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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-20

TO: STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE DEVELOPMENT AGENCIES
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARDS AND CHAIRS
STATE WORKFORCE OPPORTUNITY TAX CREDIT COORDINATORS
AMERICAN JOB CENTERS

FROM: SUZAN G. LEVINE /s/
Principal Deputy Assistant Secretary

SUBJECT: Work Opportunity Tax Credit (WOTC) Procedural Guidance

1. **Purpose.** To provide updated procedural guidance to state workforce agencies (SWA) on the WOTC certification process. This Training and Employment Guidance Letter (TEGL) and the materials and forms it discusses supersede the guidance outlined in the Third Edition of Employment and Training Administration (ETA) Handbook No. 408, published in November 2002, and its August 2009 Addendum.
2. **Action Requested.** This procedural guidance becomes effective three months from the issuance date of this TEGL. SWAs should update their processes and systems and administer the requirements outlined in this TEGL. SWAs must apply this guidance to all certification requests including any “backlog” unprocessed certification requests that were submitted for previous years. In the interim while SWAs are updating their processes and systems, SWAs should continue with the general WOTC application process according to the current policies and procedures that their state has in place and disseminate this information to all appropriate staff, employers, participating agencies, and other interested partners.
3. **Summary and Background.**
 - a. Summary – This TEGL provides SWAs with updated procedural guidance for processing and issuing determinations for all WOTC certification requests for the current year and for unprocessed certification requests received in previous years. WOTC provides incentives for employers to hire individuals from certain targeted groups who face barriers to employment.
 - b. Background – The WOTC is set forth under section 51 of the Internal Revenue Code of 1986 (Code), as extended and amended by the Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, div. Q (PATH Act). WOTC is authorized until December 31, 2020 (Section 143 of Division Q of P.L.116-94 -- Further Consolidated

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Appropriations Act, 2020). States can continue to review and prepare WOTC certification requests when there is a WOTC authorization lapse, but may not issue a certification. WOTC is available to eligible employers that hire first-time, qualifying members of WOTC targeted groups. Qualified tax-exempt employers described in section 501(c) of the Code and exempt from taxation under section 501(a) may claim the credit for hiring and employing first-time, qualified veterans. For more information on how to file for the tax credit and the eligible targeted groups, visit the Internal Revenue Service (IRS) website, <http://www.irs.gov/wotc>, and the ETA website, <https://www.dol.gov/agencies/eta/wotc>.

4. **Details.**

Roles and Responsibilities. The U.S. Departments of Labor and Treasury jointly administer the WOTC. The roles and responsibilities are discussed below.

- a. **U.S. Department of Treasury.** The U.S. Department of Treasury, through IRS, administers all tax-related provisions of the WOTC.
- b. **U.S. Department of Labor.** The U.S. Department of Labor, through ETA, oversees the administration of the WOTC, including the allotment of grant funding to SWAs, which conduct the certification of qualifying members of targeted groups. To support adherence to the certification provisions set forth in the Code, ETA develops guidance, and provides technical assistance and training to ensure WOTC regional and state coordinators are apprised of legislative updates and equipped to adopt and implement procedural changes. The ETA Regional Offices provide federal oversight of the states' implementation of the WOTC.

State Workforce Agencies. SWAs, which are the statutorily designated state agencies, are authorized to administer the operation of the WOTC certification process. The state coordinators and other Wagner-Peyser Employment Service staff process certification requests submitted by employers. States have various methods in place to accept certification requests depending on their level of funding, staff capacity, and type of system they use, including electronic submissions and by mail. Submission instructions can be found on the SWA's websites. The SWA directory is available at: <https://www.dol.gov/agencies/eta/wotc/contact>.

In addition, SWAs must administer the WOTC in accordance with the policies and procedural guidance set forth by ETA and requirements outlined in the WOTC Statement of Work (SOW). The SOW is included with annual WOTC Funding Allotment TEGs. See *TEGL No. 06-20, WOTC Initial Funding Allotments for Fiscal Year 2021* for a sample SOW. In subsequent years, refer to the most recent WOTC Funding Allotment TEG for the current SOW.

WOTC Certification Request Forms. SWAs use the IRS and ETA Forms below to process WOTC certification requests.

- *IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit.* This form is used by employers to pre-screen and to make a

written request to their SWA to certify an individual as a member of a targeted group for purposes of qualifying for the WOTC. This form is to be used together with either the ETA Form 9061 (Individual Characteristics Form) or ETA Form 9062 (Conditional Certification). In accordance with the instructions to IRS Form 8850, employers generally must submit the form to the SWA of the state in which the employer's business is located (where the employee works) no later than the 28th calendar day after the member of a targeted group begins working for the employer. The IRS Form 8850 and instructions are available at: <https://www.irs.gov/forms-pubs/about-form-8850>. Additional information is available in the next section (WOTC Application Process, page 4) of this TEGL.

Note: The IRS Form 8850 is strictly voluntary; therefore, the job applicant may refuse to complete the form with no adverse impact to securing employment. To report misuse of IRS Form 8850, contact the Treasury Inspector General for Tax Administration (TIGTA) by phone, fax, or an online form available at: https://www.treasury.gov/tigta/contact_report.shtml. TIGTA has independent oversight of IRS activities and is involved in the prevention and detection of fraud, waste, and abuse within the IRS and related entities.

- *ETA Form 9061, Individual Characteristics Form.* This form is used by employers, together with IRS Form 8850, to request certification of their employees under any targeted group. Additionally, ETA Form 9061 provides examples of supporting documentation that are accepted for each targeted group. The ETA Form 9061 is available at: [https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/ETA-FORM-9061-\(ENGLISH\).pdf](https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/ETA-FORM-9061-(ENGLISH).pdf).
- *ETA Form 9062, Conditional Certification.* This form is used in place of ETA Form 9061, together with IRS Form 8850, when the employee has been pre-certified as being a member of a specific targeted group by a participating agency.¹ The ETA Form 9062 is available at: <https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/ETA-Form-9062.pdf>.
- *ETA Self-Attestation Form (SAF) 9175, Qualified Long-term Unemployment Recipient (LTUR).* This form is only used for LTUR certification requests. To facilitate processes used by SWAs to make eligibility determinations for the LTUR group, ETA created a national SAF. Only the individual seeking to be certified as a member of a targeted group should complete the SAF. The ETA Form 9175 is available at: <https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/ETA-Form-9175.pdf>.

¹ A "participating agency" is a federal, state, county, or local government agency or a grantee of these agencies. A participating agency may include, but is not limited to, SWAs, American Job Center, WIOA grantees, School to-Work Transition grantees, Vocational Rehabilitation agencies, city and county welfare offices, Veterans' Affairs offices, and other veterans'-service organizations.

The WOTC processing forms are available at: <https://www.dol.gov/agencies/eta/wotc/how-to-file/>. ETA will update the dol.gov site with the Office of Management and Budget approved forms when there are legislative updates (for example, a required form for the addition of a new targeted group).

Note: WOTC processing forms, including IRS Form 8850, ETA Forms 9061, 9062, and 9175, are required to be used without modifications to the content and instructions. Forms must include any language related to a Privacy Act Notice, Paperwork Reduction Act Notice, or other notices and statements to ensure an applicant understands how the information provided on the form will be used and that completion of the form is voluntary.

WOTC Application Process. To verify whether a job applicant is a member of a targeted group, ETA advises SWAs to use the following application process: 1) perform intake using ETA Forms; 2) verify that a job applicant is a first-time, qualifying member of a targeted group; and 3) notify the employer about the verification results, which include certification, denial, or denial pending more information.

a) **Intake Phase:** During the intake phase, SWAs collect required forms and supporting documentation that are necessary to verify WOTC eligibility.

- SWAs should process certification requests that include an IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit, together with: 1) ETA Form 9061, Individual Characteristics Form, or 2) ETA Form 9062, Conditional Certification along with supporting documentation. SWAs have noted that receiving IRS Form 8850 separately from ETA Form 9061 or ETA Form 9062 creates significant delay in the certification process. SWAs may inform employers of submission preferences, such as that submitting IRS and ETA WOTC Forms together results in timelier processing.
- SWAs may accept electronic signatures or ink signatures for the employer's signature for IRS Form 8850 and ETA WOTC Forms used in the certification process. See IRS Notice 2012-13 for guidance on electronic signatures for IRS Form 8850 and for information on electronic submissions, which is available at: <https://www.irs.gov/pub/irs-drop/n-12-13.pdf>.
- In order to timely process a WOTC certification request, ETA recommends SWAs conduct an initial review of each certification request. The purpose of the review is to ensure that the certification request was submitted in a timely manner and is complete. Additional information about the initial review is available in the Initial Review section (page 9) of this TEGL.

b) **Verification Phase:** Once an employer submits to the SWA a complete certification request, SWAs must determine whether an employee meets the requirements to be a member of the targeted group that the employer specifies on IRS Form 8850. State coordinators and other Wagner-Peyser Employment Service staff rely on the information provided on the IRS Form 8850 and either ETA Form 9061 or ETA Form 9062; if necessary, states can use supporting documentation and other available evidence to make decisions based on the documentation submitted.² If the state determines that the

² Additional forms may be required for certain targeted groups (for example, a SAF for LTUR targeted group).

employee is a member of the targeted group, the SWA will issue a certification using an ETA Form 9063. However, if the SWA is not able to determine whether the new hire meets the requirements for the targeted group(s), the SWA will issue a denial. The reasons for a denial vary, and may include that a new hire is not in a targeted group, or that a certification request was incomplete or included erroneous information.

SWAs can develop working agreements with other SWAs for the timely and orderly processing of “out of state” certification requests, where SWAs provide available documentation and records for job applicants relocating and working in another state. SWAs can also establish formal agreements with appropriate state agencies and other partners to expedite verification of information employers submitted in the certification request, such as whether a new hire receives Temporary Aid to Needy Families, or was justice system-involved.

Additional information about eligibility criteria and documentary evidence for targeted groups is listed in the ETA Form 9061 and the WOTC eligibility desk aid, which are available at: <https://www.dol.gov/agencies/eta/wotc/how-to-file>.

- c) **Notification Phase:** SWAs must issue notifications to employers to inform them that their application was certified, denied, or denied pending more information in accordance with the Code and with this TEGL.
- SWAs must issue a **Certification** notification to an employer when a SWA determines that an employee is a member of the targeted group specified on IRS Form 8850.
 - SWAs must issue a **Denial** notification to an employer when a SWA determines that an employee is not a member of the targeted group specified on IRS Form 8850. A denial notification must provide a basis for the denial.
 - SWAs must issue a **Denial Pending More Information** notification, also known as an “Employer Needs” letter, when additional information is needed to complete a certification request. At minimum, an Employer Needs letter must: 1) set forth the additional information and/or documentation that must be submitted; 2) include a 90-calendar day deadline for the employers’ response; and 3) communicate that the certification request will be considered denied if the employer does not submit the additional information and/or documentation.

Possible reasons for issuing a Denial notification

- **Failure to meet IRS timely filing requirements.** An employer did not submit a complete IRS Form 8850 to the SWA of the state in which an employer’s business is located (where the employee works) by the 28th calendar day after the employee began working for the employer. SWAs must not review an employer’s written appeal for a certification request that was not timely filed, unless the question of timely filing is the subject of the appeal.

Note: States' policies and procedures must adhere to the provisions in the Code and ETA guidance, and uphold the integrity of ETA's WOTC certification process. SWAs must not allow employers to change the IRS Form 8850 after the 28th calendar day (for example, altering a certification request by adding new targeted groups or providing a different federal Employer Identification Number (EIN)).

- **Does not meet eligibility requirements.** If an employer's certification request for an employee does not show that the employee meets the requirements to of the targeted group that the employer specified on IRS Form 8850, the SWA will issue a Denial notification. SWAs must adhere to the eligibility requirements and necessary supporting documentation for the targeted group as indicated on the ETA Form 9061 and IRS Form 8850.

Possible reasons for issuing a Denial Pending More Information notification

- **Use of obsolete ETA Forms.** SWAs may deny a certification pending more information if an employer submits a certification request using an obsolete ETA Form. If an employer requests verification for a targeted group that is no longer eligible and not listed on the ETA Form 9061, SWAs must issue a Denial Pending More Information notification that explains necessary corrective action. However, SWAs may process certification requests on older versions of ETA Forms if the targeted group is still active and shown on the form. When there is a legislative change in targeted groups, ETA will provide guidance to communicate the terms of a grace period, as needed.
- **Incomplete certification request.** SWAs may deny a certification pending more information if an employer submits an IRS Form 8850 without required supporting documentation or an ETA Form 9061 or ETA Form 9062.
- **Incomplete ETA Forms.** SWAs may deny a certification pending more information if an employer submits an incomplete ETA Form, e.g., missing information or missing signature.

Authorized Representative. An employer may choose to authorize an individual to represent them for WOTC purposes by submitting an IRS Form 2848, Power of Attorney and Declaration of Representative, to a SWA. Without being listed on the IRS Form 2848, a representative cannot facilitate the employer's certification requests nor submit Form(s) 8850 on behalf of the employer. SWAs may request that employers attach an IRS Form 2848 with each individual or set of certification requests. In cases where an employer does not submit an IRS Form 2848 with each individual or set of certification requests, a SWA may use the IRS Form 2848 that is on file for that employer and EIN. SWAs should not conduct any WOTC business with an individual who is not listed as an authorized representative on an employer's IRS Form 2848 that is on file. SWAs should not accept an IRS Form 2848 signed and dated after the WOTC certification request is submitted to the SWA. Note: The IRS has not at this time issued any guidelines or information granting approval for e-signing or e-filing the IRS Form 2848.

An authorized representative is authorized to act on behalf of the employer regarding the certification process, which includes but is not limited to:

- Submission of IRS Form 8850 and ETA Forms 9061 or 9062;
- Submitting missing information that is necessary for a certification request;
- Providing updates or clarifying information regarding an employer's certification request; and
- Providing copies of any notices related to an employer's certification request. This authorization will automatically terminate three years from the date it is signed unless revoked or withdrawn earlier.

Authorized representatives should not make changes to the information provided by an employee after both the employee and employer have signed IRS Form 8850. If the SWA believes the employee information provided on the IRS Form 8850 has been modified without the consent of the employee/and or the employer, the SWA should follow its procedures to request additional or clarifying information from the employee and/or the employer.

SWAs should send notices and communications to employers. SWAs can also send notices and communications to authorized representatives if the SWA has an IRS Form 2848 on file at the time the employer requests certification, and if the employers checked box 2 of the form titled "Representative(s) Check if to be sent copies of notices and communication." However, if the SWA does not have an IRS Form 2848 on file at the time of the certification request submission, or the form on file does not have box 2 checked as described above, the SWA should send all notifications directly to the employers.

For more information on the IRS Form 2848, see <https://www.irs.gov/forms-pubs/about-form-2848>.

Employer Appeals. After an employer receives a denial from a SWA for a complete, timely filed certification request, an employer may submit a written appeal to the SWA within one year from the date the SWA issued the denial letter. ETA recommends that SWAs communicate clearly with employers about what information will be useful in an appeal, e.g. an explanation of why the employer believes an incorrect denial was issued, any clarifying information that was not submitted with the original certification request, or an explanation of where the employer believes the SWA misinterpreted information. If an employer disagrees with a SWA's decision on an appeal, employers can submit an appeal in writing to the ETA Regional Administrator for a determination with supporting documentation. The ETA Regional Office will issue the final determination on the matter. The contact information is available on the WOTC website at: <https://www.dol.gov/agencies/eta/wotc/contact>.

Note that this appeal process has changed from the process specified in ETA Handbook 408. In particular, the previous process allowed for an additional level of review in the ETA National Office in instances where the employer found the ETA Regional Office's determination unsatisfactory. ETA will no longer review its own decisions; the ETA

Regional Offices are well situated to make final determinations regarding specific WOTC appeals.

Workflow Process to Eliminate Backlog. Many states have adjusted their certification processes to both process current year submissions and to eliminate their backlog of certification requests not yet processed. SWAs that have successfully adjusted their processes and devote staff time to both often focus the backlog portion of time on certification requests that are complete and for which the three-year statute of limitations generally applicable to tax years will soon end, then process backlogged requests from previous years, when time and resources permit.

WOTC Performance Reporting and Administrative Forms for SWAs. SWAs use the forms below for administration purposes:

- *ETA Form 9058 - Report 1, Certification Workload and Characteristics of Certified Individuals.* This form collects program activity by the SWAs and is submitted to the ETA on a quarterly basis. Although SWAs may add their logos, this form is required to be used without modifications to the content and instructions.
- *ETA Form 9065, Work Opportunity Tax Credit, Audit Summary Worksheet.* This worksheet is an optional ETA form for SWAs' internal use in recording the results of verification activities conducted by each SWA. States are not required to submit this form to ETA. The form's design and format are optional, and states can change the design and format.
- *ETA Form 9063, Employer Certification, and its Instructions.* The SWA issues this form to an employer or representative to inform the employer that the employee has been certified to be a member of the targeted group requested, and can only issue it after verifying targeted group eligibility. If audited, employers should provide this certification to the IRS. The contents of this form cannot be modified by a SWA, but states can modify its design or appearance. Given the purpose of this form, it is the only WOTC form not accessible online. ETA directly supplies this form to SWAs; SWAs can contact their WOTC Regional Coordinators for the form if needed.

With the exception of ETA Form 9063, these current ETA Forms are available at: <https://www.dol.gov/agencies/eta/wotc/resources>. Note that these forms are available for use by SWAs only.

Recordkeeping for SWAs. States must keep copies (hard copy or electronic) of IRS Forms 8850, ETA Forms 9061, ETA Forms 9062, ETA Forms 9063, denial letters, supporting documentation, and any other forms relating to certification requests for a minimum of three years after issuance or rejection of the certification. IRS publishes guidance to employers on their record-keeping responsibilities. SWAs can share such information with employers. For information about recordkeeping, see the instructions to IRS Form 8850, which are available at: <https://www.irs.gov/forms-pubs/about-form-8850>. SWAs can also find information on recordkeeping in IRS Publication 583 "Starting a Business and Keeping Records, which is

available at: <https://www.irs.gov/businesses/small-businesses-self-employed/how-long-should-i-keep-records>.

Initial Review. ETA recommends SWAs conduct a review of each certification request as a quality control method. During the initial review, the SWA should determine if the certification request was timely filed and complete. ETA recommends SWAs record the initial review in the applicant's file, including the name of the reviewer, type of certification method (that is, automated or manual system), and the date it was completed.

Quarterly Audit. To reduce the chances of erroneously certifying ineligible persons for WOTC, SWAs must conduct quarterly audits. A quarterly audit is a verification activity to examine the quality of the SWA's certification process. In a quarterly audit, ETA recommends SWAs review certifications for the following:

- Timely submission;
- Completeness of forms (for example, signatures and dates);
- Use of available data (for example, Unemployment Insurance Wage Records, etc.);
- Accuracy of copies of supporting documentation; and
- Forms were submitted by the employer or the employer's authorized representative.

If a SWA issues an incorrect denial, SWAs must re-determine the certification request and, where the request meets requirements, issue a certification. If the SWA issued an incorrect certification, SWAs must revoke the certification.

For those applications found to be ineligible, the SWA must issue a notice of invalidation (NOI) or notice of revocation (NOR) based on the review of certifications. SWAs should send the NOI to the employer, participating agency, and job applicant invalidating an incorrect ETA Form 9062, Conditional Certification, notifying them that the Conditional Certification is invalid due to missing or incorrect information. For a sample NOI, see Attachment I.

SWAs should send the NOR to an employer, an authorized representative where appropriate, and the IRS. An NOR should communicate to the employer the reason why the SWA was not able to determine that the employee is a member of a targeted group, and the effective date of the revocation. The NOR should also inform affected employers that wages paid to the "non-eligible" employee cannot continue to be treated as "qualified wages" for WOTC purposes. For a sample NOR, see Attachment II. There are some cases when IRS will contact ETA or a SWA to request that the SWA issue a written NOR based on the IRS' review of certifications.

SWAs can transmit the NOR to IRS at the following IRS fax number:

Internal Revenue Service
Small Business/Self-Employed Campus Compliance Services
Fax: 1-855-242-6540

Note: It is not the responsibility of the SWAs to verify that an employee certified to be a member of a targeted group has worked the required number of hours for the employer,

under section 51(i)(3) of the Code. SWAs are only responsible for verifying and certifying an applicant's eligibility as a member of a targeted group. The responsibility for verifying the required number of hours worked rests with the IRS.

5. **Inquiries.** Please direct all questions to the appropriate Regional WOTC Coordinator, listed on the WOTC website at: <https://www.dol.gov/agencies/eta/wotc/contact>.

6. **References.**

- Training and Employment Guidance Letter 25-15, Change 2, *Work Opportunity Tax Credit 2015 Reauthorization*, dated February 16, 2018; and
- Section 51 of the Internal Revenue Code (26 U.S.C. §51) available at <https://uscode.house.gov/view.xhtml;jsessionid=36D3880A571F8263FD07D4406A9C774E?hl=false&edition=prelim&req=granuleid%3AUSC-1995-title26-section51&num=0>.

7. **Attachments.**

Attachment I: Notice of Invalidation (NOI)

Attachment II: Notice of Revocation (NOR)