL carryback could be absorbed by the P group in Year 1.

As noted in part I.A of this Summary of Comments and Explanation of Revisions, the computation in section 172(a)(2)(B)(ii) is made "without regard to the deductions under [section 172] and sections 199A and 250." Consistent with the statute, the amount of income in the residual income pool that is subject to the 80-percent limitation for a particular consolidated return year is not recomputed to reflect the amount of CNOLs carried over to and absorbed in that year. See §1.1502-21(a)(2)(iii)(C)(*2*) of these final regulations. Rather, the only component of the post-2017 CNOL deduction limit that is subject to change upon the carryover or carryback of additional CNOLs to the same consolidated return year is the aggregate amount of post-2017 CNOLs carried to that year. See §1.1502-21(a)(2)(iii)(C)(*1*)(*i*) of these final regulations. Determining this amount does not require an absorption rule.

With regard to Example 6, if the P group were to incur a $30 CNOL in Year 3 that was eligible to be carried back to Year 1, the P group would redetermine the aggregate amount of the P group's post-2017 CNOLs that are carried to Year 1, but the P group would not recompute the amount of Year 1 income subject to the 80-percent limitation. Thus, an absorption rule is not needed to determine how much of the P group's Year 1 CTI can be offset by subsequent CNOL carrybacks. However, these final regulations provide additional facts in Example 6 to illustrate the computation of the amount of additional CNOL carryovers or carrybacks to the same consolidated return year that can be deducted to offset income in that year.

G. *Split-waiver elections*

If a member of one consolidated group becomes a member of another consolidated group, §1.1502-21(b)(3)(ii)(B) permits the acquiring group to make an irrevocable election to relinquish, with respect to all CNOLs attributable to the acquired corporation, the portion of the carryback period for which the acquired corporation was a member of another group (so long as any other corporation joining the acquiring group that was affiliated with the acquired corporation immediately before it joined the acquiring group also is included in the waiver).

A commenter noted that, pursuant to §1.1502-21(b)(3)(ii)(B), an acquiring group may make a split-waiver election only with respect to acquired corporations that were members of a different consolidated group in a carryback year. The commenter recommended that §1.1502-21(b)(3)(ii) be expanded to allow a split-waiver election if the acquired corporation was not a member of a consolidated group in the carryback year.

The Treasury Department and the IRS appreciate the commenter's suggestion and will continue to consider it in connection with the future finalization of the temporary regulations. However, this comment exceeds the scope of these final regulations, which adopt the provisions of the proposed regulations other than those for which the text was contained in the temporary regulations (specifically, §1.1502-21(b)(3)(ii)(C) and (D)). Therefore, the Treasury Department and the IRS decline to adopt this recommendation in this Treasury decision.

H. *Modification to SRLY rules*

The proposed regulations modify the separate return limitation year (SRLY) rules in §1.1502-21(c) to take into account the limitations on NOL deductions under section 172, as amended by the TCJA and the CARES Act. See proposed §1.1502-21(c)(1)(i)(E). A commenter recommended that this modification not apply for purposes of section 1503(d) (the dual consolidated loss (DCL) rules). In certain cases, the extent to which section 1503(d) restricts the use of a DCL, or requires the recapture of a DCL (or a related interest charge), depends on the application of the SRLY rules in §1.1502-21(c), subject to certain adjustments. See §§1.1503(d)-4(c)(3) and 1.1503(d)-6(h)(2). In these cases, the adjusted SRLY rules are generally intended to ensure that a DCL may be used only to offset income of the dual resident corporation or separate unit that incurred the DCL, such that the use does not result in a "double dip" of the DCL.

The commenter recommended that the modification reflected in proposed §1.1502-21(c)(1)(i)(E) not apply for purposes of the DCL rules because the modification addresses policies specific to the SRLY rules in §1.1502-21(c) (replicating, to the extent possible, separate-entity usage of SRLY attributes), which differ from the policies underlying the DCL rules (preventing double dipping of losses). In addition, the commenter asserted that applying the rule in proposed §1.1502-21(c)(1)(i)(E) for DCL purposes could distort the determination of whether double dipping could occur.

The Treasury Department and the IRS agree with the commenter. The final regulations therefore provide that §1.1502-21(c)(1)(i)(E) does not apply for purposes of the DCL rules. See §1.1503(d)-4(c)(3)(v).

I. *Clarifying changes to proposed §1.1502-21*

In addition to the foregoing comments, a commenter recommended clarifying changes to proposed §1.1502-21. The Treasury Department and the IRS appreciate these suggested clarifications and have incorporated many of them into the final regulations. However, the commenter also recommended deleting the reference to section 199A in proposed §§1.1502-21(a)(2)(iii)(A)(*2*)(*ii*) and 1.1502-21(a)(2)(iii)(C)(*2*)(*ii*) on the grounds that the deduction under section 199A is available to only noncorporate taxpayers. Because section 199A(g) provides a deduction for specified agricultural or horticultural cooperatives, which (as C corporations) can be members of a consolidated group, these references to section 199A have been retained in the final regulations.

The Treasury Department and the IRS also have made additional clarifying revisions based on further review of the proposed regulations. In particular, the final regulations contain corrections to scrivener's errors in the two-factor computation in proposed §1.1502-21(a)(2)(iii). Specifically, the "lesser of" language in proposed §1.1502-21(a)(2)(iii)(C)(*2*), which was intended to reflect the application of section 172(a)(2)(B) to groups that include both nonlife insurance companies and other corporations, was mislocated. To accurately reflect the comparison required under section 172(a)(2)(B), the language at issue has been moved to §1.1502-21(a)(2)(iii)(C)(*1*) of the final regulations.

Additional edits have been made to enhance the consistency and clarity of the rules in proposed §1.1502-21(a)(2). For example, language reflecting the "lesser of" comparison described in the preceding paragraph has been explicitly integrated into §§1.1502-21(a)(2)(iii)(B) and 1.1502-21(a)(2)(iii)(C)(*5*)(*ii*) (concerning CNOL deductions that offset income of nonlife insurance company members) of these final regulations. As discussed in part II.B of this Summary of Comments and Explanation of Revisions, the post-2017 CNOL deduction limit equals the maximum amount of post-2017 CNOLs that can be deducted against taxable income in a consolidated return year beginning after December 31, 2020. This amount could never exceed the total amount of post-2017 CNOLs carried to that year. See section 172(f) (providing that, in the case of a nonlife insurance company, the amount of the NOL deduction allowed under section 172(a) in any taxable year equals the aggregate of NOL carrybacks and carryovers to that year).

Likewise, in the absence of any other limitation, the taxable income of a taxpayer always constitutes a limit on the deductibility of NOLs. See generally section 172(b)(2). Without such limit, the deduction of NOLs in excess of taxable income would create an additional NOL. The Treasury Department and IRS have determined that explicitly providing the respective post-2017 CNOL and taxable income limitations on the deduction of NOLs to offset taxable income of nonlife insurance companies will enhance the clarity of the final regulations and the consistency of their application.

II. *Comments on and Changes to Proposed §1.1502-47*

The proposed regulations updated the rules in §1.1502-47 to reflect statutory changes enacted since these rules were promulgated. Commenters commended the Treasury Department and the IRS for updating these regulations. Additionally, several commenters expressed their understanding that another guidance project has been initiated to propose substantive changes to §1.1502-47 and urged the Treasury Department and the IRS to give priority to this effort. These commenters argued that the objective of that guidance project should be the elimination of any provisions that depart from general consolidated return principles in life-nonlife consolidation, except to the extent non-conforming provisions are necessary to implement specific provisions of the Code. In particular, these commenters expressed concern about the treatment of consolidated capital gains and losses under §1.1502-47 and requested simplification of the eligibility and tacking rules.

The Treasury Department and the IRS appreciate the commenters' input and welcome further comments regarding substantive changes to §1.1502-47 for purposes of potential future guidance. However, such changes are beyond the scope of these final regulations.

Additionally, commenters recommended several clarifying changes to proposed §1.1502-47. Many of these suggested clarifications have been incorporated into the final regulations. For example, these final regulations have added a cross-reference to the definition of "nonlife insurance company" in §1.1502-1(k). However, one commenter recommended that §1.1502-47(g)(3) of these final regulations be modified to more closely parallel §1.1502-47(f)(3) of these final regulations. The commenter further requested that paragraph (d)(5) of these final regulations be modified to explicitly set forth the various rules (both statutory and regulatory) that apply to certain dividends received by an includible member from another member of the consolidated group. These comments exceed the scope of these final regulations, but the Treasury Department and the IRS will continue to consider these comments for purposes of potential future guidance regarding §1.1502-47.

Effective/Applicability Dates

The final regulations in §§1.1502-1(k), 1.1502-21(a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E), 1.1502-47, and 1.1503(d)-8(b)(8) apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules in §§1.1502-1(k) and 1.1502-47 of these final regulations to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence with regard to the rules in §1.1502-47, the corporation must apply those rules in their entirety and consistently with the provisions of the Internal Revenue Code applicable to the years at issue.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

Executive Orders 13563, 13771, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the final regulations as economically significant under section 1(c) of the Memorandum of Agreement. Accordingly, OMB has reviewed the final regulations.

A. *Background and Need for Regulations*

In general, taxpayers whose deductions exceed their income generate a net operating loss (NOL), calculated under the rules of section 172. Section 172 also governs the use of NOLs generated in other years to offset taxable income in the current year. Regulations issued under the authority of section 1502 may be used to govern how section 172 applies to consolidated groups of C corporations. In general, a consolidated group generates a combined NOL at an aggregate level (CNOL), with the CNOL generally equal to the loss generated from treating the consolidated group as a single entity. Under regulations promulgated prior to the Tax Cuts and Jobs Act (TCJA), the allowed CNOL deduction was equal to the lesser of the CNOL carryover or the combined taxable income of the group (before the CNOL deduction).

The TCJA and the Coronavirus Aid, Relief, and Economic Security (CARES) Act made several changes to section 172. First, the TCJA and the CARES Act disallowed the carry back of NOLs generated in taxable years beginning after 2020, except for farming losses and losses incurred by corporations that are insurance companies other than life insurance companies (nonlife insurance companies). Second, the TCJA and the CARES Act limited the NOL deduction in taxable years beginning after 2020 for NOLs generated in 2018 or later (post-2017 NOLs) to 80 percent of taxable income determined after the deduction for pre-2018 NOLs but before the deduction for post-2017 NOLs. This 80-percent limitation does not apply to nonlife insurance companies.

These final regulations implement the changes to section 172 in the context of consolidated groups. In particular, regulations are needed to address three issues related to consolidated groups that were not expressly addressed in the TCJA or the CARES Act. First, the final regulations describe how to determine the 80-percent limitation in the case of a "mixed" group – that is, a consolidated group containing nonlife insurance companies and other members. Second, the final regulations address the calculation and allocation of farming losses. Third, the final regulations implement the 80-percent limitation into existing regulations to determine the CNOL deduction attributable to losses from a member arising during periods in which that member was not part of that group. Part I.B of this Special Analyses describes the manner by which the final regulations addresses each of these issues.

Part I.B also describes an alternative approach that was contemplated by the Treasury Department and the IRS regarding the allocation of currently generated losses to nonlife insurance companies and other members. The Treasury Department and the IRS elected not to implement this approach.

B. *Overview of the Final Regulations*

In this part I.B the following terms are used. The term "P group" means a consolidated group of which P is the common parent. The term "P&C member" means a member of the P group that is a nonlife insurance company. The term "C member" means a member of the P group that is a C corporation other than a nonlife insurance company.

1. Application of 80-percent limitation in mixed groups

Under the statute, the general rule for determining the NOL deduction (for a taxable year beginning after December 31, 2020) effectively proceeds in two steps. First, the taxpayer deducts pre-2018 NOLs without limit. Second, the taxpayer deducts post-2017 NOLs up to 80 percent of the taxpayer's taxable income (computed without regard to the deductions under sections 199A and 250) determined after the deduction of pre-2018 NOLs (but, naturally, before the deduction for post-2017 NOLs). However, this 80-percent limitation does not apply for corporations that are nonlife insurance companies.

The application of the 80-percent limitation to the P group is straightforward if (i) there are no pre-2018 NOLs and (ii) both classes of P&C members and C members have positive income before the CNOL deduction. In that case, these final regulations provide, quite naturally, that the CNOL limitation is determined by adding (i) the pre-CNOL income generated by the class of C members (C member income pool), determined by applying the 80-percent limitation, plus (ii) 100 percent of the pre-CNOL income generated by the class of P&C members (P&C member income pool). This latter treatment reflects the rule in section 172(f) that nonlife insurance companies are not subject to the 80-percent limitation.

One complication arises when the pre-CNOL C member income pool is positive and the pre-CNOL P&C income pool is negative, and the P group has positive combined pre-CNOL taxable income. In this case (where the pre-CNOL income is generated by C members, rather than P&C members), these final regulations provide that the post-2017 CNOL deduction limit is determined by applying the 80-percent limitation to the income of the P group. If the situation were reversed, such that the P group had positive combined taxable income but the pre-CNOL income is generated by P&C members, rather than the C members, the post-2017 CNOL deduction limit is equal to the income of the P group (that is, determined without regard to the 80-percent limitation). In essence, in these situations, the amount of the P group's income able to absorb a post-2017 CNOL carryover is defined by the member pool (that is, the C member income pool or the P&C member income pool) that is generating the income.

The other complication occurs when there is a pre-2018 NOL. In this situation, it matters whether the pre-2018 NOL is treated as reducing the amount of the C member income pool or reducing the amount of P&C member income pool. Consider the following example (Example 1). In Example 1, the P group carries $50 in pre-2018 NOLs and $1000 in post-2017 NOLs to 2021. In 2021, the P&C members and the C members, respectively, earn (pre-CNOL) income of $100. If the pre-2018 NOL were treated as solely reducing the amount of C member income pool, then the limitation for the post-2017 CNOL deduction would be $100 plus 80 percent of $50 ($100 minus $50), equal to $140. If the pre-2018 NOL were treated as solely reducing the amount of the P&C member income pool, then the post-2017 CNOL deduction limit for the P group would be $50 ($100 minus $50) plus 80 percent of $100, or $130.

These final regulations allocate the pre-2018 NOL pro-rata to the C member income pool and the P&C member income pool in proportion to their current-year income. In Example 1, $25 of the pre-2018 NOL would be allocated to the C member income pool and $25 to the P&C member income pool. Therefore, the post-2017 CNOL deduction limit for the P group would be $75 ($100 minus $25) plus 80 percent of $75 ($100 minus $25), or $135.

2. Farming losses

Section 172 provides that NOLs arising in a taxable year beginning after December 31, 2020, may not be carried back to prior years, with two exceptions: (1) farming losses and (2) nonlife insurance company losses. Section 172(b)(1)(B) defines a "farming loss" as the smaller of the actual loss from farming activities in a given year (that is, the excess of the deductions in farming activities over income in farming activities) and the total NOL generated in that year. This statutory provision means that if a taxpayer incurs a loss in farming activities but has overall income in other activities, the farming loss will be smaller than the loss in farming activities (and can possibly be zero).

Regulations were needed to clarify two issues that arise in the context of consolidated groups. First, these regulations clarify that the maximum amount of farming loss is the CNOL of the group rather than the NOL of the specific member generating the loss in farming activities. This approach follows closely regulations issued by the Treasury Department and the IRS in 2012 in an analogous setting.

Second, given the overlapping categories of carryback-eligible NOLs (farming losses and nonlife insurance companies), regulations are needed to allocate the farming loss to the various members to determine the total amount of CNOL that can be carried back. Consider the following example (Example 2). In Example 2, the P group consists of one C member and one P&C member. In 2021, the C member's only activity is farming and the C member incurs a loss of $30, while the P&C member incurs a loss of $10. The total farming loss is $30, since $30 is less than the P group CNOL of $40. If this farming loss were allocated entirely to the C member, then the total amount eligible for carryback would be $40 (that is, $30 for the farming loss and $10 for the loss incurred by the P&C member). By contrast, if the farming loss were allocated entirely to the P&C member, only $30 would be eligible to be carried back.

Again, following a similar rule as the 2012 regulations, these final regulations allocate the farming loss to each member of the group in proportion with their share of total losses, without regard to whether each member actually engaged in farming. In Example 2, this would allocate $7.50 (that is, one-fourth of $30) of the farming loss to the P&C member and the remaining $22.50 (that is, three-fourths of $30) to the C member. Therefore, the P group would be allowed to carry back $32.50 total (that is, the $10 of loss generated by the P&C member and the $22.50 of farming losses allocated to the C member).

3. Separate Return Limitation Year

To reduce "loss trafficking," existing regulations under section 1502 limit the extent to which a consolidated group (that is, the P group) can claim a CNOL attributable to losses generated by some member (M) in years in which M was not a member. In particular, existing rules limit this amount of loss to the amount of the loss that would have been deductible had M remained a separate entity; that is, the rules are designed to preserve neutrality in loss use between being a separate entity or a member of a group. Existing rules operationalize this principle using the mechanic of a "cumulative register." The cumulative register is equal to the (cumulative) amount of M's income that is taken into account in the P group's income. Income earned by M while a member of the P group increases the cumulative register, while losses (carried over or otherwise) taken into account by the group reduce the cumulative register. In general, the existing rules provide that M's pre-group NOLs cannot offset the P group's income when the cumulative register is less than or equal to zero.

The introduction of the 80-percent limitation in the TCJA and CARES Act necessitates an adjustment to this mechanism in order to retain this neutrality-in-loss-use property. In particular, these final regulations provide that any losses by M that are absorbed by the P group and subject to the 80-percent limitation cause a reduction to the register equal to the full amount of income needed to support that deduction. The following example (Example 3) demonstrates why this adjustment is necessary. In Example 3, P and S are each corporations other than nonlife insurance companies (that is, they are subject to the 80-percent limitation). Suppose in 2021, S incurs a loss of $800, which is the only loss ever incurred by S. In 2022, S incurs income of $400. If S were not a member of a consolidated group, its 2022 NOL deduction would be limited to $320 (80 percent of $400). Suppose instead that P acquires S in 2022 and that P has separate income of $600 in 2022, so the consolidated group has $1000 in pre-CNOL income in 2022. Before claiming any CNOLs, S's cumulative register would increase to $400 in 2022. Without any additional rules, the $400 cumulative register would allow P to claim a CNOL of $400 (bringing the register down to zero), greater than what would have been allowed had S remained a separate entity. By contrast, requiring the register to be reduced by 125 percent of the NOL (as under the final regulations) allows P to claim only a $320 CNOL, replicating the result if S were a separate entity.

4. Allocation of current losses to nonlife insurance companies

In general, under the TCJA and CARES Act, taxpayers may not carry back any losses generated in tax years beginning after 2020, with the exception of losses generated by nonlife insurance companies and farming losses. Existing regulations clarify that CNOLs are allocated to each member in proportion to the total loss. This allocation rule can be illustrated by example (Example 4). In Example 4, the C member has a current loss of $10 (in a tax year beginning in 2021 or later). The P&C members are corporations PC1 and PC2. PC1 has a gain of $40 and PC2 has a loss of $40. Assume that the P group does not engage in any farming activities. The CNOL for the P group is $10. The $10 of CNOL is allocated to the C member and PC2 in proportion to their total losses. The C member has one-fifth of the total loss ($10 divided by $50) and PC2 has four-fifths. Therefore, under the existing regulations, the C member is allocated $2 ($10 times one-fifth) and PC2 is allocated $8 ($10 times four-fifths). In the end, $8 of the CNOL may be carried back in Example 4. The final regulations do not alter these existing regulations.

In formulating these final regulations, the Treasury Department and the IRS contemplated an alternative approach. Under this alternative, consolidated groups would be required to compute gain and loss by grouping P&C members and C members separately prior to allocating CNOL to members. The application of this approach can be seen by revisiting Example 4. Under this alternative approach, because the P&C members as a whole do not have a loss, no CNOL would be allocated to any P&C member regardless of the gain or loss of any of the individual P&C members. Thus, under the alternative approach, none of the $10 CNOL would be eligible for carryback in Example 4.

C. *Economic Analysis*

1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

2. Summary of economic effects

The final regulations provide certainty and clarity to taxpayers regarding the treatment of NOLs under section 172 and the regulations under section 1502. In the absence of such guidance, the chance that different taxpayers would interpret the statute and the regulations differently would be exacerbated. Similarly situated taxpayers might interpret those rules differently, with one taxpayer pursuing an economic opportunity that another taxpayer might decline to make because of different interpretations of the ability of losses to offset taxable income. If this second taxpayer's activity were more profitable, the resulting economic decisions are inefficient. Such situations are more likely to arise in the absence of guidance. While no guidance can curtail all differential or inaccurate interpretations of the statute, the regulations significantly mitigate the chance for differential or inaccurate interpretations and thereby increase economic efficiency.

To the extent that the specific provisions of the final regulations result in the acceleration or delay of the tax year in which taxpayers deduct an NOL relative to the baseline, those taxpayers may face a change in the present value of the after-tax return to new investment, particularly investment that may result in losses. The resulting changes in the incentives facing the taxpayer are complex and may lead the taxpayer either to increase, decrease, or leave unchanged the volume and risk level of its investment portfolio, relative to the baseline, in ways that depend on the taxpayer's stock of NOLs and the depreciation schedules and income patterns of investments they would typically consider, including whether the investment is subject to bonus depreciation. Because these elements are complex and taxpayer-specific and because the sign of the effect on investment is generally ambiguous, the Treasury Department and the IRS have not projected the specific effects on economic activity arising from the final regulations.

The Treasury Department and the IRS project that these regulations will have annual effects below $100 million ($2020) relative to the baseline. The effects are small because the regulations apply only to consolidated groups; in addition, several provisions of the final regulations apply only to the extent that a consolidated group contains a mix of member types. Moreover, the effects are small because: (i) for provisions of the final regulations that affect the deduction for pre-2018 NOLs, the effects are limited to the stock of the pre-2018 NOLs; and (ii) for provisions that affect the allowable rate of loss usage of post-2017 NOLs, the effect arises only from the 20 percentage point differential in the deduction for these NOLs. This latter effect in particular, to which the bulk of the provisions apply, is too small to substantially affect taxpayers' use of NOLs and thus too small to lead to meaningful changes in economic decisions.

The Treasury Department and the IRS did not estimate more precisely the economic effects of these regulations because (i) the effects are expected to be small and (ii) data or models that would address the effects of these regulations are not readily available. In the absence of quantitative estimates, the subsequent discussion provides qualitative analysis of these economic effects.

The proposed regulations solicited comments on the economic effects of the proposed regulations. No such comments were received.

3. Allocation of CNOLs to specific members of consolidated groups

The final regulations do not amend existing rules for the allocation of the CNOL within consolidated groups. The final regulations follow existing rules and allocate the CNOLs to each member of the group in proportion to the total loss.

The Treasury Department and the IRS considered an alternative approach that would have required groups to compute gain and loss at the subgroup level prior to allocating CNOL to members. Recall Example 4 in which the P&C subgroup had no gain or loss but the C subgroup had a loss of $10. Under this alternative approach, because the P&C subgroup as a whole does not have a loss, no CNOL would be allocated to any member in the P&C group regardless of the gain or loss of any of the individual members of PC. Thus, in Example 4, none of the $10 CNOL would be eligible for carryback.

The Treasury Department and the IRS recognize that as a result of the TCJA and the CARES Act, the final regulations may provide groups with an incentive to split their C members into several corporations – some with loss and some with gain; this potential incentive would not exist under the alternative regulatory approach. In certain circumstances, such a strategy would effectively enable some share of the losses generated by the other C members to be carried back. This change in the business structure of consolidated groups may entail economic costs because, to the extent this strategy is pursued, it would result from tax-driven rather than market-driven considerations. The Treasury Department and the IRS project, however, that the adopted approach will have lower compliance costs for taxpayers, relative to the alternative regulatory approach, because it generally follows existing regulatory practice for allocating losses within a consolidated group.

The Treasury Department and the IRS have not attempted to estimate the economic consequences of either of these effects but project them to be small. The effects are projected to be small because (i) only a small number of taxpayers are likely to be affected; (ii) any reorganization that occurs due to the final regulations will primarily be "on paper" and entail little or no economic loss; and (iii) the compliance burden of loss allocation, under either the final regulations or the alternative approach, is not high.

No additional substantive alternatives were raised by the comments.

4. Affected Taxpayers

The Treasury Department and the IRS project that these regulations will primarily affect consolidated groups that contain at least one nonlife insurance member and at least one member that is not a nonlife insurance company. Based on data from 2015, the Treasury Department and the IRS calculate that there were 1,130 such consolidated groups. Approximately 460 of these groups were of "mixed loss" status, meaning that at least one nonlife insurance member had a gain and one other member had a loss, or vice versa.

D. *Summary*

In sum, these regulations clarify the recent statutory changes to section 172 as they apply to consolidated corporate groups. The Treasury Department and IRS project the economic effect of these regulations to be small given that (1) the effect of NOL usage on investment incentives is of ambiguous sign, (2) these regulations are projected to have only a small effect on NOL usage, and (3) it is expected that most taxpayers would have come to a similar interpretation of the statute in the absence of these regulations.

II. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these final regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

V. *Congressional Review Act*

The Administrator of OIRA has determined that this is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.) (CRA). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Consistent with this requirement, the effective date of this Treasury decision is December 28, 2020, whereas the rules in this Treasury decision apply for taxable years beginning after December 31, 2020.

Drafting Information

The principal authors of these regulations are Justin O. Kellar, Gregory J. Galvin, and William W. Burhop of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1502-1 is amended by adding paragraphs (k) and (l) to read as follows:

§1.1502-1 Definitions.

* * * * *

(k) *Nonlife insurance company*. The term *nonlife insurance company* means a member that is an insurance company other than a *life insurance company*, each as defined in section 816(a).

(l) *Applicability date*. Paragraph (k) of this section applies to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply paragraph (k) of this section to taxable years beginning on or before December 31, 2020.

Par. 3. Section 1.1502-21 is amended:

1. By revising paragraph (a).

2. By revising paragraph (b)(1).

3. By revising paragraph (b)(2)(iv).

4. By revising paragraph (b)(2)(v) introductory text.

5. In paragraph (b)(2)(v), by designating *Examples 1* through *3* as paragraphs (b)(2)(v)(A) through (C), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

6. In newly designated paragraphs (b)(2)(v)(A) through (C), by redesignating paragraphs (b)(2)(v)(A)(i) and (ii) as paragraphs (b)(2)(v)(A)(*1*) and (*2*), paragraphs (b)(2)(v)(B)(i) and (ii) as paragraphs (b)(2)(v)(B)(*1*) and (*2*), and paragraphs (b)(2)(v)(C)(i) and (ii) as paragraphs (b)(2)(v)(C)(*1*) and (*2*).

7. By adding paragraphs (b)(2)(v)(D) through (G).

8. In paragraph (b)(3)(ii)(B), by removing the text "§ 1.1502-21(b)(3)(ii)(B)(*2*)" and adding in its place "§1.1502-21(b)(3)(ii)(B)".

9. By revising paragraph (b)(3)(ii)(C).

10. By adding paragraph (b)(3)(ii)(D).

11. By revising paragraph (c)(1)(i) introductory text.

12. In paragraph (c)(1)(i)(C)(*2*), by removing the word "and".

13. In paragraph (c)(1)(i)(D), by removing the word "account." and adding in its place "account; and".

14. By adding paragraph (c)(1)(i)(E).

15. By revising paragraph (c)(1)(iii) introductory text.

16. In paragraph (c)(1)(iii), by designating *Examples 1* through *5* as paragraphs (c)(1)(iii)(A) through (E), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

17. In newly redesignated paragraphs (c)(1)(iii)(A) through (E), by redesignating paragraphs (c)(1)(iii)(A)(i) through (iii) as paragraphs (c)(1)(iii)(A)(*1*) through (*3*), paragraphs (c)(1)(iii)(B)(i) through (vi) as paragraphs (c)(1)(iii)(B)(*1*) through (*6*), paragraphs (c)(1)(iii)(C)(i) through (iii) as paragraphs (c)(1)(iii)(C)(*1*) through (*3*), paragraphs (c)(1)(iii)(D)(i) through (iv) as paragraphs (c)(1)(iii)(D)(*1*) through (*4*), and paragraphs (c)(1)(iii)(E)(i) through (v) as paragraphs (c)(1)(iii)(E)(*1*) through (*5*).

18. By revising newly redesignated paragraphs (c)(1)(iii)(A)(*2*) and (c)(1)(iii)(B)(*2*) through (*6*).

19. In newly redesignated paragraph (c)(1)(iii)(C)(*2*), by adding the words ", a taxable year that begins on January 1, 2021" after the words "at the beginning of Year 4".

20. By revising newly redesignated paragraphs (c)(1)(iii)(D)(*2*) through (*4*).

21. By adding paragraph (c)(1)(iii)(D)(*5*).

22. By revising newly redesignated paragraphs (c)(1)(iii)(E)(*2*) through (*5*).

23. By adding paragraphs (c)(1)(iii)(E)(*6*) and (c)(1)(iii)(F).

24. By revising paragraph (c)(2)(v).

25. By revising paragraph (c)(2)(viii) introductory text,.

26. In paragraph (c)(2)(viii), by designating *Examples 1* through *4* as paragraphs (c)(2)(viii)(A) through (D), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

27. In newly designated paragraphs (c)(2)(viii)(A) through (D), by redesignating paragraphs (c)(2)(viii)(A)(i) through (vii) as paragraphs (c)(2)(viii)(A)(*1*) through (*7*), paragraphs (c)(2)(viii)(B)(i) through (iv) as paragraphs (c)(2)(viii)(B)(*1*) through (*4*), paragraphs (c)(2)(viii)(C)(i) through (iii) as paragraphs (c)(2)(viii)(C)(*1*) through (*3*), and paragraphs (c)(2)(viii)(D)(i) and (ii) as paragraphs (c)(2)(viii)(D)(*1*) and (*2*).

28. In newly redesignated paragraphs (c)(2)(viii)(A)(*3*) through (*7*), the first sentence of each, by adding the words ", including the limitation under paragraph (c)(1)(i)(E) of this section" after the words "under paragraph (c) of this section".

29. In newly redesignated paragraph (c)(2)(viii)(B)(*1*), the first sentence, by adding the words ", none of which is a nonlife insurance company" after the text "S, T, P and M".

30. In newly redesignated paragraph (c)(2)(viii)(B)(*1*), the fourth sentence, by adding the text "(a taxable year beginning after December 31, 2020)" after the language "Year 3".

31. By revising newly designated paragraph (c)(2)(viii)(B)(*3*).

32. By redesignating newly redesignated paragraph (c)(2)(viii)(B)(*4*) as paragraph (c)(2)(viii)(B)(*5*).

33. By adding a new paragraph (c)(2)(viii)(B)(*4*).

34. By revising newly redesignated paragraph (c)(2)(viii)(B)(*5*).

35. By adding paragraph (c)(2)(viii)(B)(*6*).

36. In paragraph (g)(5), by designating *Examples 1* through *9* as paragraphs (g)(5)(i) through (ix), respectively, and removing the period after each example number in the paragraph headings and replacing them with a colon.

37. In newly redesignated paragraphs (g)(5)(i) through (ix), by redesignating paragraphs (g)(5)(i)(i) through (iv) as paragraphs (g)(5)(i)(A) through (D), paragraphs (g)(5)(ii)(i) through (iv) as paragraphs (g)(5)(ii)(A) through (D), paragraphs (g)(5)(iii)(i) through (iii) as paragraphs (g)(5)(iii)(A) through (C), paragraphs (g)(5)(iv)(i) through (iv) as paragraphs (g)(5)(iv)(A) through (D), paragraphs (g)(5)(v)(i) through (iv) as paragraphs (g)(5)(v)(A) through (D), paragraphs (g)(5)(vi)(i) through (iv) as paragraphs (g)(5)(vi)(A) through (D), paragraphs (g)(5)(vii)(i) through (vi) as paragraphs (g)(5)(vii)(A) through (F), paragraphs (g)(5)(viii)(i) through (v) as paragraphs (g)(5)(viii)(A) through (E), and paragraphs (g)(5)(ix)(i) through (vii) as paragraphs (g)(5)(ix)(A) through (G).

38. By revising paragraph (h)(9).

39. By adding paragraph (h)(10).

The revisions and additions read as follows:

§1.1502-21 Net operating losses.

(a) *Consolidated net operating loss deduction*—(1) *In general*. Subject to any limitations under the Internal Revenue Code or this chapter (for example, the limitations under section 172(a)(2) and paragraph (a)(2) of this section), the consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

(i) Any CNOLs (as defined in paragraph (e) of this section) of the consolidated group; and

(ii) Any net operating losses (or NOLs) of the members arising in separate return years.

(2) *Application of section 172 for computing net operating loss deductions*—(i) *Overview*. For purposes of §1.1502-11(a)(2) (regarding a CNOL deduction), the rules of section 172 regarding the use of net operating losses are taken into account as provided by this paragraph (a)(2) in calculating the consolidated taxable income of a group for a particular consolidated return year. More specifically, in computing taxable income for taxable years beginning after December 31, 2020, section 172(a) generally limits the deductibility of net operating losses arising in taxable years beginning after December 31, 2017 (post-2017 NOLs). However, these limitations do not apply to net operating losses arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs). Therefore, in any particular consolidated return year beginning after December 31, 2020, the group's CNOL deduction includes CNOLs arising in taxable years beginning before January 1, 2018 (pre-2018 CNOLs), without limitation under section 172(a). Following the deduction of pre-2018 CNOLs, this paragraph (a)(2) applies to compute the maximum amount of CNOLs from taxable years beginning after December 31, 2017 (post-2017 CNOLs), that can be deducted against taxable income in a consolidated return year beginning after December 31, 2020 (post-2017 CNOL deduction limit). See section 172(a)(2)(A) and (B).

(ii) *Computation of the 80-percent limitation and special rule for nonlife insurance companies*—(A) *Determinations based on status of group members*. If a portion of a post-2017 CNOL is carried back or carried over to a consolidated return year beginning after December 31, 2020, whether the members of the group include nonlife insurance companies, other types of corporations, or both determines whether section 172(a) (including the limitation described in section 172(a)(2)(B)(ii) (80-percent limitation)), section 172(f) (providing special rules for nonlife insurance companies), or both, apply to the group for the consolidated return year.

(B) *Determination of post-2017 CNOL deduction limit*. The post-2017 CNOL deduction limit is determined under paragraph (a)(2)(iii) of this section by applying section 172(a)(2)(B)(ii) (that is, the 80-percent limitation), section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income for that year.

(C) *Inapplicability of 80-percent limitation*. The 80-percent limitation does not apply to CNOL deductions taken in taxable years beginning before January 1, 2021, or to CNOLs arising in taxable years beginning before January 1, 2018 (that is, pre-2018 CNOLs). See section 172(a).

(iii) *Computations under sections 172(a)(2)(B) and 172(f)*. This paragraph (a)(2)(iii) provides rules for applying sections 172(f) and 172(a)(2)(B) to consolidated return years beginning after December 31, 2020 (that is, for computing the post-2017 CNOL deduction limit). Section 172(f) applies to income of nonlife insurance company members, whereas section 172(a)(2)(B)(ii) applies to income of members that are not nonlife insurance companies. Thus, this paragraph (a)(2)(iii) provides specific rules for groups with no nonlife insurance company members, only nonlife insurance company members, or a combination of nonlife insurance company members and other members. For groups with both nonlife insurance company members and life insurance company members, see paragraph (b)(2)(iv)(E) of this section.

(A) *Groups without nonlife insurance company members*. If no member of a group is a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, section 172(a)(2)(B)(ii) (that is, the 80-percent limitation) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year is the lesser of—

(*1*) The aggregate amount of post-2017 NOLs carried to that year; or

(*2*) The amount determined by multiplying—

(*i*) 80 percent, by

(*ii*) Consolidated taxable income for the group for that year (determined without regard to any deductions under sections 172, 199A, and 250) less the aggregate amount of pre-2018 NOLs carried to that year.

(B) *Groups comprised solely of nonlife insurance companies*. If a group is comprised solely of nonlife insurance companies during a particular consolidated return year beginning after December 31, 2020, section 172(f) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year equals the lesser of—

(*1*) The aggregate amount of post-2017 NOLs carried to that year, or

(*2*) Consolidated taxable income less the aggregate amount of pre-2018 NOLs carried to that year.

(C) *Groups that include both nonlife insurance companies and other corporations*—(*1*) *General rule*. Except as provided in paragraph (a)(2)(iii)(C)(*5*) of this section, if a group has at least one member that is a nonlife insurance company and at least one member that is not a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year equals the lesser of—

(*i*) The aggregate amount of post-2017 NOLs carried to that year, or

(*ii*) The sum of the amounts in the income pools determined under paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section.

(*2*) *Residual income pool*. The amount determined under this paragraph (a)(2)(iii)(C)(*2*) (residual income pool) is eighty percent of the excess of—

(*i*) The consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020, determined without regard to any income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250, over

(*ii*) The aggregate amount of pre-2018 NOLs carried to that year that are allocated to this income pool under paragraph (a)(2)(iii)(C)(*4*) of this section (that is, by applying the 80-percent limitation). See section 172(a)(2)(B)(ii).

(*3*) *Nonlife income pool*. The amount determined under this paragraph (a)(2)(iii)(C)(*3*) (nonlife income pool) is the consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020, determined without regard to any income, gain, deduction, or loss of members included in the computation under paragraph (a)(2)(iii)(C)(*2*) of this section, less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to this income pool under paragraph (a)(2)(iii)(C)(*4*) of this section. See section 172(f).

(*4*) *Pro rata allocation of pre-2018 NOLs between pools of income*. For purposes of paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section, the aggregate amount of pre-2018 NOLs carried to any particular consolidated return year beginning after December 31, 2020, is prorated between the residual income pool and the nonlife income pool based on the relative amounts of positive income of those two pools. For example, if $30 of pre-2018 NOLs is carried over to a consolidated return year in which the residual income pool contains $75 and the nonlife income pool contains $150, the residual income pool is allocated $10 of the pre-2018 NOLs ($30 x $75/($75 + $150), or $30 x 1/3), and the nonlife income pool is allocated the remaining $20 of pre-2018 NOLs ($30 x $150/($75 + $150), or $30 x 2/3).

(*5*) *Exception*. The post-2017 CNOL deduction limit for the group for a consolidated return year is determined under this paragraph (a)(2)(iii)(C)(*5*) if the amounts computed under paragraphs (a)(2)(iii)(C)(*2*) and (*3*) of this section for that year are not both positive.

(*i*) *Positive residual income pool and negative nonlife income pool*. This paragraph (a)(2)(iii)(C)(*5*)(*i*) applies if the amount computed under paragraph (a)(2)(iii)(C)(*2*) of this section for the residual income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(*3*) of this section for the nonlife income pool is negative. If this paragraph (a)(2)(iii)(C)(*5*)(*i*) applies, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or 80 percent of the consolidated taxable income of the entire group (determined without regard to any deductions under sections 172, 199A, and 250) after subtracting the aggregate amount of pre-2018 NOLs carried to that year (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(*ii*) *Positive nonlife income pool and negative residual income pool*. If the amount computed under paragraph (a)(2)(iii)(C)(*3*) of this section for the nonlife income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(*2*) of this section for the residual income pool is negative, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or the consolidated taxable income of the entire group less the aggregate amount of pre-2018 NOLs carried to that year. See section 172(f).

(b) * * *

(1) *Carryovers and carrybacks generally*. The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of, and are subject to any limitations under, section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, except as otherwise provided in this section, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL eligible for carryback or carryover that is attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, for example, section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii)(B) of this section, (Example 2), for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) * * *

(iv) *Operating rules*. (A) *Amount of CNOL attributable to a member*. The amount of a CNOL that is attributable to a member equals the product obtained by multiplying the CNOL and the percentage of the CNOL attributable to the member.

(B) *Percentage of CNOL attributable to a member*—(*1*) *In general*. Except as provided in paragraph (b)(2)(iv)(B)(*2*) of this section, the percentage of the CNOL for the consolidated return year attributable to a member equals the separate net operating loss of the member for the consolidated return year divided by the sum of the separate net operating losses for that year of all members having such losses for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(*2*) *Recomputed percentage*. If, for any reason, a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis (for example, under §1.1502-11(b) or (c), paragraph (b)(2)(iv)(C) of this section, §1.1502-28, or 1.1502-36(d), or as the result of a carryback to a separate return year), the percentage of the CNOL attributable to each member is recomputed. In addition, if a member with a separate net operating loss ceases to be a member, the percentage of the CNOL attributable to each remaining member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining CNOL attributable to the member at the time of the recomputation divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. For purposes of this paragraph (b)(2)(iv)(B)(*2*), a CNOL that is permanently disallowed or eliminated is treated as absorbed.

(C) *Net operating loss carryovers and carrybacks*—(*1*) *General rules*. Subject to the rules regarding allocation of special status losses under paragraph (b)(2)(iv)(D) of this section—

(*i*) *Nonlife insurance companies*. The portion of a CNOL attributable to any members of the group that are nonlife insurance companies is carried back or carried over under the rules in section 172(b) applicable to nonlife insurance companies.

(*ii*) *Corporations other than nonlife insurance companies*. The portion of a CNOL attributable to any other members of the group is carried back or carried over under the rules in section 172(b) applicable to corporations other than nonlife insurance companies.

(*2*) *Recomputed percentage*. For rules governing the recomputation of the percentage of a CNOL attributable to each remaining member if any portion of the CNOL attributable to a member is carried back under section 172(b)(1)(B) or (C) and absorbed on a non-pro rata basis, see paragraph (b)(2)(iv)(B)(*2*) of this section.

(D) *Allocation of special status losses*. The amount of the group's CNOL that is determined to constitute a farming loss (as defined in section 172(b)(1)(B)(ii)) or any other net operating loss that is subject to special carryback or carryover rules (special status loss) is allocated to each member separately from the remainder of the CNOL based on the percentage of the CNOL attributable to the member, as determined under paragraph (b)(2)(iv)(B) of this section. This allocation is made without regard to whether a particular member actually incurred specific expenses or engaged in specific activities required by the special status loss provisions. This paragraph (b)(2)(iv)(D) applies only with regard to losses for which the special carryback or carryover rules are dependent on the type of expense generating the loss, rather than on the special status of the entity to which the loss is allocable. See section 172(b)(1)(C) and paragraph (b)(2)(iv)(C)(*1*)(*i*) of this section (applicable to losses of nonlife insurance companies). This paragraph (b)(2)(iv)(D) does not apply to farming losses incurred by a consolidated group in any taxable year beginning after December 31, 2017, and before January 1, 2021.

(E) *Coordination with rules for life-nonlife groups under §1.1502-47*. For groups that include at least one member that is a life insurance company and for which an election is in effect under section 1504(c)(2), any computation of the 80-percent limitation under paragraph (a)(2)(iii)(C) of this section is computed only with respect to items of income, gain, deduction, and loss of the members of the nonlife subgroup (as defined in §1.1502-47(b)(9)). For rules regarding the use of CNOLs of the nonlife subgroup to offset life insurance company taxable income of the life subgroup (each as defined in §1.1502-47(b)), or the use of CNOLs of the life subgroup to offset consolidated taxable income of the nonlife subgroup, see generally section 1503(c)(1) and §1.1502-47.

(v) *Examples*. For purposes of the examples in this paragraph (b)(2)(v), unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, all losses are farming losses within the meaning of section 172(b)(1)(B)(ii), all taxable years begin after December 31, 2020, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b) are illustrated by the following examples:

* * * * *

(D) *Example 4: Allocation of a CNOL arising in a consolidated return year beginning after December 31, 2020*. (*1*) P is the common parent of a consolidated group that includes S. Neither P nor S is a nonlife insurance company. The P group also includes nonlife insurance companies PC1, PC2, and PC3. In the P group's 2021 consolidated return year, all members except S have separate net operating losses, and the P group's CNOL in that year is $40. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(*2*) Under paragraphs (b)(1) and (b)(2)(iv)(B)(*1*) of this section, for purposes of carrying losses to other taxable years, the P group's $40 CNOL is allocated pro rata among the group members that have separate net operating losses. Under paragraph (b)(2)(iv)(C) of this section, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) are carried back to each of the two preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C). The portion attributable to P (which is not a nonlife insurance company) may not be carried back but is carried over to future years. See section 172(b)(1)(A).

(E) *Example 5: Allocation of a CNOL arising in a consolidated return year beginning before January 1, 2021*. The facts are the same as in paragraph (b)(2)(v)(D)(*1*) of this section, except that the P group incurred the CNOL during the P group's 2020 consolidated return year. The allocation among the P group members of the CNOL described in paragraph (b)(2)(v)(D)(*2*) of this section would be the same. However, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) will be carried back to each of the five preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C) and section 172(b)(1)(D)(i). The portion attributable to P (which is not a nonlife insurance company) will be carried back to each of the five preceding taxable years and then carried over to future years. See section 172(b)(1)(A) and section 172(b)(1)(D)(i).

(F) *Example 6: CNOL deduction and application of section 172*. (*1*) P (a type of corporation other than a nonlife insurance company) is the common parent of a consolidated group that includes PC1 (a nonlife insurance company). P and PC1 were both incorporated in Year 1 (a year beginning after December 31, 2020). In Year 1, P and PC1 have separate taxable income of $20 and $25, respectively. As a result, the P group has Year 1 consolidated taxable income of $45. In Year 2, P has separate taxable income of $24, and PC1 has a separate taxable loss of $40, resulting in a P group CNOL of $16. Additionally, in Year 3, P has separate taxable income of $15, and PC1 has a separate taxable loss of $45, resulting in a P group CNOL of $30. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(*2*) Under paragraph (b)(2)(iv)(B) of this section, the P group's Year 2 CNOL and Year 3 CNOL are entirely attributable to PC1, a nonlife insurance company. Therefore, under section 172(b)(1)(C)(i), the entire amount of each of these CNOLs is eligible to be carried back to Year 1.

(*3*) Under paragraph (a)(2)(ii) of this section, the amount of the Year 2 CNOL that may be used by the P group in Year 1 is determined by taking into account the status (nonlife insurance company or other type of corporation) of the member that has separate taxable income composing in whole or in part the P group's consolidated taxable income. Because the P group includes both a nonlife insurance company member and a member that is not a nonlife insurance company, paragraph (a)(2)(iii)(C) of this section applies to determine the computation of the post-2017 CNOL deduction limit for the group for Year 1. Therefore, the 80-percent limitation is applied to the residual income pool, which consists of the taxable income of P, a type of corporation other than a nonlife insurance company. Under the 80-percent limitation, the maximum amount of P's Year 1 income that may be offset by the P group's post-2017 CNOLs is $16, which equals 80 percent of the excess of P's taxable income for Year 1 ($20) over the aggregate amount of pre-2018 NOLs allocable to P ($0) (80 percent x ($20 - $0)). See paragraph (a)(2)(iii)(C)(*2*) and (a)(2)(iii)(C)(*4*) of this section. PC1 is a nonlife insurance company to which section 172(f), rather than the 80-percent limitation in section 172(a)(2)(B)(ii), applies. Therefore, the maximum amount of PC1's Year 1 income that may be offset by the P group's post-2017 CNOLs is $25, which equals the excess of PC1's taxable income for Year 1 ($25) over the aggregate amount of pre-2018 NOLs allocable to PC1 ($0). See paragraph (a)(2)(iii)(C)(*3*) and (*4*) of this section.

(*4*) Based on paragraph (a)(2)(iii)(C) of this section and the analysis set forth in paragraph (b)(2)(v)(F)(*3*) of this section, at the end of Year 2, the P group's post-2017 CNOL deduction limit for Year 1 is the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 ($16), or $41 ($16 + $25). Therefore, the P group can offset $16 of its Year 1 income with its CNOL carryback from Year 2.

(*5*) When the Year 3 CNOL is carried back to Year 1, the P group's post-2017 CNOL deduction limit for Year 1 is the lesser of $46 (the aggregate amount of post-2017 NOLs carried to Year 1) or $41 ($16 + $25; see the computation in paragraph (b)(2)(v)(F)(*3*) of this section). Thus, the total amount of the P group's Year 1 income that may be offset by the P group's Year 2 and Year 3 CNOLs is $41 ($16 from Year 2 + $25 from Year 3). As a result, the P group reports $4 of income ($45 - $41) in Year 1 that is ineligible for offset by any other NOLs. The P group carries over its remaining $5 CNOL ($46 - $41) to future years.

(G) *Example 7: Pre-2018 and post-2017 CNOLs*. (*1*) P is the common parent of a consolidated group. No member of the P group is a nonlife insurance company or is engaged in a farming business, and no member of the P group has a loss that is subject to a SRLY limitation. The P group had the following consolidated taxable income or CNOL for the following taxable years:

Table 1 to paragraph (b)(2)(v)(G)(*1*)

2014	2015	2016	2017	2018	2019	2020	2021
$60	$0	$0	($90)	$30	($40)	($100)	$120

(*2*) Under section 172(a)(1), all $30 of the P group's 2018 consolidated taxable income is offset by the 2017 CNOL carryover without limitation. The remaining $60 of the P group's 2017 CNOL is carried over to 2021 under section 172(b)(1)(A)(ii)(I).

(*3*) Under section 172(b)(1)(D)(i)(I), the P group's $40 2019 CNOL is carried back to the five taxable years preceding the year of the loss. Thus, the P group's $40 2019 CNOL is carried back to offset $40 of its 2014 consolidated taxable income.

(*4*) Under section 172(a)(2) and paragraph (a)(2)(i) of this section, the P group's CNOL deduction for 2021 equals the aggregate amount of pre-2018 NOLs carried to 2021 plus the group's post-2017 CNOL deduction limit. The P group has $60 of pre-2018 NOLs carried to 2021 ($90 - $30). Because no member of the P group is a nonlife insurance company, paragraph (a)(2)(iii)(A) of this section applies to determine the computation of the group's post-2017 CNOL deduction limit for 2021. See also section 172(a)(2)(B). Therefore, the post-2017 CNOL deduction limit of the P group for 2021 is $48, which equals the lesser of the aggregate amount of post-2017 NOLs carried to 2021 ($100), or 80 percent of the excess of the P group's consolidated taxable income for that year computed without regard to any deductions under sections 172, 199A, and 250 ($120) over the aggregate amount of pre-2018 NOLs carried to 2021 ($60) (that is, 80 percent x $60). Thus, the P group's CNOL deduction for 2021 equals $108 ($60 pre-2018 NOLs carried to 2021 + $48 post-2017 CNOL deduction limit). See section 172(a)(2) and paragraph (a)(2)(i) of this section. The P group offsets $108 of its $120 of 2021 consolidated taxable income, resulting in $12 of consolidated taxable income in 2021. The remaining $52 of the P group's 2020 CNOL ($100 - $48) is carried over to future taxable years. See section 172(b)(1)(A)(ii)(II).

(3) * * *

(ii) * * *

(C) *Waiver of carryback period for losses in taxable years to which statutorily amended carryback rules apply*. For further information, see §1.1502-21T(b)(3)(ii)(C).

(D) *Examples*. For further information, see §1.1502-21T(b)(3)(ii)(D).

* * * * *

(c) * * *

(1) * * *

(i) *General rule*. Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member (SRLY member) arising (or treated as arising) in SRLYs (SRLY NOLs) that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member's items of income, gain, deduction, and loss (cumulative register). For this purpose—

* * * * *

(E) If a limitation on the amount of taxable income that may be offset under section 172(a) (see paragraph (a)(2) of this section) applies in a taxable year to a member whose carryovers or carrybacks are subject to a SRLY limitation (SRLY member), the amount of net operating loss subject to a SRLY limitation that is available for use by the group in that year is limited to the percentage of the balance in the cumulative register that would be available for offset under section 172(a) if the SRLY member filed a separate return and reported as taxable income in that year the amount contained in the cumulative register. For example, assume that a consolidated group has a SRLY member that is a corporation other than a nonlife insurance company, and that the SRLY member has a SRLY NOL that arose in a taxable year beginning after December 31, 2017 (post-2017 NOL). The group's consolidated taxable income for a consolidated return year beginning after December 31, 2020 is $200, but the cumulative register has a positive balance of only $120 (and no other net operating loss carryovers or carrybacks are available for the year). Because the SRLY limitation would be $96 ($120 x 80 percent), only $96 of SRLY loss may be used, rather than $160 ($200 x 80 percent). In addition, to the extent that this paragraph (c)(1)(i)(E) applies, the cumulative register is decreased by the full amount of income required under section 172(a) to support the amount of SRLY NOL absorption. See, for example, paragraph (c)(1)(iii)(A) and (B) of this section for examples illustrating the application of this rule.

* * * * *

(iii) *Examples*. For purposes of the examples in this paragraph (c)(1)(iii), no corporation is a nonlife insurance company and, unless otherwise specified, all taxable years begin after December 31, 2020, and all CNOLs arise in taxable years beginning after December 31, 2020. The principles of this paragraph (c)(1) are illustrated by the following examples:

(A) * * *

(*2*) T's $100 net operating loss carryover from Year 1 arose in a SRLY. See §1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the $100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The positive balance of the cumulative register of T for Year 2 equals the consolidated taxable income of the P group determined by reference to only T's items, or $70. However, due to the 80-percent limitation and the application of paragraph (c)(1)(i)(E) of this section, the SRLY limitation is $56 ($70 x 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($300 x 80 percent = $240). Therefore, $56 of the SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2. Although only $56 is absorbed, the cumulative register of T is reduced by $70, the full amount of income necessary to support the $56 deduction after taking into account the 80-percent limitation ($70 x 80 percent = $56).

* * * * *

(B) * * *

(*2*) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See §1.1502-1(f)(2)(i). Thus, P's $40 net operating loss arising in Year 1 and $120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Although the P group has $160 of taxable income in Year 4, the 80-percent limitation reduces the P group's net operating loss deduction in that year to $128 ($160 x 80 percent). Under the principles of section 172, paragraph (b) of this section requires that P's $40 loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves $88 ($128 - $40) of the P group's Year 4 consolidated taxable income available for offset by loss carryovers.

(*3*) T's Year 2 and Year 3 are SRLYs with respect to the P group. See §1.1502-1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's $50 net operating loss arising in Year 2 and $60 net operating loss arising in Year 3 are subject to the SRLY limitation. The positive balance of the cumulative register of T for Year 4 equals the P group's consolidated taxable income determined by reference to only T's items, or $70. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $56 ($70 x 80 percent). Therefore, the P group can absorb up to $56 of T's SRLY net operating losses in Year 4. Under the principles of section 172, T's $50 SRLY net operating loss from Year 2 is included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. After absorption of this loss, under paragraph (c)(1)(i) of this section, $6 of SRLY limit remains in Year 4 ($56 - $50). Further, the total amount of Year 4 consolidated taxable income available for offset by other loss carryovers under section 172(a) is $38 ($88 - $50).

(*4*) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (that is, Year 3). The losses carried over from Year 3 total $180. However, the remaining Year 4 SRLY limit is $6. Therefore, the total amount of loss available for absorption is $126 ($120 allocable to P and $6 allocable to T). Under paragraph (b) of this section, the losses available for absorption that are carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Thus, $36.19 of P's Year 3 loss is absorbed ($120/($120 + $6)) x $38 = $36.19. In addition, $1.81 of T's Year 3 loss is absorbed ($6/($120 + $6)) x $38 = $1.81.

(*5*) After deduction of T's SRLY net operating losses in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. A total of $51.81 of SRLY net operating losses were absorbed in Year 4 ($50 + $1.81). After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $64.76 ($64.76 x 80 percent = $51.81). Therefore, the cumulative register of T is decreased by $64.76, and $5.24 remains in the cumulative register ($70 - $64.76).

(*6*) P carries its remaining $83.81 ($120 - $36.19) Year 3 net operating loss and T carries its remaining $58.19 ($60 - $1.81) Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has $90 of consolidated taxable income (computed without regard to the CNOL deduction). The P group's consolidated taxable income determined by reference to only T's items is a CNOL of $4. Therefore, the positive balance of the cumulative register of T in Year 5 equals $1.24 ($5.24 - $4). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $0.99 ($1.24 x 80 percent). For Year 5, the total amount of Year 5 consolidated taxable income available for offset by loss carryovers as a result of the 80-percent limitation is $72 ($90 x 80 percent). Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Therefore, $71.16 of P's Year 3 loss is absorbed (($83.81/($83.81 + $0.99)) x $72 = $71.16). In addition, $0.84 of T's Year 3 losses is absorbed (($0.99/($83.81 + $0.99)) x $72 = $0.84).

* * * * *

(D) * * *

(*2*) Under §1.1502-15(a), T's $100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to both a SRLY limitation and the 80-percent limitation for Year 3. The built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. See §1.1502-21(c)(1)(i)(D). Consequently, under paragraph (b) of this section, the built-in loss is absorbed by the P group before the net operating loss carryover from Year 1 is absorbed. The positive balance of the cumulative register of T for Year 3 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $48 ($60 x 80 percent). Therefore, $48 of the built-in loss is absorbed by the P group. None of T's $100 SRLY net operating loss carryover from Year 1 is allowed.

(*3*) After deduction of T's $48 SRLY built-in loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 x 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 - $60).

(*4*) Under §1.1502-15(a), the $52 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation and the 80-percent limitation is treated as a $52 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY. The built-in loss is carried to other years in accordance with the rules of paragraph (b) of this section. The positive balance of the cumulative register of T for Year 4 equals $40 (zero from Year 3 + $40). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 4 is $32 ($40 x 80 percent). Therefore, under paragraph (c) of this section, $32 of T's $100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(*5*) After deduction of T's $32 SRLY net operating loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $40 ($40 x 80 percent = $32). Therefore, the cumulative register is decreased by $40, and zero remains in the cumulative register ($40 - $40).

(E) * * *

(*2*) For Year 2, the P group computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group determines its ability to use its capital loss carryover before it determines its ability to use its ordinary loss carryover. Under section 1212, because the P group has no Year 2 capital gain, it cannot absorb any capital losses in Year 2. T's Year 1 net capital loss and the P group's Year 2 consolidated net capital loss (all of which is attributable to T) are carried over to Year 3.

(*3*) The P group's ability to deduct net operating losses in Year 2 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the group's limitation for Year 2 is $72 ($90 x 80 percent). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 2 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 2 is $48 ($60 x 80 percent). Therefore, only $48 of T's Year 1 SRLY net operating loss is absorbed by the P group in Year 2. T carries over its remaining $52 of its Year 1 loss to Year 3.

(*4*) After deduction of T's SRLY net operating losses in Year 2, the net operating loss cumulative register is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. The P group deducted $48 of T's SRLY net operating losses in Year 2. After taking into account the 80-percent limitation, the amount of taxable income necessary to support this deduction is $60 ($60 x 80 percent = $48). Therefore, the net operating loss cumulative register of T is decreased by $60, and zero remains in the net operating loss cumulative register ($60 - $60).

(*5*) For Year 3, the P group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of $30. Under §1.1502-22(c), the aggregate amount of T's $50 capital loss carryover from Year 1 that is included in computing the P group's consolidated net capital gain for all years of the group (in this case, Years 2 and 3) may not exceed $30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (that is, $30 of capital gain in Year 3)). Thus, the P group may include $30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining $20 of its Year 1 capital loss to Year 4. Therefore, the capital loss cumulative register of T is decreased by $30, and zero remains in the capital loss cumulative register ($30 - $30). Further, because the net operating loss cumulative register includes all taxable income of T included in the P group, as well as all absorbed losses of T (including capital items), a zero net increase occurs in the net operating loss cumulative register. The P group carries over the Year 2 consolidated net capital loss to Year 4.

(*6*) The P group's ability to deduct net operating losses in Year 3 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the P group's taxable income for Year 3 that can be offset, before use of net operating losses, is $40 (80 percent x the sum of zero capital gain, after use of the capital loss carryover, plus $50 of ordinary income). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 3 equals the P group's consolidated taxable income determined by reference only to T's items, or $40. This amount equals the sum obtained by adding the zero carryover from Year 2, a net inclusion of zero from capital items implicated in Year 3 ($30 - $30), and $40 of taxable income in Year 3. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $32 ($40 x 80 percent). Therefore, only $32 of the Year 1 net operating loss is absorbed by the P group in Year 3. T carries over its remaining $20 of its Year 1 loss to Year 4.

(F) *Example 6: Pre-2018 NOLs and post-2017 NOLs*. (*1*) Individual A owns P. On January 1, 2017, A forms T. P and T are calendar-year taxpayers. In 2017, T sustains a $100 net operating loss that is carried over. During 2018, 2019, and 2020, T deducts a total of $90 of its 2017 net operating loss against its taxable income, and T carries over the remaining $10 of its 2017 net operating loss. In 2021, T sustains a net operating loss of $50. On December 31, 2021, P acquires all the stock of T, and T becomes a member of the P group. The P group has $300 of consolidated taxable income in 2022 (computed without regard to the CNOL deduction). Such consolidated taxable income would be $70 if determined by reference to only T's items. The P group has no other SRLY net operating loss carryovers or CNOL carryovers.

(*2*) T's remaining $10 of net operating loss carryover from 2017 and its $50 net operating loss carryover from 2021 are both SRLY losses in the P group. See §1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's net operating loss carryovers are subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for the P group's 2022 consolidated return year is consolidated taxable income determined by reference to only T's $70 of items.

(*3*) Because T's oldest (2017) carryover was sustained in a year beginning before January 1, 2018, its use is not subject to limitation under section 172(a)(2)(B). Therefore, all $10 of T's 2017 SRLY net operating loss (that is, a pre-2018 NOL) is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. After deduction of T's $10 SRLY net operating loss from 2017, the cumulative register of T is reduced on a dollar-for-dollar basis, pursuant to paragraph (c)(1)(i) of this section. Therefore, the cumulative register of T is decreased by $10, and $60 remains in the cumulative register ($70 - $10).

(*4*) The P group's deduction of T's 2021 net operating loss is subject to both a SRLY limitation and the 80-percent limitation under section 172(a)(2)(B)(ii). Therefore, the total limitation on the use of T's 2021 net operating loss in the P group is $48 (the remaining cumulative register of $60 x 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($290 x 80 percent = $232). Therefore, $48 of T's 2021 SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. The remaining $2 of T's 2021 SRLY net operating loss ($50 - $48) is carried over to the P group's 2023 consolidated return year.

(*5*) After deduction of T's $48 SRLY NOL in 2022, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 x 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 - $60).

(2) * * *

(v) *Coordination with other limitations*. This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, a net operating loss may not offset income in excess of any limitations under section 172(a) and paragraph (a)(2) of this section. Additionally, any dual consolidated loss may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and §§ 1.1503(d)-1 through 1.1503(d)-8. See also §1.1502-47(k) (relating to preemption of rules for life-nonlife groups).

* * * * *

(viii) *Examples*. For purposes of the examples in this paragraph (c)(2)(viii), no corporation is a nonlife insurance company or has any farming losses. The principles of this paragraph (c)(2) are illustrated by the following examples:

* * * * *

(B) * * *

(*3*) In Year 4, the M group has $10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). That consolidated taxable income would be $45 if determined by reference only to the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the positive balance of the cumulative register of the P SRLY subgroup for Year 4 equals $45 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $36 ($45 x 80 percent). However, the M group has only $10 of consolidated taxable income in Year 4. Thus, due to the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of all net operating losses in Year 4 is limited to $8 ($10 x 80 percent). As a result, the M group deducts $8 of P's SRLY net operating loss carryover, and the remaining $37 is carried over to Year 5.

(*4*) After deduction of $8 of P's SRLY net operating loss in Year 4, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $10 ($10 x 80 percent = $8). Therefore, the cumulative register of the P SRLY subgroup is decreased by $10, and $35 remains in the cumulative register ($45 - $10).

(*5*) In Year 5, the M group has $100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). None of P, S, or T has any items of income, gain, deduction, or loss in Year 5. Although the members of the P SRLY subgroup do not contribute to the $100 of consolidated taxable income in Year 5, the positive balance of the cumulative register of the P SRLY subgroup for Year 5 is $35 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $28 ($35 x 80 percent). Because of the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of net operating losses in Year 5 is limited to $80 ($100 x 80 percent). Because the $28 of net operating loss available to be absorbed is less than 80 percent of the M group's consolidated taxable income, $28 of P's SRLY net operating loss is absorbed in Year 5, and the remaining $9 ($37 - $28) is carried over to Year 6.

(*6*) After deduction of $28 of P's SRLY net operating loss in Year 5, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $35 ($35 x 80 percent = $28). Therefore, the cumulative register of the P SRLY subgroup is decreased by $35, and zero remains in the cumulative register ($35 - $35).

* * * * *

(h) * * *

(9) For the applicability dates of paragraphs (b)(3)(ii)(C) and (b)(3)(ii)(D) of this section, see §1.1502-21T(h)(9).

(10) The rules of paragraphs (a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E) of this section apply to taxable years beginning after December 31, 2020.

Par. 4. Section 1.1502-47 is amended:

1. By revising paragraphs (a)(2)(i) and (ii).

2. By removing paragraph (a)(3).

3. By redesignating paragraph (a)(4) as paragraph (a)(3).

4. By removing paragraphs (b) and (c).

5. By redesignating paragraph (d) as paragraph (b).

6. By revising newly redesignated paragraphs (b)(1), (2), (3), (4), (5), (10), (11), and (13).

7. In newly redesignated paragraph (b)(14), by designating *Examples 1* through *14* as paragraphs (b)(14)(i) through (xiv), respectively.

8. In newly redesignated paragraph (b)(14)(i), by adding a sentence at the end of the paragraph.

9. By revising newly redesignated paragraph (b)(14)(ii).

10. By removing newly redesignated paragraph (b)(14)(xiv).

11. By redesignating paragraph (e) as paragraph (c).

12. By removing newly redesignated paragraphs (c)(4) and (5).

13. By redesignating paragraph (c)(6) as paragraph (c)(4).

14. By redesignating paragraph (f) as paragraph (d).

15. By revising newly redesignated paragraph (d)(5).

16. By removing the last sentence of newly redesignated paragraph (d)(6).

17. By removing newly redesignated paragraph (d)(7)(ii).

18. By redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(ii).

19. By revising newly redesignated paragraph (d)(7)(ii).

20. By redesignating paragraph (g) as paragraph (e).

21. In newly redesignated paragraph (e)(2), by removing the language "partial" everywhere it appears.

22. By removing newly redesignated paragraph (e)(3).

23. By redesignating paragraph (h) as paragraph (f).

24. By revising newly redesignated paragraph (f)(2)(iii).

25. In newly designated paragraph (f)(2)(v), by removing the word "partial" everywhere it appears.

26. In newly redesignated paragraph (f)(2)(v), by adding a sentence at the end of the paragraph.

27. By revising newly redesignated paragraph (f)(2)(vi) and (vii).

28. By removing newly redesignated paragraph (f)(3).

29. By redesignating newly redesignated paragraph (f)(4) as paragraph (f)(3).

30. By revising newly redesignated paragraph (f)(3)(ii).

31. By adding a new paragraph (g).

32. By removing paragraphs (j), (k), and (l).

33. By redesignating paragraph (m) as paragraph (h), and redesignating paragraph (n) as paragraph (j).

34. In newly redesignated paragraph (h), by removing the language "partial" everywhere it appears.

35. In newly redesignated paragraph (h)(2)(ii), by adding a sentence at the end of the paragraph.

36. In newly redesignated paragraph (h)(3)(iv), by adding a sentence at the end of the paragraph.

37. In newly redesignated paragraph (h)(3)(viii), by removing the language "common parent's election" and adding in its place "election by the agent for the group (within the meaning of §1.1502-77)".

38. In newly redesignated paragraph (h)(3)(ix), by removing the last two sentences.

39. By removing newly redesignated paragraph (h)(4).

40. By redesignating newly redesignated paragraph (h)(5) as paragraph (h)(4).

41. By revising newly redesignated paragraph (h)(4) introductory text.

42. In newly redesignated paragraph (h)(4), by redesignating *Examples 1* through *6* as paragraphs (h)(4)(i) through (vi).

43. By revising newly redesignated paragraphs (h)(4)(ii) and (iii).

44. By removing newly redesignated paragraphs (h)(4)(v) and (vi).

45. By revising redesignated paragraph (j)(2)(iii).

46. By removing newly redesignated paragraph (j)(2)(v).

47. By redesignating newly redesignated paragraph (j)(2)(vi) as paragraph (j)(2)(v).

48. By revising newly redesignated paragraph (j)(3).

49. By redesignating paragraphs (q), (r), and (s) as paragraphs (k), (l), and (m), respectively.

50. By adding a new paragraph (n).

51. By removing paragraphs (o), (p), and (t).

52. In the following table, for each section designated or redesignated under these regulations (as indicated in the second column), removing the language in the third column and adding the language in the fourth column with the frequency indicated in the fifth column:

Paragraph	**Redesignations**	**Remove**	**Add**	**Frequency**
1.1502-47(a)(1)	N/A	section 802 or 821 (relating respectively to life insurance companies and to certain mutual insurance companies)	section 801 (relating to life insurance companies)	Once
1.1502-47(a)(1)	N/A	life insurance companies and mutual insurance companies may	life insurance companies may	Once
1.1502-47(a)(1)	N/A	composition and its consolidated tax	composition, its consolidated taxable income (or loss), and its consolidated tax	Once
1.1502-47(a)(4)	1.1502-47(a)(3)	§§ 1.1502-1 through 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(a)(4)	1.1502-47(a)(3)	844	848	Once
1.1502-47(d)(12)(i)(A), (d)(12)(i)(C), (d)(12)(i)(D), (d)(12)(iii), (d)(12)(iv), (d)(12)(v), (d)(12)(v)(B), (d)(12)(v)(C), (d)(12)(v)(D), (d)(12)(vi), (d)(12)(vii), and (d)(12)(viii)(F)	1.1502-47(b)(12)(i)(A), (b)(12)(i)(C), (b)(12)(i)(D), (b)(12)(iii), (b)(12)(iv), (b)(12)(v), (b)(12)(v)(B), (b)(12)(v)(C), (b)(12)(v)(D), (b)(12)(vi), (b)(12)(vii), and (b)(12)(viii)(F), respectively	(d)(12)	(b)(12)	Each place it appears
1.1502-47(d)(12)(iii)	1.1502-47(b)(12)(iii)	subdivision (iii)	paragraph (b)(12)(iii)	Once
1.1502-47(d)(12)(iv)	1.1502-47(b)(12)(iv)	subdivision (iv)	paragraph (b)(12)(iv)	Once
1.1502-47(d)(12)(v)(B)	1.1502-47(b)(12)(v)(B)	(i.e., sections 11, 802, 821, or 831)	(for example, section 11, section 801, or section 831)	Once
1.1502-47(d)(12)(vi)	1.1502-47(b)(12)(vi)	subdivision (vi)	paragraph (b)(12)(vi)	Once
1.1502-47(d)(12)(vii)	1.1502-47(b)(12)(vii)	return year and even	return year even	Once
1.1502-47(d)(12)(viii)(A)	1.1502-47(b)(12)(viii)(A)	(i.e., total reserves in section 801(c))	(that is, total reserves in section 816(c), as modified by section 816(h))	Once
1.1502-47(d)(12)(viii)(D) and (F)	1.1502-47(b)(12)(viii)(D) and (F), respectively	subdivision (viii)	paragraph (b)(12)(viii)	Once
1.1502-47(d)(14)	1.1502-47(b)(14)	*Illustrations*	*Examples*	Once
1.1502-47(d)(14)	1.1502-47(b)(14)	paragraph (d)	paragraph (b)	Once
1.1502-47(d)(14), Example 1	1.1502-47(b)(14)(i)	1913	2012	Once

Paragraph	Redesignations	Remove	Add	Frequency
1.1502-47(d)(14), Examples 2 through 4, 8, 10, and 12	1.1502-47(b)(14)(ii) through (iv), (viii), (x), and (xii), respectively	1974	2012	Each place it appears
1.1502-47(d)(14), Examples 1 through 3	1.1502-47(b)(14)(i) through (iii), respectively	1980	2018	Each place it appears
1.1502-47(d)(14), Examples 1 through 5 and 8 through 13	1.1502-47(b)(14)(i) through (v) and (viii) through (xiii), respectively	1982	2020	Each place it appears
1.1502-47(d)(14), Examples 5 through 7 and 9	1.1502-47(b)(14)(v) through (vii) and (ix), respectively	1983	2021	Each place it appears
1.1502-47(d)(14), Examples 2 through 5 and 8 through 12	1.1502-47(b)(14)(ii) through (v) and (viii) through (xii), respectively	(d)(12)	(b)(12)	Each place it appears
1.1502-47(d)(14), Examples 2, 3, and 12	1.1502-47(b)(14)(ii), (iii), and (xii), respectively	stock casualty	nonlife insurance	Each place it appears
1.1502-47(d)(14), Example 3	1.1502-47(b)(14)(iii)	subparagraph (d)(12)(v)(B) and (E)	paragraph (b)(12)(v)(B) and (D)	Once
1.1502-47(d)(14), Example 3	1.1502-47(b)(14)(iii)	e.g.	for example	Once
1.1502-47(d)(14), Example 5	1.1502-47(b)(14)(v)	i.e.	in other words	Once
1.1502-47(d)(14), Example 12	1.1502-47(b)(14)(xii)	casualty	nonlife insurance	Once
1.1502-47(e)(1)	1.1502-47(c)(1)	life company or an ineligible mutual company.	life company.	Once
1.1502-47(e)(3)	1.1502-47(c)(3)	§ 1.1502-75(c) and paragraph (e)(4) of this section,	§1.1502-75(c),	Once
1.1502-47(f)(3)	1.1502-47(d)(3)	1981	2019	Each place it appears
1.1502-47(f)(3)	1.1502-47(d)(3)	1982	2020	Each place it appears
1.1502-47(f)(3)	1.1502-47(d)(3)	applying §§ 1.1502-13, 1.1502-18, and 1.1502-19	applying §§1.1502-13 and 1.1502-19	Once
1.1502-47(f)(7)(i)	1.1502-47(d)(7)(i)	paragraph (g)	paragraph (e)	Once
1.1502-47(f)(7)(i)	1.1502-47(d)(7)(i)	sections 802(a), 821(a), and 831(a)	sections 801(a) and 831(a)	Once
1.1502-47(g)	1.1502-47(e)	three	two	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (h)	paragraph (f)	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (n)	paragraph (j)	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (g)(1)	paragraph (e)(1)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (j)	paragraph (g)(1)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (m)	paragraph (h)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (g)(2)	paragraph (e)(2)	Once
1.1502-47(h)(1)	1.1502-47(f)(1)	paragraph (h)	paragraph (f)	Once

Paragraph	Redesignations	Remove	Add	Frequency
1.1502-47(h)(1)	1.1502-47(f)(1)	includes separate mutual insurance company taxable income (as defined in section 821(b)) and insurance company taxable income	includes insurance company taxable income	Once
1.1502-47(h)(2)(i)	1.1502-47(f)(2)(i)	§§ 1.1502-21 or 1.1502-21A (as appropriate), the rules in this subparagraph (2)	§1.1502-21, the rules in this paragraph (f)(2)	Once
1.1502-47(h)(2)(ii)	1.1502-47(f)(2)(ii)	§§ 1.1502-21(A)(f) or 1.1502-21(e) (as appropriate)	§1.1502-21(e)	Once
1.1502-47(h)(2)(iv)	1.1502-47(f)(2)(iv)	year beginning after December 31, 1981, §§ 1.1502-21A or 1.1502-21 (as appropriate)	year, §1.1502-21	Once
1.1502-47(h)(2)(iv)	1.1502-47(f)(2)(iv)	nonlife loss	nonlife subgroup loss	Once
1.1502-47(h)(2)(v)	1.1502-47(f)(2)(v)	subparagraph (2)	paragraph (f)(2)	Once
1.1502-47(h)(4)(i)	1.1502-47(f)(3)(i)	§§ 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502-47(h)(4)(i)	1.1502-47(f)(3)(i)	subparagraph (4)	paragraph (f)(3)	Once
1.1502-47(h)(4)(i)	1.1502-47(f)(3)(i)	§§ 1.1502-22 or 1.1502-22A(a) (as appropriate)	§1.1502-22	Once
1.1502-47(h)(4)(iii)	1.1502-47(f)(3)(iii)	§§ 1.1502–22A(b)(1) or 1.1502-22(b)	§1.1502-22(b),	Once
1.1502-47(h)(4)(iii)(A)	1.1502-47(f)(3)(iii)(A)	allowed under section 822(c)(6) or section 832(c)(5),	allowed under section 832(c)(5),	Once
1.1502-47(m)	1.1502-47(h)	paragraph (g)	paragraph (e)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (h)	paragraph (f)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (l)	paragraph (g)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (m)	paragraph (h)	Each place it appears
1.1502-47(m)(2)(ii)	1.1502-47(h)(2)(ii)	§§ 1502-21 or 1.1502-21A (as appropriate)	§1.1502-21	Once
1.1502-47(m)(2)(ii)	1.1502-47(h)(2)(ii)	§§ 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	But see subdivision (ix) of this paragraph (m)(3)	But see paragraph (h)(3)(ix) of this section	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	arising in separate return years ending after December 31, 1980,	arising in separate return years	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	and 1.1502-22 (or §§ 1.1502-21A and 1.1502-22A, as appropriate).	and 1.1502-22.	Once

Paragraph	Redesignations	Remove	Add	Frequency
1.1502-47(m)(3)(iii)	1.1502-47(h)(3)(iii)	consolidated LO	life consolidated net operating loss	Once
1.1502-47(m)(3)(v)	1.1502-47(h)(3)(v)	GO or TII	taxable income	Once
1.1502-47(m)(3)(v)	1.1502-47(h)(3)(v)	LICTI (as determined under paragraph (j) of this section) for any	LICTI for any	Once
1.1502-47(m)(3)(vi)(A)	1.1502-47(h)(3)(vi)(A)	subparagraph (3)	paragraph (h)(3)	Once
1.1502-47(m)(3)(vii)(A)	1.1502-47(h)(3)(vii)(A)	notwithstanding § 1.1502-21A(b)(3)(ii) or 1.1502-21(b),	notwithstanding §1.1502-21(b),	Once
1.1502-47(m)(3)(vii)(A)	1.1502-47(h)(3)(vii)(A)	taxable income for that year.	taxable income for that year, subject to the limitation in section 172(a).	Once
1.1502-47(m)(3)(vii)(B)	1.1502-47(h)(3)(vii)(B)	(A) of this subdivision (vii)	paragraph (h)(3)(vii)(A) of this section	Once
1.1502-47(m)(3)(viii)	1.1502-47(h)(3)(viii)	section 172(b)(3)(C)	section 172(b)(3)	Once
1.1502-47(m)(3)(ix)	1.1502-47(h)(3)(ix)	243(b)(2)	243(b)(3)	Once
1.1502-47(m)(3)(ix)	1.1502-47(h)(3)(ix)	return year ending after December 31, 1980,	return year,	Once
1.1502-47(m)(3)(x)	1.1502-47(h)(3)(x)	LICTI (as defined in paragraph (j) of this section) in the particular	LICTI in the particular	Once
1.1502-47(m)(3)(xii)	1.1502-47(h)(3)(xii)	carryback of a consolidated LO	carryback of a life consolidated net operating loss	Once
1.1502-47(m)(3)(xii)	1.1502-47(h)(3)(xii)	(2) or (4)	(2) or (3)	Once
1.1502-47(m)(5), Examples 1 through 4	1.1502-47(h)(4)(i) through (iv), respectively	1982	2021	Each place it appears
1.1502-47(m)(5), Examples 1 through 4	1.1502-47(h)(4)(i) through (iv), respectively	i.e.	that is	Each place it appears
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	paragraph (d)(13)	paragraph (b)(13)	Once
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	attributable to I (an ineligible member)	attributable to I (an ineligible member that is not a nonlife insurance company)	Once
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	of this section. The result would be	of this section and section 172(a). The result would be	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	of this section or under § 1.1502-15A.	of this section.	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	taxable income is $35	taxable income is $32.5	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	30%	35%	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(15)	(17.5)	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(65)	(67.5)	Once

Paragraph	Redesignations	Remove	Add	Frequency
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(85)	(82.5)	Once
1.1502-47(n)	1.1502-47(j)	consolidated LO	life consolidated net operating loss and consolidated operations loss carryovers	Each place it appears
1.1502-47(n)(1)	1.1502-47(j)(1)	paragraph (g)(1)	paragraph (e)(1)	Once
1.1502-47(n)(1)	1.1502-47(j)(1)	paragraph (n)(2) of this section	paragraph (j)(2) of this section, subject to the rules and limitations in paragraph (j)(3) of this section	Once
1.1502-47(n)(1)	1.1502-47(j)(1)	consolidated net capital loss (as determined under paragraph (l)(4) of this section).	consolidated net capital loss.	Once
1.1502-47(n)(2)	1.1502-47(j)(2)	paragraph (h)	paragraph (f)	Once
1.1502-47(n)(2)	1.1502-47(j)(2)	paragraphs (m)(2) and (3)	paragraphs (h)(2) and (3)	Once
1.1502-47(n)(2)(ii)	1.1502-47(j)(2)(ii)	consolidated partial LICTI	consolidated LICTI	Once
1.1502-47(n)(2)(iv)	1.1502-47(j)(2)(iv)	Paragraphs (m)(3)(vi), (vii), (x), and (xi)	Paragraphs (h)(3)(vi), (vii), (x), and (xi)	Once
1.1502-47(q)	1.1502-47(k)	§ 1.1502-1 through 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(q)	1.1502-47(k)	paragraph (m)(3)(vi)	paragraph (h)(3)(vi)	Once
1.1502-47(q)	1.1502-47(k)	§§ 1.1502-21A(b)(3) and 1.1502-79A(a)(3) (or § 1.1502-21, as appropriate)	§1.1502-21	Once
1.1502-47(r)	1.1502-47(l)	partial LICTI (or LO)	LICTI (or life consolidated net operating loss)	Once
1.1502-47(r)	1.1502-47(l)	§§ 1.1502-0 - 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(s)(1)(iii)	1.1502-47(m)(1)(iii)	paragraphs (g), (m), and (n)	paragraphs (e), (h), and (j)	Once
1.1502-47(s)(1)(iv)	1.1502-47(m)(1)(iv)	paragraph (h)	paragraph (f)	Once
1.1502-47(s)(1)(v)	1.1502-47(m)(1)(v)	consolidated partial Life	consolidated Life	Once
1.1502-47(s)(1)(v)	1.1502-47(m)(1)(v)	(as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section,	or life consolidated net operating loss	Once

The additions and revisions read as follows:

§1.1502-47 Consolidated returns by life-nonlife groups.

(a) * * *

(2) *General method of consolidation*—(i) *Subgroup method*. The regulations adopt a subgroup method to determine consolidated taxable income. One subgroup is the group's nonlife companies. The other subgroup is the group's life insurance companies. Initially, the nonlife subgroup computes nonlife consolidated taxable income and the life subgroup computes consolidated LICTI. A subgroup's income may in effect be reduced by a loss of the other subgroup, subject to the limitations in sections 172 and 1503(c). The life subgroup losses consist of life consolidated net operating loss, consolidated operations loss carryovers from taxable years beginning before January 1, 2018 (consolidated operations loss carryovers), and life consolidated net capital loss. The nonlife subgroup losses consist of nonlife consolidated net operating loss and nonlife consolidated net capital loss. Consolidated taxable income is therefore defined in pertinent part as the sum of nonlife consolidated taxable income and consolidated LICTI, reduced by life subgroup losses and/or nonlife subgroup losses.

(ii) *Subgroup loss*. A subgroup loss does not actually affect the computation of nonlife consolidated taxable income or consolidated LICTI. It merely constitutes a bottom-line adjustment in reaching consolidated taxable income. Furthermore, the amount of a subgroup's loss, if any, that is eligible to be carried back to a prior taxable year first must be carried back against income of the same subgroup before it may be used as a setoff against the other subgroup's income in the taxable year the loss arose. (See sections 172(b)(1) and 1503(c)(1); see also §1.1502-21(b)). The carryback of losses from one subgroup may not be used to offset income of the other subgroup in the year to which the loss is to be carried. This carryback of one subgroup's loss may "bump" the other subgroup's loss that, in effect, previously reduced the income of the first subgroup. The subgroup's loss that is bumped in appropriate cases may, in effect, reduce a succeeding year's income of either subgroup. This approach gives the group the tax savings of the use of losses, but the bumping rule assures that, insofar as possible, life deductions will be matched against life income and nonlife deductions against nonlife income.

* * * * *

(b) * * *

(1) *Life company*. The term *life company* means a life insurance company as defined in section 816 and subject to tax under section 801. Section 816 applies to each company separately.

(2) Nonlife *insurance company*. The term *nonlife insurance company* has the meaning provided in §1.1502-1(k).

(3) *Life insurance company taxable income*. The term *life insurance company taxable income* or *LICTI* has the meaning provided in section 801(b).

(4) *Group*. The term *group* has the meaning provided in §1.1502-1(a). Unless otherwise indicated in this section, a group's composition is determined without regard to section 1504(b)(2).

(5) *Member*. The term *member* has the meaning provided in §1.1502-1(b). A life company is tentatively treated as a member for any taxable year for purposes of determining if it is an eligible corporation under paragraph (b)(12) of this section and, therefore, if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

* * * * *

(10) *Separate return year*. The term *separate return year* has the meaning provided in §1.1502-1(e). For purposes of this paragraph (b)(10), the term *group* is defined with regard to section 1504(b)(2) for years in which an election under section 1504(c)(2) is not in effect. Thus, a separate return year includes a taxable year for which that election is not in effect.

(11) *Separate return limitation year*. Section 1.1502-1(f)(2) provides exceptions to the definition of the term separate return limitation year. For purposes of applying those exceptions to this section, the term *group* is defined without regard to section 1504(b)(2), and the definition in this paragraph (b)(11) applies separately to the nonlife subgroup in determining nonlife consolidated taxable income under paragraph (f) of this section and to the life subgroup in determining consolidated LICTI under paragraph (g) of this section. Paragraph (h)(3)(ix) of this section defines the term separate return limitation year for purposes of determining whether the losses of one subgroup may be used against the income of the other subgroup.

* * * * *

(13) *Ineligible corporation*. A corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation. Losses of a nonlife member arising in years when it is ineligible may not be used under section 1503(c)(2) and paragraph (g) of this section to set off the income of a life member. If a life company is ineligible and is the common parent of the group (without regard to section 1504(b)(2)), the election under section 1504(c)(2) may not be made.

(14) * * *

(i) * * * S_2 must file its own separate return for 2020.

(ii) *Example 2*. Since 2012, L1 has been a life company owning all the stock of L2. In 2018, L1 transfers assets to S1, a new nonlife insurance company subject to taxation under section 831(a). For 2020, only L1 and L2 are eligible corporations. The tacking rule in paragraph (b)(12)(v) of this section does not apply in 2020 because the old corporation (L1) and the new corporation (S1) do not have the same tax character.

* * * * *

(d) * * *

(5) *Dividends received deduction*—(i) *Dividends received by an includible insurance company*. Dividends received by an includible member insurance company, taxed under either section 801 or section 831, from another includible member of the group are treated for Federal income tax purposes as if the group did not file a consolidated return. See sections 818(e)(2) and 805(a)(4) for rules regarding a member taxed under section 801, and see sections 832(g) and 832(b)(5)(B) through (E) for rules regarding a member taxed under section 831.

(ii) *Other dividends*. Dividends received from a life company member of the group that are not subject to paragraph (d)(5)(i) of this section are not included in gross income of the distributee member. See section 1504(c)(2)(B)(i). If the distributee corporation is a nonlife insurance company subject to tax under section 831, the rules of section 832(b)(5)(B) through (E) apply.

* * * * *

(7) * * *

(ii) Any taxes described in §1.1502-2 (other than in §1.1502-2(a)(1), (a)(6), and (a)(7)).

* * * * *

(f) * * *

(2) * * *

(iii) *Carrybacks*. The portion of the nonlife consolidated net operating loss for the nonlife subgroup described in paragraph (f)(2)(vi) of this section, if any, that is eligible to be carried back to prior taxable years under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the nonlife consolidated net operating loss may be used as a nonlife subgroup loss under paragraphs (e)(2) and (h) of this section to set off consolidated LICTI in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the net operating loss of the nonlife subgroup may be made by the agent for the group within the meaning of §1.1502-77.

* * * * *

(v) * * * For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21.

(vi) *Portion of nonlife consolidated net operating loss that is carried back to prior taxable years*. The portion of the nonlife consolidated net operating loss that (absent an election to waive carrybacks) is carried back to the two preceding taxable years is the sum of the nonlife subgroup's farming loss (within the meaning of section 172(b)(1)(B)(ii)) and the amount of the subgroup's net operating loss that is attributable to nonlife insurance companies (as determined under §1.1502-21). For rules governing the absorption of net operating loss carrybacks, including limitations on the amount of net operating loss carrybacks that may be absorbed in prior taxable years, see §1.1502-21(b).

(vii) *Example*. P, a holding company that is not an insurance company, owns all of the stock of S, a nonlife insurance company, and L1, a life insurance company. L1 owns all of the stock of L2, a life insurance company. Both L1 and L2 satisfy the eligibility requirements of §1.1502-47(b)(12). Each corporation uses the calendar year as its taxable year, and no corporation has incurred farming losses (within the meaning of section 172(b)(1)(B)(ii)). For 2021, the group first files a consolidated return for which the election under section 1504(c)(2) is effective. P and S filed consolidated returns for 2019 and 2020. In 2021, the P-S group sustains a nonlife consolidated net operating loss that is attributable entirely to S (see §1.1502-21(b)). The election in 2021 under section 1504(c)(2) does not result under paragraph (d)(1) of this section in the creation of a new group or the termination of the P-S group. The loss is carried back to the consolidated return years 2019 and 2020 of P and S. Pursuant to §1.1502-21(b), the loss may be used to offset S's income in 2019 and 2020 without limitation, and the loss may be used to offset P's income in those years, subject to the limitation in section 172(a) (see §1.1502-21(b)). The portion of the loss not absorbed in 2019 and 2020 may serve as a nonlife subgroup loss in 2021 that may set off the consolidated LICTI of L1 and L2 under paragraphs (e)(2) and (h) of this section.

(3) * * *

(ii) *Additional principles*. In applying §1.1502-22 to nonlife consolidated net capital loss carryovers and carrybacks, the principles set forth in paragraph (f)(2)(iii) through (v) of this section for applying §1.1502-21 to nonlife consolidated net operating loss carryovers and carrybacks also apply, without regard to the limitation in paragraph (f)(2)(vi) of this section.

* * * * *

(g) *Consolidated LICTI*—(1) *General rule*. Consolidated LICTI is the consolidated taxable income of the life subgroup, computed under §1.1502-11 as modified by this paragraph (g).

(2) *Life consolidated net operating loss deduction*—(i) *In general*. In applying §1.1502-21, the rules in this paragraph (g)(2) apply in determining for the life subgroup the life net operating loss and the portion of the life net operating loss carryovers and carrybacks to the taxable year.

(ii) *Life CNOL*. The life consolidated net operating loss is determined under §1.1502-21(e) by treating the life subgroup as the group.

(iii) *Carrybacks*—(A) *General rule*. The portion of the life consolidated net operating loss for the life subgroup, if any, that is eligible to be carried back under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the life consolidated net operating loss may be used as a life subgroup loss under paragraphs (e)(1) and (j) of this section to set off nonlife consolidated taxable income in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the consolidated net operating loss of the life subgroup may be made by the agent for the group within the meaning of §1.1502-77.

(B) *Special rule for life consolidated net operating losses arising in 2018, 2019, or 2020*. If a life consolidated net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried back to a life insurance company taxable year beginning before January 1, 2018, then such life consolidated net operating loss is treated as an operations loss carryback (within the meaning of section 810, as in effect prior to its repeal) of such company to such taxable year.

(iv) *Subgroup rule*. In determining the portion of the life consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, §1.1502-21 is applied by treating the life subgroup as the group. Therefore, the absorption is determined without taking into account any nonlife subgroup losses that were previously reported on a consolidated return as setting off life consolidated taxable income for the year to which the life subgroup loss is carried back.

(v) *Carryovers*. The portion of the life consolidated net operating loss that is not absorbed in a prior year as a carryback, or as a life subgroup loss that set off nonlife consolidated taxable income for the year the loss arose, constitutes a life carryover under this paragraph (g)(2) to reduce consolidated LICTI before that portion may constitute a life subgroup loss that sets off nonlife consolidated taxable income for that particular year. For limitations on the use of life carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21(b).

(3) *Life consolidated capital gain net income or loss*—(i) [Reserved].

(ii) *Life consolidated net capital loss carryovers and carrybacks*. The life consolidated net capital loss carryovers and carrybacks for the life subgroup are determined by applying the principles of §1.1502-22 as modified by the following rules in this paragraph (g)(3)(ii):

(A) Life consolidated net capital loss is first carried back (or apportioned to the life members for separate return years) to be absorbed by life consolidated capital gain net income without regard to any nonlife subgroup capital losses and before the life consolidated net capital loss may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose.

(B) If a life consolidated net capital loss is not carried back or is not a life subgroup loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose, then it is carried over to the particular year under this paragraph (g)(3)(ii) first against life consolidated capital gain net income before it may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in that particular year.

(h) * * *

(2) * * *

(ii) * * * Additionally, the amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and §1.1502-21).

* * * * *

(3) * * *

(iv) * * * The amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and §1.1502-21).

* * * * *

(4) *Examples*. The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

* * * * *

(ii) *Example 2*. (A) The facts are the same as in paragraph (h)(4)(i) of this section, except that, for 2021, S's separate net operating loss is $200. Assume further that L's consolidated LICTI is $200. Under paragraph (h)(3)(vi) of this section, the offsettable nonlife consolidated net operating loss is $100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section ($200), reduced by the separate net operating loss of I ($100)). The offsettable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is $35 (35 percent of the lesser of the offsettable $100 or consolidated LICTI of $200). See section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of $65, and I carries over a loss of $100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net operating loss ($200) less amount used in 2021 ($35)). Under paragraph (h)(2)(ii) of this section, the offsettable nonlife consolidated net operating loss that may be carried to 2022 is $65 ($100 minus $35). The facts and results are summarized in the following table.

Table 1 to paragraph (h)(4)(ii)(A)
(Dollars omitted)

		Facts	Offsettable	Limit	Unused Loss
		(a)	(b)	(c)	(d)
1	P	100			
2	S	(200)	(100)		(65)
3	I	(100)			(100)
4	Nonlife Subgroup	(200)	(100)	(100)	(165)
5	L	200		200	
6	35% of lower of line 4(c) or 5(c)			35	
7	Unused offsettable loss				(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is $165 (line 5(a) minus line 6(c)).

(iii) *Example 3*. The facts are the same as in paragraph (h)(4)(ii) of this section, with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of $50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is $100. Under paragraph (f)(2) of this section, $50 of the nonlife consolidated net operating loss carryover ($165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2022 is attributable to I, the ineligible nonlife member. Accordingly, the offsettable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is $65, the unused loss from 2021. The offsettable nonlife consolidated net operating loss in 2022 is $22.75 (35 percent of the lesser of the offsettable loss of $65 or consolidated LICTI of $100). Accordingly, under paragraph (e) of this section, consolidated taxable income is $77.25 (consolidated LICTI of $100 minus the offsettable loss of $22.75).

* * * * *

(j) * * *

(2) * * *

(iii) Substitute the term "life consolidated net operating loss and consolidated operations loss carryovers" for "nonlife consolidated net operating loss", and "paragraph (g)" for "paragraph (f)".

(3) *Examples*. The following examples illustrate the principles of this paragraph (j). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

(i) *Example 1*. P, S, L1 and L2 constitute a group that elects under section 1504(c)(2) to file a consolidated return for 2021. In 2021, the nonlife subgroup consolidated taxable income is $100 and there is $20 of nonlife consolidated net capital loss that cannot be carried back under paragraph (f) of this section to taxable years (whether consolidated or separate) preceding 2021. The nonlife subgroup has no carryover from years prior to 2021. The life consolidated net operating loss is $150, which under paragraph (g) of this section includes life consolidated capital gain net income of $25. Since life consolidated capital gain net income is zero for 2021 (see paragraph (h)(3)(iii) of this section), the nonlife capital loss offset is zero (see paragraph (h)(3)(ii) of this section). However, $100 of life consolidated net operating loss sets off the $100 nonlife consolidated taxable income in 2021. The life subgroup carries under paragraph (g)(2) of this section to 2022 $50 of the life consolidated net operating loss ($150 minus $100). The $50 carryover will be used in 2022 (subject to the limitation in section 172(a)) against life subgroup income before it may be used in 2022 to setoff nonlife consolidated taxable income.

(ii) *Example 2*. The facts are the same as in paragraph (j)(3)(i) of this section, except that, for 2021, the nonlife consolidated taxable income is $150 (this amount is entirely attributable to S and includes nonlife consolidated capital gain net income of $50), consolidated LICTI is $200, and a life consolidated net capital loss is $50. The $50 life consolidated net capital loss sets off the $50 nonlife consolidated capital gain net income. Consolidated taxable income under paragraph (e) of this section is $300 (nonlife consolidated taxable income ($150) minus the setoff of the life consolidated net capital loss ($50), plus consolidated LICTI ($200)).

(iii) *Example 3*. The facts are the same as in paragraph (j)(3)(ii) of this section, except that, for 2022, the nonlife consolidated net operating loss is $150. This entire amount is attributable to S; thus, it is eligible to be carried back to 2021 against nonlife consolidated taxable income under paragraph (f)(2) of this section and §1.1502-21(b). If P, the agent for the group within the meaning of §1.1502-77, does not elect to relinquish the carryback under section 172(b)(3), the entire $150 will be carried back, reducing 2021 nonlife consolidated taxable income to zero and nonlife consolidated capital gain net income to zero. Under paragraph (h)(3)(xii) of this section, the setoff in 2021 of the nonlife consolidated capital gain net income ($50) by the life consolidated net capital loss ($50) is restored. Accordingly, the 2021 life consolidated net capital loss may be carried over by the life subgroup to 2022. Under paragraph (e) of this section, after the carryback, consolidated taxable income for 2021 is $200 (nonlife consolidated taxable income ($0) plus consolidated LICTI ($200)).

(iv) *Example 4*. The facts are the same as in paragraph (j)(3)(iii) of this section, except that P elects under section 172(b)(3) to relinquish the carryback of $150 arising in 2022. The setoff in Example 2 is not restored. However, the offsettable nonlife consolidated net operating loss for 2022 (or that may be carried over from 2022) is zero. See paragraph (h)(3)(viii) of this section. Nevertheless, the $150 nonlife consolidated net operating loss may be carried over to be used by the nonlife group.

(v) *Example 5*. P owns all of the stock of S1 and of L1. On January 1, 2017, L1 purchases all of the stock of L2. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, L1 is an eligible corporation under paragraph (b)(12) of this section but L2 is ineligible. Thus, L1 but not L2 is a member for 2021. For 2021, L2 sustains a net operating loss, which cannot be carried back (see section 172(b)). For 2021, L2 is treated under paragraph (d)(6) of this section as a member of a controlled group of corporations under section 1563 with P, S, and L1. For 2022, L2 is eligible and is included on the group's consolidated return. L2's net operating loss for 2021 that may be carried to 2022 is not treated under paragraph (b)(11) of this section as having been sustained in a separate return limitation year for purposes of computing consolidated LICTI of the L1-L2 life subgroup for 2022. Furthermore, the portion of L2's net operating loss not used under paragraph (g)(2) of this section against life subgroup income in 2022 may be included in offsettable life consolidated net operating loss under paragraph (j)(2) and (h)(3)(i) of this section that reduces in 2022 nonlife consolidated taxable income (subject to the limitation in section 172(a)) because L2's loss in 2021 was not sustained in a separate return limitation year under paragraph (j)(2) and (h)(3)(ix)(A) of this section or in a separate return year (2021) when an election was in effect under neither section 1504(c)(2) nor section 243(b)(3).

* * * * *

(n) *Effective/applicability dates*. The rules of this section apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules of this section to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence, the taxpayer must apply those rules in their entirety and consistently with the provisions of subchapter L of the Internal Revenue Code applicable to the years at issue.

Par. 5. Section 1.1503(d)-4 is amended by:

1. In paragraph (c)(3)(iii)(B), removing the period and adding in its place a semi-colon.

2. In paragraph (c)(3)(iv), removing the period and adding in its place "; and".

3. Adding paragraph (c)(3)(v).

The addition reads as follows:

§1.1503(d)-4 Domestic use limitation and related operating rules.

* * * * *

(c) * * *

(3) * * *

(v) The SRLY limitation is applied without regard to §1.1502-21(c)(1)(i)(E) (section 172(a) limitation applicable to a SRLY member).

* * * * *

Par. 6. Section 1.1503(d)-8 is amended by adding paragraph (b)(8) to read as follows:

§1.1503(d)-8 Effective dates.

* * * * *

(b) * * *

(8) *Rule providing that SRLY limitation applies without regard to §1.1502-21(c)(1)(i)(E)*. Section 1.1503(d)-4(c)(3)(v) applies to any period to which §1.1502-21(c)(1)(i)(E) applies.

Sunita Lough,
Deputy Commissioner for Services
and Enforcement.

Approved: September 29, 2020.

David J. Kautter,
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register on October 23, 2020, 11:15 a.m., and published in the issue of the Federal Register for October 27, 2020, 85 FR 67966)

Part III

Transition Relief Related to Health Coverage Reporting Required by Sections 6055 and 6056 for 2020

Notice 2020-76

SECTION 1. PURPOSE

This notice extends the due date for certain 2020 information-reporting requirements under sections 6055 and 6056 of the Internal Revenue Code (Code) from January 31, 2021, to March 2, 2021. This notice also provides relief from the section 6721 and section 6722 penalties for certain aspects of the 2020 information-reporting requirements under sections 6055 and 6056.

SECTION 2. BACKGROUND

Sections 6055 and 6056 were added to the Code by sections 1502 and 1514, respectively, of the Patient Protection and Affordable Care Act (PPACA), enacted March 23, 2010, Pub. L. No. 111-148, 124 Stat. 119, 250, 256. Section 6055 requires health insurance issuers, self-insuring employers, government agencies, and other providers of minimum essential coverage to file and furnish annual information returns and statements regarding coverage provided. Section 6056 requires applicable large employers (generally those with 50 or more full-time employees, including full-time equivalent employees, in the previous year) to file and furnish annual information returns and statements relating to the health insurance, if any, that the employer offers to its full-time employees. Section 6056 was amended by sections 10106(g) and 10108(j) of the PPACA and was further amended by section 1858(b)(5) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, enacted April 15, 2011, Pub. L. No. 112-10, 125 Stat. 38, 169.

Section 36B, which was added to the Code by section 1401 of the PPACA, provides a premium tax credit for eligible individuals who enroll, or enroll a family member, in coverage through a Health Insurance Marketplace. Section 5000A, which was added to the Code by section 1501(b) of the PPACA, generally provides that individuals must have minimum essential coverage, qualify for an exemption from the minimum essential coverage requirement, or make an individual shared responsibility payment when they file their federal income tax return. Section 11081 of Pub. L. No. 115-97, 131 Stat. 2054, 2092, enacted December 22, 2017, and commonly referred to as the Tax Cuts and Jobs Act, reduces the individual shared responsibility payment to zero for months beginning after December 31, 2018.

Section 6721 imposes a penalty for failing to timely file an information return or for filing an incorrect or incomplete information return. Section 6722 imposes a penalty for failing to timely furnish an information statement or for furnishing an incorrect or incomplete information statement. The section 6721 and section 6722 penalties are imposed with regard to information returns and statements listed in section 6724(d), which includes those required by sections 6055 and 6056.

The regulations under section 6055 require every person that provides minimum essential coverage to an individual during a calendar year to file with the Internal Revenue Service (IRS) an information return and a transmittal on or before the following February 28 (March 31 if filed electronically) and to furnish to the responsible individual identified on the return a written statement on or before January 31 following the calendar year to which the statement relates. *See* § 1.6055-1(f) and (g)(4) of the Income Tax Regulations; *see also* section 6055(c)(2). (In 2021, the January 31 furnishing due dates referred to above in this paragraph and in the following paragraph fall on a weekend day; accordingly, in 2021 such furnishing will be timely if done on February 1. *See* section 7503.) Except as provided in the following paragraph, the IRS has designated Form 1094-B, *Transmittal of Health Coverage Information Returns*, and Form 1095-B, *Health Coverage*, to meet the requirements of the section 6055 regulations.

The regulations under section 6056 require every applicable large employer or a member of an aggregated group that is determined to be an applicable large employer (ALE member) to file with the IRS an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to full-time employees a written statement on or before January 31 following the calendar year to which the statement relates. *See* § 301.6056-1(e) and (g) of the Procedure and Administration Regulations; *see also* section 6056(c)(2). The IRS has designated Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, to meet the requirements of the section 6056 regulations. In addition, an ALE member that offers health coverage through a self-insured health plan must complete the reporting required under section 6055 (that is, information about each individual enrolled in the self-insured health plan) using Form 1095-C, Part III, rather than Form 1095-B.[1] ALE members use Form 1095-C, Part III to meet the section 6055 reporting requirement for all employees, but for employees who are not full-time, ALE members report only certain information to reflect that the Form 1095-C is being used to complete section 6055 reporting but not section 6056 reporting, which applies only to full-time employees.

The regulations under sections 6055 and 6056 allow the IRS to grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C for good cause shown. *See* §§ 1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A). In addition, filers of Forms 1095-B, 1094-C, and 1095-C may receive an automatic 30-day extension of time to file these forms with

[1] See the Instructions for Forms 1094-C and 1095-C for the option to file Form 1094-B and Form 1095-B, rather than Form 1094-C and Form 1095-C, to report coverage of certain non-employees.

the IRS by submitting Form 8809, *Application for Extension of Time To File Information Returns*, on or before the due date for filing those forms. *See* §§ 1.6081-1 and 1.6081-8. In limited situations, filers who submit Form 8809 before the automatic 30-day extension period expires may also receive an additional 30-day extension of time to file Forms 1095-B, 1094-C, and 1095-C with the IRS. *See id.*

The preambles to the section 6055 and section 6056 regulations (T.D. 9660, 79 FR 13220, 2014-13 I.R.B. 842; T.D. 9661, 79 FR 13231, 2014-13 I.R.B. 855) provided that, for reporting of 2015 offers and coverage, the IRS would not impose penalties under sections 6721 and 6722 on reporting entities that could show that they made good-faith efforts to comply with the information-reporting requirements. This relief applied only to furnishing and filing incorrect or incomplete information reported on a statement or return and not to a failure to timely furnish or file a statement or return. Notice 2015-87, 2015-52 I.R.B. 889, reiterated that relief, and Notice 2015-68, 2015-41 I.R.B. 547, provided additional information about that relief with regard to reporting under section 6055. The preambles also noted the general rule that, under section 6724 and the related regulations, the section 6721 and section 6722 penalties may be waived if a failure to timely furnish or file a statement or return is due to reasonable cause.

Through a series of Internal Revenue Bulletin notices, the Department of the Treasury (Treasury Department) and the IRS extended the due dates for information-reporting requirements under sections 6055 and 6056 for furnishing statements to individuals for the years 2015, 2016, 2017, 2018, and 2019. *See* Notice 2016-4, 2016-3 I.R.B. 279 (2015); Notice 2016-70, 2016-49 I.R.B. 784 (2016); Notice 2018-06, 2018-2 I.R.B. 300 (2017); Notice 2018-94, 2018-51 I.R.B.1042 (2018); Notice 2019-63, 2019-51 I.R.B. 1390 (2019). In these notices, in general,[2] the Treasury Department and the IRS extended the furnishing due date for the Forms 1095-B and 1095-C by 30 days. Each notice also extended the good-faith transition relief from the section 6721 and section 6722 penalties to the information-reporting requirements under sections 6055 and 6056 for the years 2015, 2016, 2017, 2018, and 2019, respectively.

In Notices 2018-94 and 2019-63, the Treasury Department and the IRS stated that, because the individual shared responsibility payment is reduced to zero for months beginning after December 31, 2018, they were studying whether and how the reporting requirements under section 6055 should change, if at all, for future years. Notice 2019-63 also provided penalty relief for Form 1095-B filers who chose to furnish the forms only upon request and did so in accordance with the procedures described in the notice.

SECTION 3. TRANSITION RELIEF

A. *Extension of Due Date for Furnishing Information Statements to Individuals under Sections 6055 and 6056 for 2020*

The Treasury Department and the IRS have determined that a substantial number of employers, insurers, and other providers of minimum essential coverage need additional time beyond the January 31, 2021, due date to gather and analyze the information and prepare the 2020 Forms 1095-B and 1095-C to be furnished to individuals. Accordingly, this notice extends the due date for furnishing the 2020 Forms 1095-B and 1095-C, from January 31, 2021, to March 2, 2021. In view of this automatic extension to March 2, 2021, the provisions under §§ 1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A) allowing the IRS to grant an extension of time of up to 30 days to furnish Forms 1095-B and 1095-C will not apply to the extended due date. Because the extension of the due date to furnish information statements to individuals granted in this notice applies automatically and is as generous as the permissive 30-day extension of time to furnish 2020 information statements under sections 6055 and 6056 that may be requested by some reporting entities in submissions to the IRS, the IRS will not formally respond to such requests. Notwithstanding the extension provided in this notice, employers and other coverage providers are encouraged to furnish 2020 information statements as soon as they are able.

This notice does not extend the due date for filing with the IRS the 2020 Forms 1094-B, 1095-B, 1094-C, or 1095-C. However, this notice does not affect the provisions regarding an automatic extension of time for filing information returns; the automatic extension remains available under the normal rules for employers and other coverage providers who submit a Form 8809 on or before the due date. *See* §§ 1.6081-1 and 1.6081-8. This notice also does not affect the provisions regarding additional extensions of time to file. *See id.*

B. Relief Regarding the Furnishing Requirement under Section 6055 for 2020

Because the individual shared responsibility payment is zero in 2020, an individual does not need the information on Form 1095-B to compute his or her federal tax liability or file an income tax return with the IRS. Nonetheless, reporting entities required to furnish Form 1095-B to individuals must expend resources to do so. At this time, the Treasury Department and the IRS have determined as a matter of enforcement priorities that, for 2020, relief from the penalty under section 6722 for failing to furnish a statement as required under section 6055 is in the interest of sound tax administration in certain cases. In particular, the IRS will not assess a penalty under section 6722 against reporting entities for failing to furnish a Form 1095-B to responsible individuals in cases where the following two conditions are met (the 2020 section 6055 furnishing relief). First, the reporting entity must post a notice prominently on its website stating that responsible individuals may receive a copy of their 2020 Form 1095-B upon request, accompanied by an email address and a physical address to which a request may be sent, as well as a telephone number that responsible individuals can use to contact the reporting entity with any questions. Second, the reporting entity must furnish a 2020 Form 1095-B

[2] For 2015 information statements, the furnishing due date was extended by 60 days. For 2018 information statements, the furnishing due date was extended by 30 days but the 30th day fell on a Saturday, so the Forms 1095-B and 1095-C were timely if filed by the 32nd day.

to any responsible individual upon request within 30 days of the date the request is received. The reporting entity may furnish these statements electronically if it meets the requirements provided in § 1.6055-2.

As noted earlier, ALE members that offer self-insured health plans are generally required to use Form 1095-C, Part III, to meet the section 6055 reporting requirements, instead of Form 1095-B. However, because of the combined reporting under sections 6055 and 6056 on the Form 1095-C for full-time employees of ALE members enrolled in self-insured health plans, the 2020 section 6055 furnishing relief does not extend to the requirement to furnish Forms 1095-C to full-time employees. Accordingly, for full-time employees enrolled in self-insured health plans, penalties will continue to be assessed consistent with prior enforcement policies for any failure by ALE members to furnish Form 1095-C, including Part III, according to the applicable instructions. However, the 2020 section 6055 furnishing relief does extend to penalty assessments in connection with the requirement to furnish Form 1095-C to any employee enrolled in an ALE member's self-insured health plan who is not a full-time employee for any month of 2020,[3] subject to the requirements of the 2020 section 6055 furnishing relief.

The 2020 section 6055 furnishing relief does not affect assessment of penalties associated with the requirement or the deadline to file with the IRS the 2020 Forms 1094-B or 1095-B or the Forms 1094-C or 1095-C, as applicable.

C. *Final Extension of Good-Faith Relief for Reporting and Furnishing under Sections 6055 and 6056 for 2020*

This notice also provides a final extension of relief from penalties under sections 6721 and 6722 to reporting entities that report incorrect or incomplete information on the return or statement when these entities can show they made good-faith efforts to comply with the information-reporting requirements under sections 6055 and 6056 for 2020 (both for furnishing to individuals and for filing with the IRS). This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. Reporting entities must make a good-faith effort to comply with the regulations under sections 6055 and 6056 to be eligible for this relief. In determining good faith, the IRS will take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the IRS and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the IRS or testing its ability to transmit information to the IRS. Reporting entities that fail to file an information return or furnish a statement by the extended due dates, except as otherwise provided in this notice, are not eligible for relief. As this good-faith relief was intended to be transitional relief, this is the last year the Treasury Department and the IRS intend to provide this relief.

D. *Future Years and Request for Comments*

In Notice 2019-63, the Treasury Department and the IRS requested comments as to whether an extension of the due date for furnishing statements to individuals under section 6056 would be necessary for future years and, if so, why. Very few comments were submitted, which indicates that this relief may no longer be necessary. In Notice 2019-63, the Treasury Department and the IRS also requested comments as to whether and how the reporting requirements under section 6055 should change, if at all, for future years; only one comment was submitted.

The Treasury Department and the IRS are renewing the request for comments related to furnishing requirements under sections 6055 and 6056. Unless we receive comments that explain why this relief continues to be necessary, no relief related to the furnishing requirements under sections 6055 and 6056 will be granted in future years. Taxpayers and reporting entities are strongly encouraged to submit comments electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS- 2020-0037" in the search field on the regulations.gov homepage to find this notice and submit comments).

Alternatively, taxpayers and reporting entities may mail comments to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2020-76) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Comments must be submitted by February 1, 2021. All comments received will be available for public inspection on www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

SECTION 4. CONTACT INFORMATION

The principal author of this notice is Danielle Pierce of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Danielle Pierce at (202) 317-5150 (not a toll-free number).

Request for Comments Regarding Protection of Annuity and Spousal Rights Under Section 205 of ERISA with Respect to a Terminating § 403(b) Plan Funded Through the Use of Custodial Accounts

Notice 2020-80

PURPOSE

This notice requests comments on the application of the annuity and spousal

[3] For such an employee, the Instructions for Forms 1094-C and 1095-C provide that the employer is to enter code 1G on line 14 for the Form 1095-C, but the ALE member is not otherwise required to complete Part II of Form 1095-C.

rights provisions of section 205 of the Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended (ERISA), in connection with a distribution of an individual custodial account (ICA) in kind from a terminating § 403(b) plan. Although no § 403(b) plans are subject to the annuity and spousal rights provisions of §§ 401(a)(11) and 417 of the Internal Revenue Code (Code), some § 403(b) plans that are subject to ERISA (such as a plan of a non-church tax-exempt employer that provides for matching contributions) are subject to the parallel annuity and spousal rights provisions of section 205 of ERISA.[1] Revenue Ruling 2020-23, 2020-47 I.R.B., issued contemporaneously with this notice, provides guidance regarding termination of a § 403(b) plan that is funded through the use of § 403(b)(7) custodial accounts and distribution of an ICA in kind to a participant or beneficiary of the plan. The revenue ruling does not, however, address the application of the annuity and spousal rights provisions under section 205 of ERISA in connection with a distribution of an ICA in kind as part of a plan termination.

BACKGROUND

Treas. Reg. § 1.403(b)-10(a) provides that a § 403(b) plan may be terminated and establishes requirements for the plan termination. One of the requirements for a plan termination is that "all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan."

Rev. Rul. 2011-7, 2011-10 I.R.B. 534, provides, in relevant part, that a plan may be terminated in accordance with the rules of § 1.403(b)-10(a) by delivery to participants and beneficiaries of a fully paid individual annuity contract or an individual certificate evidencing fully paid benefits under a group annuity contract, as further described in the ruling.

Section 110 of Division O of the Further Consolidated Appropriations Act, 2020, P.L. 116-94 , 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), directs that guidance be issued providing that, if an employer terminates a plan under which amounts are contributed to a custodial account under § 403(b)(7), the plan administrator or custodian may distribute an ICA in kind to a participant or beneficiary of the plan. It also provides that the distributed ICA shall be maintained by the custodian on a tax-deferred basis as a § 403(b)(7) custodial account, similar to the treatment of fully paid individual annuity contracts under Rev. Rul. 2011-7, until amounts are actually paid to the participant or beneficiary.

Rev. Rul. 2020-23 provides that a plan is terminated in accordance with the rules of § 1.403(b)-10(a) in situations that involve the distribution of an ICA in kind. The revenue ruling further provides that a distribution of an ICA in kind to a participant or beneficiary is not includible in gross income until amounts are actually paid to the participant or beneficiary from the ICA, so long as the ICA maintains its status as a § 403(b)(7) custodial account. The revenue ruling explicitly does not, however, address a situation in which annuity and spousal rights under section 205 of ERISA apply.

Section 205(a) of ERISA generally provides that a distribution must be provided either as a qualified joint and survivor annuity (QJSA) in the case of a participant who does not die before the annuity starting date,[2] or as a qualified preretirement survivor annuity (QPSA) in the case of a participant who dies before the annuity starting date. However, section 205(b)(1)(C) of ERISA provides that section 205 of ERISA does not apply to a participant under a plan that is not a defined benefit plan or money purchase pension plan if (i) a full death benefit is provided to the surviving spouse, (ii) no participant election of a distribution in the form of a life annuity is made (and a life annuity is not the normal form of benefit), and (iii) no part of the distribution is the result of a transfer from a defined benefit plan or a money purchase pension plan (this is sometimes called the "profit-sharing exception" or the "profit-sharing safe harbor"). Section 205(c) of ERISA provides that a participant may elect to waive the QJSA or QPSA form of benefit, but spousal consent is needed for a waiver by a married participant.

REQUEST FOR COMMENTS

For a § 403(b) plan that does not have a participant to whom the annuity and spousal rights provisions of section 205 of ERISA apply, Rev. Rul. 2020-23 provides guidance allowing the distribution of an ICA in kind as part of the termination of the plan. However, issues remain regarding the application of section 205 of ERISA in connection with a distribution of an ICA in kind under section 110 of the SECURE Act for a § 403(b) plan with at least one participant to whom section 205 of ERISA applies, including if a participant cannot be reached, a participant does not elect to waive the QJSA and QPSA form of benefit, or a married participant elects to waive the QJSA and QPSA form of benefit but the participant's spouse does not consent to the waiver.

The Department of the Treasury (Treasury Department) and the IRS request comments on the application of ERISA section 205 annuity and spousal rights provisions in connection with a distribution in kind of an ICA under section 110 of the SECURE Act, including any administrative or other burdens that may arise and potential methods or rules that could minimize or eliminate those burdens.

The Treasury Department and the IRS are particularly interested in—

- Information on current practices and arrangements (including sample language from custodial account agreements and § 403(b) plan documents, if relevant) that may affect the termination of § 403(b) plans that are funded through § 403(b)(7) custodial accounts and that are subject to section 205 of ERISA;

[1] The Internal Revenue Service (IRS) has interpretive authority over section 205 of ERISA pursuant to the Reorganization Plan No. 4 of 1978, 5 U.S.C. App.

[2] In general, for a married participant, a QJSA is an annuity for the life of the participant with a survivor annuity for the life of the spouse that meets certain requirements, and the participant's election to waive the QJSA cannot take effect unless the participant's spouse consents to the election. ERISA § 205(c)(2) and (d)(1). For an unmarried participant, the QJSA is an annuity for the life of the participant, and a single life annuity must be provided unless the participant elects another form of benefit. § 1.401(a)-20, Q&A-25(a).

- Views regarding the administrability of alternative dates (which continue to be evaluated by the Treasury Department and the IRS for consistency with applicable law) for when rights under section 205 of ERISA might be required to be protected, for example, at the time of the termination of a § 403(b) plan (by obtaining the participant's waiver and the spouse's consent, pursuant to section 205(c) of ERISA, to a distribution in kind of an ICA), or at the time payments are made from the ICA (analogous to § 1.401(a)-20, Q&A-2, which provides that the requirements of §§ 401(a)(11) and 417 of the Code are applied to payments under distributed annuity contracts);
- Views on whether the Pension Benefit Guaranty Corporation's missing participants program for defined contribution plans (29 CFR Part 4050 Subpart B)[3] might be a destination for transferring, without participant and spousal consent, the cash value of custodial accounts that are subject to section 205 of ERISA; and
- Views on the type(s) of transition relief, if any, that would assist with the termination of an existing § 403(b) plan that is funded through the use of § 403(b)(7) custodial accounts in a way that protects rights under section 205 of ERISA.

Comments should be submitted in writing on or before February 3, 2021, and should include a reference to Notice 2020-80. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at *www.regulations.gov* (type "IRS IRS-2020-0032" in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2020-80), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

All commenters are strongly encouraged to submit comments electronically, as access to mail may be limited. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

DRAFTING INFORMATION

The principal author of this notice is Patrick T. Gutierrez of the Office of Associate Chief Counsel, Employee Benefits, Exempt Organizations, and Employment Taxes. For further information regarding this notice, please contact Patrick T. Gutierrez at (202) 317-4148 (not toll-free).

[3] Pension Benefit Guaranty Corporation (PBGC) staff advised the Treasury Department and the IRS that, under the missing participants program, (i) PBGC generally pays a 50-percent joint and survivor annuity to participants who are married and claim benefits (although de minimis amounts transferred into the program are paid as a lump sum), (ii) married participants may elect with spousal consent a lump sum or another type of annuity, and (iii) terminating plans transferring benefits into the program must liquidate accounts and send money to the PGBC (as PBGC cannot accept in-kind account transfers).

Part IV

Notice of Proposed Rulemaking

Section 42, Low-Income Housing Credit Average Income Test Regulations

REG-119890-18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations setting forth guidance on the average income test under section 42(g)(1)(C) of the Internal Revenue Code (Code) for purposes of the low-income housing credit. These proposed regulations affect owners of low-income housing projects, tenants in those projects, and State or local housing credit agencies that administer the low-income housing credit.

DATES: Written (including electronic) comments must be received by December 29, 2020.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-104591-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Dillon Taylor or Michael J. Torruella Costa at (202) 317-4137; concerning submissions of comments, Regina L. Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Code.

The Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085 (1986 Act) created the low-income housing credit under section 42 of the Code. Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(c)(1)(A) provides that the qualified basis of any qualified low-income building for any taxable year is an amount equal to (i) the applicable fraction (determined as of the close of the taxable year) of (ii) the eligible basis of the building (determined under section 42(d)). Sections 42(c) and 42(d) define applicable fraction and eligible basis. Section 42(d)(1) and (2) define the eligible basis of a new building or an existing building, respectively.

Section 42(c)(2) defines a qualified low-income building as any building which is part of a qualified low-income housing project at all times during the compliance period (that is, the period of 15 taxable years beginning with the first taxable year of the credit period) and to which the amendments made by section 201(a) of the 1986 Act apply (generally property placed in service after December 31, 1986, in taxable years ending after that date). To qualify as a low-income housing project, one of the section 42(g) minimum set-aside tests, as elected by the taxpayer, must be satisfied.

Prior to the enactment of the Consolidated Appropriations Act of 2018, Pub. L. 115-141, 132 Stat. 348 (2018 Act), section 42(g) set forth two minimum set-aside tests that a taxpayer may elect with respect to a low-income housing project, known as the 20-50 test and the 40-60 test. Under the 20-50 test, at least 20 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 50 percent or less of the area median gross income (AMGI). Section 42(g)(1)(A). Under the 40-60 test, at least 40 percent of the residential units in the project must be both rent-restricted and occupied by tenants whose gross income is 60 percent or less of AMGI. Section 42(g)(1)(B).

Section 103(a) of Division T of the 2018 Act added section 42(g)(1)(C) to the Code to provide a third minimum set-aside test that a taxpayer may elect with respect to a low-income housing project: the average income test. Section 42(g)(1)(C)(i) provides that, a project meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. Section 42(g)(1)(C)(ii)(I) and (III) provides that the taxpayer must designate the imputed income limitation for each unit and the designated imputed income limitation of any unit must be 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. Section 42(g)(1)(C)(ii)(II) provides that the average of the imputed income limitations designated by the taxpayer for each unit must not exceed 60 percent of AMGI.

Generally, under section 42(g)(2)(D)(i), if the income of the occupant of a low-income unit rises above the income limitation, the unit continues to be treated as a low-income unit if the income of the occupant initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in case of the 20-50 test or the 40-60 test. Under this exception, the unit ceases to be treated as a low-income unit when two conditions occur. The first condition is that the income of an occupant of a low-income unit increases above 140 percent of the imputed income limitation applicable to the unit under section 42(g)(1) (applicable income limitation). The second condition is that a new occupant, whose income exceeds the applicable income limitation, occupies any residential unit in the building of a comparable or smaller size. In the case of a deep rent skewed project described in section 142(d)(4)(B), "170 percent" is substituted for "140 percent" in applying the applicable income limitation under section 42(g)(1), and the second condition is that any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of AMGI. Section 42(g)(2)(D)(iv). The exception contained in section 42(g)(2)(D)(ii) is referred to as the "next available unit rule." *See also* §1.42-15 of the Income Tax Regulations.

Section 103(b) of Division T of the 2018 Act added section 42(g)(2)(D)(iii), (iv) and (v) to the Code to provide a new next available unit rule for situations in which the taxpayer has elected the average income test. Under this new next available unit rule, a unit ceases to be a low-income unit if two conditions are met. The first condition is whether the income of an occupant of a low-income unit increases above 140 percent of the greater of (i) 60 percent of AMGI, or (ii) the imputed income limitation designated by the taxpayer with respect to the unit (applicable imputed income limitation). The second condition is whether any other residential rental unit in the building that is of a size comparable to, or smaller than, that unit is occupied by a new tenant whose income exceeds the applicable imputed income limitation. If the new tenant occupies a unit that was taken into account as a low-income unit prior to becoming vacant, the applicable imputed income limitation is the limitation designated with respect to the unit. If the new tenant occupies a market-rate unit, the applicable imputed income limitation is the limitation that would have to be designated with respect to the unit in order for the project to continue to maintain an average of the designations of 60 percent of AMGI or lower.

In the case of a deep rent skewed project described in section 142(d)(4)(B) for which the taxpayer elects the average income test, "170 percent" is substituted for "140 percent" in applying the applicable imputed income limitation, and the second condition is that any low-income unit in the building is occupied by a new resident whose income exceeds the lesser of 40 percent of AMGI or the imputed income limitation designated with respect to the unit under section 42(g)(1)(C)(ii)(I). Section 42(g)(2)(D)(iv).

Under section 42(g), once a taxpayer elects to use a particular set-aside test with respect to a low-income housing project, that election is irrevocable. Thus, if a taxpayer had previously elected to use the 20-50 test under section 42(g)(1)(A) or the 40-60 test under section 42(g)(1)(B) with respect to a low-income housing project, the taxpayer may not subsequently elect to use the average income test under section 42(g)(1)(C) with respect to that low-income housing project. Section 42(g)(4) provides generally that section 142(d)(2) applies for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit.

Section 42(m)(1) provides that the owners of an otherwise-qualifying building are not entitled to the housing credit dollar amount that is allocated to the building unless, among other requirements, the allocation is pursuant to a qualified allocation plan (QAP). A QAP provides standards by which a State or local housing credit agency (Agency) is to make these allocations. Under §1.42-5(a)(1), a QAP must contain a procedure that the Agency will follow in monitoring noncompliance.

Explanation of Provisions

I. Proposed §1.42-15, Next Available Unit Rule for the Average Income Test

The proposed regulations update the next available unit provisions in §1.42-15 to reflect the new set-aside based on the average income test and to take into account section 42(g)(2)(D)(iii), (iv) and (v). In situations where multiple units are over-income at the same time in an average-income project that has a mix of low-income and market-rate units, these regulations provide that a taxpayer need not comply with the next available unit rule in a specific order. Instead, renting any available comparable or smaller vacant unit to a qualified tenant maintains the status of all over-income units as low-income units until the next comparable or smaller unit becomes available (or, in the case of a deep rent skewed project, the next low-income unit becomes available). For example, in a 20-unit building with 9 low-income units (3 units at 80 percent of AMGI; 2 units at 70 percent of AMGI; 1 unit at 40 percent of AMGI; and 3 units at 30 percent of AMGI), if there are two over-income units, one a 30 percent income 3-bedroom unit and another a 70 percent 2-bedroom unit, and the next available unit is a vacant 2-bedroom market-rate unit, renting the vacant 2-bedroom unit to occupants at either the 30 or 70 percent income limitation would satisfy both the minimum set-aside of 40 percent and the average test of 60 percent or lower required by section 42(g)(1)(C).

II. Proposed §1.42-19, Average Income Test

A. In General

The proposed regulations provide that a project for residential rental property meets the requirements of the average income test under section 42(g)(1)(C) if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by tenants whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the designated imputed income limitations of the low-income units in the project must not exceed 60 percent of AMGI.

B. Designation of Imputed Income Limitations

Section 42(g)(1)(C)(ii) provides special rules relating to the income limitations applicable in the average income test. Specifically, it provides that the taxpayer must designate the imputed income limitation for each unit taken into account under the average income test. Further, the imputed income limitation of any unit designated must be 20, 30, 40, 50, 60, 70, or 80 percent of AMGI.

The proposed regulations provide that a taxpayer must designate the imputed income limitation of each unit taken into account under the average income test in accordance with: (1) any procedures established by the IRS in forms, instructions, or publications or in other guidance published in the Internal Revenue Bulletin pursuant to §601.601(d)(2)(ii)(*b*); and (2) any procedures established by the Agency that has jurisdiction over the low-income housing project that contains the units to be designated, to the extent that those Agency procedures are consistent with any IRS guidance and these regulations. After the enactment of the 2018 Act, commenters have specifically asked that Agencies be provided this flexibility, and the Treasury Department and the IRS agree that Agencies should generally be able to establish designation procedures that accommodate their needs. Several commenters suggested allowing the Agencies, when they consider it necessary, to require income recertifications, to set compliance testing periods, or to adjust compliance monitoring fees to reflect the additional costs associated with monitoring income averaging. These proposed regulations do not change existing levels of flexibility on those issues.

C. Method and Timing of Unit Designation

The Code does not specify the manner by which taxpayers must designate the imputed income limitation of units for purposes of the average income test. Designation of the imputed income limitation with respect to a unit is, first, for Agencies to evaluate the proper mix of units in a project in making housing credit dollar amount allocations consistent with the State policies and procedures set forth in the QAPs, and, second, to carry out their compliance-monitoring responsibilities. For these reasons, the proposed regulations provide that the taxpayers should designate the units in accordance with the Agency procedures relating to such designations, provided that the Agency procedures are consistent with any requirements and procedures relating to unit designation that the IRS may set forth in its forms and publications and other guidance. Further, to promote certainty, the proposed regulations provide that the taxpayers must complete the initial designation of all of the units taken into account for the average income test as of the close of the first taxable year of the credit period. In addition, the proposed regulations provide that no change to the designated imputed income limitations may be made.

D. Requirement to Maintain 60 Percent AMGI Average Test and Opportunity to Take Mitigating Actions

A low-income housing project must meet the requirements of the elected set-aside test for each taxable year. For a project electing the average income test, in addition to the project containing at least 40 percent low-income units, the designated imputed income limitations of the project must meet the requirement of an average test. That is, the average of the designated imputed income limitations of all low-income units (including units in excess of the minimum 40 percent set-aside) must be 60 percent of AMGI or lower (60-percent or lower average test). Regardless of their other attributes, residential units that are not included in the computation of the average do not count as low-income units. Consistent with the application of the 20-50 test and 40-60 test, the statutory requirements of a set-aside test do not change from year to year. Accordingly, in each taxable year, the average of all of the designations must be 60 percent of AMGI or lower.

The Treasury Department and the IRS recognize that, in some situations, the average income requirement may magnify the adverse consequences of a single unit's failure to maintain its status as a low-income unit. Assume, for example, a 100 percent low-income project in which a single unit is taken out of service. Under the 20–50 or 40–60 set-asides, the project remains a qualified low-income housing project even though the reduction in qualified basis may trigger a corresponding amount of recapture. By contrast, under the average income set-aside, if the failing unit has a designated imputed income limitation that is less than 60 percent of AMGI, the average of the limitations without that unit may now be more than 60 percent. In the absence of some relief provision under the average income test, the entire project would fail, and the taxpayer would experience a correspondingly large recapture.

Because there is no indication that the statute intended such a stark disparity between the average income set-aside and the existing 20–50 and 40–60 set-asides, the proposed regulations provide for certain mitigating actions. In most situations, if the taxpayer takes a mitigating action within 60 days of the close of a year for which the average income test might be violated, the taxpayer avoids total disqualification of the project and significantly reduces the amount of recapture. See part II.F. of this Explanation of Provisions.

Responding to that same concern after the enactment of the 2018 Act, some commenters asked that Agencies be provided a specific grant of authority to establish procedures and policies related to the average income set-aside that could reduce the risk of failure of an entire project. For example, some commenters asked that Agencies be allowed to establish rules permitting owners to alter the imputed income limitations designated for particular units (presumably by reducing income limitations when needed to maintain a compliant average and then later raising limitations to prevent a permanent reduction in the aggregate maximum gross rents from the project). As described in part II.C. of this Explanation of Provisions, these proposed regulations do not permit designated imputed income limitations to be changed. Other commenters proposed allowing owners to take protective steps similar to those that are provided in the proposed regulations.

E. Results Following an Opportunity to Take Mitigating Actions

The proposed regulations provide that, after any mitigating actions, if, prior to the end of the 60th day following the year in which the project would otherwise fail the 60-percent or lower average test, the project satisfies all other requirements to be a qualified low-income housing project, then as a result of the mitigating action, the project is treated as having satisfied the 60-percent or lower average test at the close of the immediately preceding year. However, if no mitigating actions are taken, the project fails to be a qualified low-income housing project as of the close of the year in which the project fails the average income test.

F. Description of Mitigating Actions

The proposed regulations describe two possible mitigating actions. First, the taxpayer may convert one or more market-rate units to low-income units. Immediately prior to becoming a low-income unit, that unit must be vacant or occupied by a tenant who qualifies for residence in a low-income unit (or units) and whose income is not greater than the new imputed income limitation of that unit (or units).

Alternatively, the taxpayer may identify one or more low-income units as "removed" units. A unit may be a removed unit only if it complies with all the requirements of section 42 to be a low-income unit.

G. Tax Treatment of Removed Units

The proposed regulations provide that a removed unit is not included in computing the average of the imputed income limitations of the low-income units under the 60-percent or lower average test. If the absence of one or more removed units from the computation causes fewer than 40 percent (or, if applicable, fewer than 25 percent) of the residential units to be taken into account in computing the average, the project fails to be a qualified low-income housing project. In addition, a removed unit is not treated as a low-income unit (or units) for purposes of credit calculation. On the other hand, for purposes of the recapture provisions of section 42(j), a removed unit is treated the same as a low-income unit, and thus the act of identifying a removed unit does not trigger recapture (unless the identification reduces the low-income units below 40 percent of the project).

H. Request for Comments on an Alternative Mitigating Action Approach

Recognizing that this approach of mitigating actions may in certain cases cause a project to have less than 40 percent of low-income units and, thereby, to fail the average income test, the Treasury Department and the IRS request comments on an alternative mitigating approach. Under this alternative mitigating approach, in the event that the average test rises above 60 percent of AMGI as of the close of a taxable year, due to a low-income unit or units ceasing to be treated as a low-income unit or units, the taxpayer may take the mitigating actions of redesignating the imputed income limitation of a low-income unit to return the average test to 60 percent of AMGI or lower. If, under this approach, a redesignation causes a low-income unit to be an over-income unit as defined in §1.42-15(a), the taxpayer would be required to apply the next available unit rule applicable to the average income test.

Proposed Applicability Date

The amendments to the next available unit regulations in §1.42-15 are proposed to apply to occupancy beginning 60 or more days after the date those regulations are published as final regulations in the **Federal Register**. The average income test regulations in §1.42-19 are proposed to apply to taxable years beginning after the date those regulations are published as final regulations in the **Federal Register**. Taxpayers, however, may rely on the proposed amendments to §1.42-15 for occupancy beginning after October 30, 2020 and on or before 60 days after the date those regulations are published as final regulations in the **Federal Register**, provided the taxpayer follows the rules in proposed §1.42-15 in their entirety, and in a consistent manner. Taxpayers may also rely on proposed §1.42-19 for taxable years beginning after October 30, 2020 and on or before the date those regulations are published as final regulations in the **Federal Register**, provided the taxpayer follows the rules in proposed §1.42-19 in their entirety, and in a consistent manner.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, prior to the publication of this regulation and before the enactment of the 2018 Act, taxpayers were already required to satisfy either the 20-50 test or the 40-60 test, as elected by the taxpayer, in order to qualify as a low-income housing project. The 2018 Act added a third minimum set-aside test, the average income test, that taxpayers may elect. This regulation sets forth requirements for the average income test, and the costs associated with the average income test are similar to the costs associated with the 20-50 test and 40-60 test. Accordingly, the Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the "ADDRESSES" section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB

1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal authors of these regulations are Dillon Taylor and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding in numerical order an entry for §1.42-19 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42-19 also issued under 26 U.S.C. 42(n).

* * * * *

Par. 2. Section 1.42-0 is amended by:

1. In §1.42-15:

i. Revising the entry for (c).

ii. Adding entries for (c)(1) and (2) and (c)(2)(i) through (iv).

iii. Revising the entry for (i).

iv. Adding entries for (i)(1) and (2).

2. Adding §1.42-19.

The revisions and additions read as follows:

§1.42-0 Table of contents.

* * * * *

§1.42-15 Available unit rule.

* * * * *

(c) Exceptions.

(1) Rental of next available unit in case of the 20–50 test or 40–60 test.

(2) Rental of next available unit in case of the average income test.

(i) Basic rule.

(ii) No requirement to comply with the next available unit rule in a specific order.

(iii) Deep rent skewed projects.

(iv) Limitation.

* * * * *

(i) Applicability dates.

(1) In general.

(2) Applicability dates under the average income test.

* * * * *

§1.42-19 Average income test.

(a) In general.

(b) Designation of imputed income limitations.

(1) 10-percent increments.

(2) Method of designation.

(3) Timing of designation.

(i) No subsequent change to imputed income limitations.

(ii) Converted market-rate units.

(c) Opportunity to take mitigating actions.

(d) Results following an opportunity to take mitigating actions.

(e) Mitigating actions.

(1) Conversion of a market-rate unit.

(2) Removing low-income units from the average income computation.

(f) Tax treatment of removed units.

(1) Status of the project.

(2) Recapture.

(3) Amount of credit.

(4) Long-term commitment.

(g) Examples.

(1) Example 1.

(i) Facts.

(ii) Analysis.

(2) Example 2.

(i) Facts.

(ii) Analysis.

(A) Average income test.

(B) Recapture.

(C) Restoration of habitability and of qualified basis.

(h) Applicability dates.

Par. 3. Section 1.42-15 is amended by:

1. Revising the definition of *Over-income unit* in paragraph (a).

2. Revising the heading for paragraph (c).

3. Designating the text of paragraph (c) as paragraph (c)(1) and adding a heading for newly designated paragraph (c)(1).

3. Adding paragraph (c)(2).

4. Revising paragraph (i).

The revisions and additions read as follows:

§1.42-15 Available unit rule.

(a)* * *

Over-income unit means, in the case of a project with respect to which the taxpayer elects the requirements of section 42(g)(1)(A) (20-50 test) or section 42(g)(1)(B) (40–60 test), a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1)(A) and (B), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B). In the case of a project with respect to which the taxpayer elects the requirements of section 42(g)(1)(C) (average income test), *over-income unit* means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent (170 percent in case of deep rent skewed projects described in section 142(d)(4)(B)) of the greater of 60 percent of area median gross income or the imputed income limitation designated with respect to the unit under §1.42-19(b).

* * * * *

(c) *Exceptions*—(1) *Rental of next available unit in case of the 20–50 test or 40–60 test*.* * *

(2) *Rental of next available unit in case of the average income test*—(i) *Basic rule*. In the case of a project with respect to which the taxpayer elects the average income test, if a unit becomes an over-income unit within the meaning of paragraph (a) of this section, that unit ceases to be a low-income unit if—

(A) Any residential rental unit (of a size comparable to, or smaller than, the over-income unit) is available, or subsequently becomes available, in the same low-income building; and

(B) That available unit is occupied by a new resident whose income exceeds the limitation described in paragraph (c)(2)(iv) of this section.

(ii) *No requirement to comply with the next available unit rule in a specific order*. In situations where multiple units in a building are over-income units at the same time, it is not necessary for a taxpayer to comply with the rule in this section (next available unit rule) in a specific order.

(iii) *Deep rent skewed projects*. In the case of a project described in section

142(d)(4)(B) with respect to which the taxpayer elects the average income test, if a unit becomes an over-income unit within the meaning of paragraph (a) of this section, that unit ceases to be a low-income unit if—

(A) Any low-income unit is available, or subsequently becomes available, in the same low-income building; and

(B) That unit is occupied by a new resident whose income exceeds the lesser of 40 percent of area median gross income or the imputed income limitation designated with respect to that unit.

(iv) *Limitation*. For purposes of paragraph (c)(2) of this section (basic next available unit rule for the average income test), the limitation described in this paragraph (c)(2)(iv) is—

(A) In the case of a unit that was taken into account as a low-income unit prior to becoming vacant, the imputed income limitation designated with respect to that available unit for the average income test under §1.42-19(b); and

(B) In the case of any other unit, the highest imputed income limitation that could be designated with respect to that available unit under §1.42-19(e)(1), in order for the project to continue to meet the requirements of §1.42-19(a)(3) (60 percent of AMGI or less).

* * * * *

(i) *Applicability dates*—(1) *In general*. Except as provided in paragraph (i)(2) of this section, this section applies to leases entered into or renewed on and after September 26, 1997.

(2) *Applicability dates under the average income test*. The second sentence of the definition of *over-income unit* in paragraph (a) of this section and paragraph (c)(2) of this section apply to occupancy beginning 60 or more days after [date these regulations are published as final regulations in the **Federal Register**].

Par. 4. Section 1.42-19 is added to read as follows:

§1.42-19 Average income test.

(a) *In general*. A project for residential rental property meets the requirements of section 42(g)(1)(C) (average income test) if—

(1) 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in the project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit;

(2) The taxpayer designates these imputed income limitations in the manner provided by paragraph (b) of this section; and

(3) The average of the imputed income limitations of the low-income units in the project does not exceed 60 percent of area median gross income (AMGI).

(b) *Designation of imputed income limitations*—(1) *10-percent increments*. The designated imputed income limitation of any unit must be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent of AMGI.

(2) *Method of designation*. The taxpayer must designate the imputed income limitation of each unit in accordance with—

(i) Any procedures established by the Internal Revenue Service (IRS) in forms, instructions, or publications or in other guidance published in the Internal Revenue Bulletin pursuant to §601.601(d)(2)(ii)(*b*) of this chapter; and

(ii) Any procedures established by the State or local housing credit agency (Agency) that has jurisdiction over the low-income housing project that contains the units to be designated, to the extent that those Agency procedures are consistent with the requirements of paragraph (b)(2)(i) of this section.

(3) *Timing of designation*. Except as provided in paragraph (b)(3)(ii) of this section, not later than the close of the first taxable year of the credit period, the taxpayer must designate the imputed income limitation of each unit taken into account for purposes of paragraph (a) of this section.

(i) *No subsequent change to imputed income limitations*. No change to the designated imputed income limitations may be made. Even if the taxpayer elects to identify a low-income unit as a removed unit under paragraph (e)(2) of this section, the designated imputed income limitation of the unit is not changed. If a designation is removed, the unit ceases to be a low-income unit.

(ii) *Converted market-rate units*. If a residential unit that was not a low-income unit is converted to a low-income unit, the designation of the imputed income limitation for that unit must take place on or before the 60th day after the unit is to be treated as a low-income unit. See paragraphs (b)(1) and (2) of this section for rules regarding designation.

(c) *Opportunity to take mitigating actions*. The taxpayer may take one or more of the mitigating actions described in paragraph (e)(1) or (2) of this section if—

(1) At the close of a taxable year (failing year), one or more low-income units have ceased to qualify as low-income units; and

(2) This cessation causes the project of which they are a part to fail to satisfy the requirement in paragraph (a)(3) of this section (regarding the average of the imputed income limitations of the low-income units).

(d) *Results following an opportunity to take mitigating actions*. (1) After any mitigating actions, if, prior to the end of the 60th day following the failing year, the project satisfies the requirements to be a low-income housing project (including satisfaction of the requirement in paragraph (a)(3) of this section), then paragraph (a)(3) of this section is treated as having been satisfied at the close of the failing year.

(2) If paragraph (d)(1) of this section does not apply, the project fails to be a qualified low-income project on the close of the failing year.

(e) *Mitigating actions*—(1) *Conversion of a market-rate unit*. The taxpayer may convert to low-income status a unit that is not currently a low-income unit. Immediately prior to becoming a low-income unit, the unit must be vacant or occupied by a tenant who qualifies for residence in a low-income unit and whose income is not greater than the imputed income limitation designated by the taxpayer for that unit. This inclusion of conversions as mitigating actions is without prejudice to the permissibility of conversions in other contexts.

(2) *Removing low-income units from the average income computation*. The taxpayer may identify one or more residential units as *removed units*. A unit may be a removed unit only if it complies with all requirements of section 42 to be a low-income unit. Status as a removed

unit may be ended by the taxpayer at any time. Identification of a removed unit and termination of that identification must be effected as provided by the IRS in forms, publications, and guidance published in the Internal Revenue Bulletin pursuant to §601.601(d)(2)(ii)(*b*) of this chapter. In the absence of any such IRS requirements, the identification and termination must be made in accordance with any Agency procedures.

(f) *Tax treatment of removed units*—(1) *Status of the project*. A removed unit is not taken into account under paragraph (a)(3) of this section in computing the average of the imputed income limitations of the low-income units. If the absence of one or more removed units from the computation causes fewer than 40 percent (or, if applicable, fewer than 25 percent) of the residential units to be taken into account in computing the average, the project fails to be a qualified low-income housing project.

(2) *Recapture*. For purposes of applying section 42(j), removed units are taken into account in the same manner as low-income units. Thus, during the compliance period, a unit's status as a removed unit does not reduce the applicable fraction of section 42(c)(1)(B) and thus does not reduce qualified basis for purposes of recapture under section 42(j).

(3) *Amount of credit*. For purposes of section 42(a), removed units are not taken into account as low-income units. Thus, during the credit period, a unit's status as a removed unit reduces the applicable fraction—and thus reduces qualified basis—for purposes of calculating the taxpayer's annual credit amount.

(4) *Long-term commitment*. For purposes of applying section 42(h)(6)(B)(i) to any taxable year after the credit period, removed units are not taken into account as low-income units.

(g) *Examples*. The operation of this section is illustrated by the following examples.

(1) *Example 1*—(i) *Facts*. (A) A single-building housing project received an allocation of housing credit dollar amount. The taxpayer who owns the project elects the average income test, intending for the 5-unit building to have 100 percent low-income occupancy. The taxpayer properly and timely designates the imputed income limitations for the 5 units as follows: 2 units at 40 percent of AMGI; 1 unit at 60 percent of AGMI; and 2 units at 80 percent of AMGI.

Table 1 to paragraph (g)(1)(i)(A)

Unit Number	Imputed Income Limitation of the Unit
1	80 percent of AMGI
2	80 percent of AMGI
3	60 percent of AMGI
4	40 percent of AMGI
5	40 percent of AMGI

(B) In the first taxable year of the credit period (Year 1), the project is fully leased and occupied.

(ii) *Analysis*. (A) The average of the imputed income limitations of the units is 60 percent of AMGI calculated as follows: (2 x 40% + 1 x 60% + 2 x 80%) / 5 = 60%.

(B) Thus, the income limitations satisfy the requirement in paragraph (a)(3) of this section that the average of the designated imputed income limitations of the low-income units in the project does not exceed 60% of AMGI.

(2) *Example 2*—(i) *Facts*. Assume the same facts as in paragraph (g)(1) of this section (*Example 1*). In Year 2, Unit # 4 becomes uninhabitable. (Unit # 4 has a designated imputed income limitation of 40 percent of AMGI.) Because all of the units in the project are low-income units, converting a market-rate unit to a low-income unit is not an available mitigating action. Within 60 calendar days following the close of Year 2, the taxpayer identifies Unit # 2 as a removed unit. (Unit # 2 has a designated imputed income limitation of 80 percent of AMGI.) Repair work on Unit # 4 is completed in Year 4, and the taxpayer then ends the status of Unit # 2 as a removed unit.

(ii) *Analysis*. During Year 2, Unit # 4 is not a low-income unit because it is not suitable for occupancy under section 42(i)(3)(B). In the absence of any mitigating action, the average of the imputed income limitations of the units at the close of Year 2 would be 65 percent of AMGI. That average would be calculated as follows: (1 x 40% + 1 x 60% + 2 x 80%) / 4 = 65%. Under paragraph (d)(2) of this section, unless effective mitigating action is taken not later than the 60th calendar day following the close of Year 2, the project fails to be a qualified low-income housing project because it fails to satisfy paragraph (a)(3) of this section. As described in the facts in paragraph (g)(2)(i) of this section, however, the taxpayer takes the mitigating action in paragraph (e)(2) of this section. That action has the following results:

(A) *Average income test*. Under paragraph (f)(2) of this section, the identification of Unit # 2 as a removed unit causes that unit not to be taken into account in computing the average of the imputed income limitations of the low-income units. Unit # 4 is also not taken into account because it is no longer a low-income unit. Therefore, the calculation under paragraph (a)(3) of this section as of the close of Years 2 and 3 is as follows: (1 x 40% + 1 x 60% + 1 x 80%) / 3 = 60%. Thus, for those years, the project satisfies the average income test because, for purposes of that test, at least 40 percent of the units are taken into account as low-income units and the average of the imputed income limitations of those units does not exceed 60% of AMGI.

(B) *Recapture.* At the close of Year 2, the amount of the qualified basis is less than the amount of the qualified basis at the close of Year 1, because Unit # 4's unsuitability for occupancy prohibits it from being a low-income unit. Unit # 4's failure to be a low-income unit, therefore, reduces the applicable fraction and thus the qualified basis as well. This results in a credit recapture amount for Year 2. Under paragraph (f)(2) of this section, however, for purposes of calculating the recapture amount, Unit # 2's status as a removed unit does not impair its contribution to the applicable fraction and the qualified basis.

(C) *Restoration of habitability and of qualified basis*. As described in the facts in paragraph (g)(2)(i) of this section, in Year 4, after repair work is complete, the formerly uninhabitable Unit # 4 is again suitable for occupancy, and the taxpayer ends the status of Unit # 2 as a removed unit. Thus, both units are now low-income units, neither is a removed unit, and so both are included in the computations for the average income test. At the close of Year 4, therefore, the average of the imputed income limitations of all of the low-income units in the project is 60 percent of AMGI, which is calculated as follows: (2 x 40% + 1 x 60% + 2 x 80%) / 5 = 60%. For purposes of computing the credit under section 42(a) for Year 4, both units are included in the applicable fraction and, thus, are included in qualified basis for purposes of that calculation. Prior to the restoration in Year 4, for purposes of a computation of credits under section 42(a), Unit # 4 does not contribute to qualified basis because it is not a low-income unit, and, under paragraph (f)(3) of this section, Unit # 2 does not contribute to qualified basis because it is a removed unit.

(h) *Applicability dates*. This section applies to taxable years beginning after [date these regulations are published as final regulations in the **Federal Register**].

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 29, 2020, 8:45 a.m., and published in the issue of the Federal Register for October 30, 2020, 85 F.R. 68816)

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2020-19

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81-38 and superseding guidance in Revenue Procedure 2014-42, which govern a preparer's eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer and signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014-42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

Suspended from practice before the IRS—An individual who is suspended is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to practice before the IRS, but OPR may subject the individual's future practice rights to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Ineligible for limited practice—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81-38 or to comply with Circular 230 as required by Revenue Procedure 2014-42 may be determined ineligible to engage in limited practice as a representative of any taxpayer.

Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government's summary judgment motion or (2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision becomes the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint was filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

Determined ineligible for limited practice—-There has been a final determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or failed to comply with any of the requirements to act as a representative.

A practitioner who has been disbarred or suspended under 31 C.F.R. § 10.60, or suspended under § 10.82, or a disqualified appraiser may petition for reinstatement before the IRS after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period if shorter than 5 years). Reinstatement will not be granted unless the IRS is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to Circular 230, and that granting such reinstatement would not be contrary to the public interest.

Reinstatement decisions are published at the individual's request, and described in these terms:

Reinstated to practice before the IRS—-The individual's petition for reinstatement has been granted. The agent, and eligible to practice before the IRS, or in the case of an appraiser, the individual is no longer disqualified.

Reinstated to engage in limited practice before the IRS—-The individual's petition for reinstatement has been granted. The individual is an unenrolled/unlicensed return preparer and eligible to engage in limited practice before the IRS, subject to requirements the IRS has prescribed for limited practice by tax return preparers.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a final decision; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" agreement admitting to one or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
San Francisco	Collins, Cary S.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R § 10.82(b)	Indefinite from May 13, 2019
Florida				
North Miami Beach	Aronson, David A.	CPA	Suspended by consent for admitted violations of 31 C.F.R. § 10.51(a)(10)	Indefinite from September 30, 2020
Oakland Park	Marcus, Joel	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from July 29, 2020
Marco Island	Wagner, Albert	CPA	Disbarred by ALJ Decision	Indefinite from July 19, 2020
Michigan				
Inkster	Hairston, Gary Y.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from August 12, 2020
New Jersey				
Clifton	Aref, Hamed M.	CPA	Suspended by consent for admitted violation of 31 C.F.R. §§ 10.51(a), 10.51(a)(2), and 10.51(a)(9)	Indefinite from August 12, 2020

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
New York				
Lansing	LaVigne, Andrew N.	CPA	Suspension by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)(2)	Indefinite from July 19, 2020
Ohio				
Hamilton	Marshall, Keith S.	CPA	Disbarred by ALJ Decision	Indefinite from August 6, 2020
Texas				
Castroville	Valdez-Ortegon, Richard	Enrolled Agent	Suspension by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)(2)	Indefinite from September 3, 2020
Wisconsin				
Wausau	Deedon, Michael C.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)(1) and (2)	Indefinite from September 3, 2020

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2019–27 through 2019–52 is in Internal Revenue Bulletin 2019–52, dated December 27, 2019.

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Internal Revenue Service
Washington, DC 20224

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INTERNAL REVENUE BULLETIN

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