

(iii) A unique identifier, including, at a minimum, the date of issuance and title of the document;

(iv) The activity or entities to which the guidance applies;

(v) Citations to applicable statutes and regulations;

(vi) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so sufficient information to identify the previously issued guidance; and

(vii) A short summary of the subject matter covered in the guidance document at the top of the document.

(3) The guidance document avoids using mandatory language, such as “shall,” “must,” “required,” or “requirement,” unless the language is describing an established statutory or regulatory requirement or is addressed to RRB staff and will not foreclose the RRB’s consideration of positions advanced by affected private parties;

(4) The guidance document is written in plain and understandable English;

(5) All guidance documents include a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

(e) In addition to the procedures governing the review and clearance of guidance documents, issuance of significant guidance documents must also be preceded by the requirements enumerated in this section unless the Board and OMB’s Office of Information and Regulatory Affairs (OIRA) agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all of the following requirements:

(1) Public notice of and a request for comment on the proposed issuance of a significant guidance document must be given at least 30 days before its issuance. The RRB will provide a public response to major concerns raised in comments, except when the RRB for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.

(2) A majority of the three-member Board (Board) that heads the RRB must approve the significant guidance document.

(3) OIRA makes the final significance determination for a significant guidance document. A significant guidance document must be reviewed by OIRA under Executive Order (E.O.) 12866

before issuance; and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

(4) The Board may request a categorical determination that a class of guidance documents presumptively does not qualify as significant under Executive Order 13891 by submitting to OIRA a written request that is signed by the General Counsel and that explains why the proposed category of guidance document generally is only routine or ministerial, or is otherwise of limited importance to the public. Examples of documents in the category should be provided to OIRA with the written request for a categorical exemption.

(f) A member of the public may file a petition for withdrawal or modification of a particular guidance document by filing a written request with the Secretary to the Board at 844 N Rush Street, Chicago, Illinois 60611–1275. The Board will respond to each petition in a timely manner, but no later than 90 days after receipt of the petition with a decision and rationale for the decision.

(g) The Board will not cite, use, or rely on a guidance document that is rescinded, except to establish historical facts.

(h) The Board maintains on its website a guidance portal from which all guidance documents may be accessed. Unless a guidance document is on the website, it is not considered to be in effect.

Dated: August 24, 2020.

By Authority of the Board.

**Stephanie Hillyard,**

*Secretary to the Board.*

[FR Doc. 2020–18861 Filed 8–27–20; 8:45 am]

**BILLING CODE 7905–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9900]

RIN 1545–BP84

#### Carryback of Consolidated Net Operating Losses; Correcting Amendment

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to Treasury Decision 9900,

which was published in the **Federal Register** on Wednesday, July 8, 2020. Treasury Decision 9900 contained temporary regulations that permit consolidated groups that acquire new members that were members of another consolidated group to elect in a year subsequent to the year of acquisition to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Internal Revenue Code (Code) for certain losses attributable to the acquired members if there is a retroactive statutory extension of the NOL carryback period under section 172.

**DATES:** *Effective date:* These corrections are effective on August 28, 2020.

*Applicability date:* For the date of applicability, see § 1.1502–21T(h)(9).

**FOR FURTHER INFORMATION CONTACT:** Jonathan R. Neuville, at (202) 317–5363 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations (TD 9900) that are the subject of this correction are issued under section 1502 of the Code.

##### Need for Correction

As published July 8, 2020 (85 FR 40892), the temporary regulations (TD 9900; FR Doc. 2020–14426) contained errors that need to be corrected.

##### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

#### PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1502–21T is amended by revising the second sentence of paragraph (b)(3)(ii)(C)(1), the first sentence of paragraph (b)(3)(ii)(C)(5)(i), the first sentence of paragraph (b)(3)(ii)(C)(5)(ii), the third sentence of paragraph (b)(3)(ii)(D)(2)(ii), and the second sentence of paragraph (b)(3)(ii)(D)(4)(ii) to read as follows:

#### § 1.1502–21T Net operating losses (temporary).

(b) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(C) \* \* \*

(1) \* \* \* (See paragraph

(b)(3)(ii)(C)(2) of this section for

definitions of terms used in this paragraph (b)(3)(ii)(C) and paragraph (b)(3)(ii)(D) of this section.)

\* \* \* \* \*

(5) \* \* \*  
(i) \* \* \* An amended statute split-waiver election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(1) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]” (amended statute split-waiver election statement).

\* \* \* \* \*

(ii) \* \* \* An extended split-waiver election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(iii)(C)(1) TO WAIVE THE PRE-[insert first day of the first taxable year for which the acquired member was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]” (extended split-waiver election statement).

\* \* \* \* \*

(D) \* \* \*  
(2) \* \* \*  
(ii) \* \* \* See paragraph (b)(3)(ii)(C)(2)(v) of this section. \* \* \*  
\* \* \* \* \*

(4) \* \* \*  
(ii) \* \* \* See paragraph (b)(3)(ii)(C)(2)(ix) of this section.  
\* \* \* \* \*

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2020–16985 Filed 8–27–20; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**29 CFR Part 89**

**RIN 1290–AA40**

**Promoting Regulatory Openness Through Good Guidance (PRO Good Guidance)**

**AGENCY:** Office of the Secretary, U.S. Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the U.S. Department of Labor’s policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice-and-comment process for significant guidance; and taking and responding to petitions about guidance. This rule will help the Department use guidance lawfully and appropriately, and it gives Americans fairer notice of and improved access to guidance. The Department expects this rule will have meaningful benefits for employers, workers, and the American public overall.

**DATES:** Effective on September 28, 2020.

**FOR FURTHER INFORMATION CONTACT:** Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (large print, Braille, audio tape or disc), upon request, by calling (202) 693–5959 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:**

**Preamble Table of Contents**

- I. Background and Overview
- II. Discussion of the Department’s PRO Good Guidance Rule: Promoting Regulatory Openness Through Good Guidance
- III. Final Rule

**I. Background and Overview**

On October 9, 2019, the President issued Executive Order 13891 (E.O.), titled “Promoting the Rule of Law through Improved Agency Guidance Documents,” addressing guidance issued by federal agencies outside of the context of formal rulemaking. Among other things, the E.O. requires that federal agencies generally treat guidance as non-binding; establish processes for issuing guidance; make all guidance available to the public; take comment on significant guidance; and receive and respond to petitions for withdrawal or modification of guidance. The E.O. directs the Department to finalize regulations related to these requirements. This Promoting Regulatory Openness through Good Guidance Rule (the “rule on guidance” or “PRO Good Guidance Rule”) complies with that directive.

Though informed and prompted by the E.O., the Department issues this rule under its own, independent authority. It does so expecting the rule will lead to

meaningful benefits for employers, workers, and the American public. Among other things, the rule clarifies when and how agencies should speak outside the context of notice-and-comment rulemaking. It ensures that all guidance is accessible. And it enables the public to comment on significant guidance documents and submit petitions concerning guidance. Increased clarity, greater public access, and input regarding agency policy will result in more useful and effective guidance. Just as important, better delineating what is and is not legally binding will give fairer notice to regulated entities and will enhance the Department’s efforts to take care that the law is faithfully executed.

Chief among its considerations, this rule is designed to take into account how powerful agency statements are. When agencies speak, Americans listen carefully and often change their behavior as a result. Ignorance of or failure to abide by agency regulations and the laws agencies enforce can have immense ramifications. In light of the stakes, the public often treats guidance from agencies as binding, even if it technically is not. Thus, it is vital that agencies promulgate, maintain, and use guidance carefully.

**II. Discussion of the Department’s PRO Good Guidance Rule: Promoting Regulatory Openness through Good Guidance**

This rule has eight sections, each of which is explained in more detail below.

- Section 89.1 outlines the rule’s scope and purpose
- Section 89.2 defines key terms
- Section 89.3 provides general requirements for issuing and using guidance
- Section 89.4 establishes a review and approval process for guidance and identifies features guidance must generally have
- Section 89.5 requires guidance to be made publicly accessible
- Section 89.6 sets up special processes for significant guidance
- Section 89.7 enables the public to petition agencies to withdraw or modify guidance
- Section 89.8 makes clear that this rule is one of agency procedure and does not create enforceable rights

*Section 89.1 Scope of This Part*

In § 89.1, the Department explains the scope and purpose of this rule. Paragraph (a) begins by accounting for how guidance documents—in their proper place—are valuable tools of government. The American people are