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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-09

TO: ALL STATE WORKFORCE AGENCIES
 ALL STATE WORKFORCE LIAISONS
 ALL REGIONAL WOTC COORDINATORS

FROM: JANE OATES /s/
 Assistant Secretary

SUBJECT: Information and Guidance on the Two New Work Opportunity Tax Credit (WOTC) Targeted Groups Introduced by the American Recovery and Reinvestment Act of 2009

- Purpose.** The purpose of this advisory is to inform the State Workforce Agencies (SWAs) of two new WOTC targeted groups and to provide guidance for the effective and timely implementation of eligibility certification for these new groups.
- References.** The American Recovery and Reinvestment Act of 2009 (Public Law 111-5, Recovery Act); Internal Revenue Code of 1986, Section 51, as amended; Paperwork Reduction Act of 1995; Notice 2009-28, 2009-24 I.R.B. 1082, dated June 15, 2009; Notice 2009-69, which will be published in the Internal Revenue Bulletin on August 31, 2009; the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147); the Tax Relief and Health Care Act of 2006 (Public Law 109-432); the Working Families Tax Relief Act of 2004 (Public Law 108-311); the Small Business and Work Opportunity Tax Credit Act of 2007 (Public Law 110-28); TEGL No. 19-05, dated March 7, 2006, New Streamlined Reporting Requirements and Extension of the Information Collection for the Work Opportunity and Welfare-to-Work Tax Credits; TEGL No. 20-06, dated April 3, 2007, Reauthorization of the Work Opportunity Tax Credit and Other Program Changes; TEGL No. 05-07, dated September 11, 2007, Reauthorization of the Work Opportunity Tax Credit and Other Program Changes; TEGL No. 11-08, dated February 19, 2009, Extension of the Information Collection for the Consolidated Work Opportunity Tax Credit Program: Revised Reporting and Processing Forms; Training and Employment Guidance Letter (TEGL) No. 11-08, Change 1, Extension Period Granted to the State Workforce Agencies and Employers for the Uninterrupted Use of All 2007 and 2008 Work Opportunity Tax Credit

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Program Processing Forms; ETA Handbook No. 408, November 2002, Third Edition (the Handbook); and the updated November 2008 Addendum to the Handbook (Addendum, OMB No. 1205-0371).

3. **Background.** On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1221 of the Recovery Act, (P. L. No. 111-5), amended § 51 of the Internal Revenue Code (IRC) to add two new targeted groups for purposes of the WOTC. The amended Section 51 (d) (14) provides that: unemployed veterans and disconnected youth who begin work for an employer during 2009 or 2010 shall be treated as members of a targeted group for purposes of the WOTC. The June 15, 2009, Notice 2009-28 and Notice 2009-69 that was published on August 31 provide guidance on the statutory definitions of “unemployed veteran” and “disconnected youth,” and provide transition relief for employers who hire unemployed veterans or disconnected youth after December 31, 2008, and before September 17, 2009, if the employer submits the pre-screening notice to the designated local agency to request certification no later than October 17, 2009. Notice 2009-28 and Notice 2009-69 are provided as Attachments A₁ and A₂.
4. **Program Administration.** The Recovery Act did not change the SWAs’ certification and program operation responsibilities from those described in the November 2002, Third Edition of ETA Handbook 408 (The Handbook) and the most recently updated Addendum. These include procedures for: a) determining targeted group eligibility by conducting verification activities and issuing certifications and denials; b) establishing working partnerships with different participating agencies at the state and local levels for resolving technical issues and issuing conditional certifications; c) complying with quarterly report responsibilities; d) complying with records retention time periods; and e) at the regional level, providing technical assistance and conducting oversight visits.
5. **Eligibility Certification for Unemployed Veterans and Disconnected Youth.** New § 51(d)(14) of the IRC provides that unemployed veterans and disconnected youth who begin work for an employer during 2009 or 2010 shall be treated as members of a targeted group for purposes of the WOTC.

Members of the unemployed veterans targeted group are veterans who are certified as: 1) having been discharged or released from active duty at any time during the five-year period ending on the hiring date; and 2) being in receipt of unemployment compensation under a state or federal law for not less than four weeks during the one-year period ending on the hiring date. The term veteran is defined in sec. 51(d)(3)(B)(i) as: (1) having served on

active duty for a period of more than 180 days; or (2) having been discharged or released from active duty for a service-connected disability.

Members of the disconnected youth targeted group are individuals who are certified as: (1) having attained age 16 but not age 25 on the hiring date; (2) not regularly attending any secondary, technical, or post-secondary school during the six-month period preceding the hiring date; (3) not regularly employed during such six-month period; and (4) not readily employable by reason of lacking a sufficient number of basic skills.

To certify the eligibility of the Recovery Act targeted groups, ETA revised Form 9061 by adding the two new targeted groups and the appropriate documentary evidence and/or collateral contacts required for the new targeted group's eligibility determination. The required documentation has been added to page 3 of the form. A copy of the updated Form 9061 is provided as Attachment B. Key changes to ETA Form 9061 are discussed below:

- Unemployed Veterans. Questions to identify unemployed veterans have been added in Box 20. The individual must meet all three criteria to be certified as an unemployed veteran. Criteria and documentary evidence are provided below.
 - (I) To determine that the individual satisfies the definition of veteran (having served on active duty for a period of more than 180 days or having been discharged or released from active duty for a service-connected disability):
 - DD-214, or
 - FL 21-802 (Issued only by DVA, certifies a Veteran with a service-connected disability), or
 - Discharge papers.
 - (II) To determine that the veteran was discharged or released from active duty in the Armed Forces at any time during the five-year period ending on the hiring date:
 - DD-214, or
 - Discharge papers.
 - (III) To determine if a veteran has been in receipt of unemployment compensation:
 - Unemployment Insurance claims records
- Disconnected Youth. Questions to identify disconnected youth are provided in Box 21. The individual must meet all four criteria provided

to be certified as a disconnected youth. Criteria and documentary evidence are provided below:

(I) To determine that the youth is at least age 16 but under 25 on the hiring date:

- Birth Certificate
- Driver's License
- Work Permit
- Copy of Hospital Record of Birth
- School I.D. Card/School Records
- Federal/State/Local Government ID

Where the document listed above does not contain age or birth date, another valid document must be obtained to verify an individual's age.

(II) To determine whether the youth has not been regularly attending any secondary, technical or post-secondary school during the 6-month period before hiring date:

- Signed letter from parent/guardian (if minor) attesting to the information above, and/or
- Self-Attestation explaining that the applicant is not attending or has not attended any secondary, technical, or post-secondary school for more than 10 hours per week during the 6-month period before the hiring date.

(III) To determine whether the youth has not been regularly employed during the 6-month period before hiring date:

- Unemployment Insurance Wage Records

(IV) To determine whether the youth was not readily employable due to lack of basic skills:

- Self-Attestation that the individual does not have a high school diploma or GED, or
- Self-Attestation that the individual has a certificate of graduation from a secondary school or GED that was awarded no less than 6 months preceding the hiring date and has not held a job (other than occasionally) or been admitted to a technical school or post-secondary school since receiving the certificate.

Although self-attestation is allowed to document (II) *Not regularly attending school*, and (IV) *Not readily employable due to lack of basic skills*, it is the

responsibility of the SWA to take reasonable steps to ensure that it has the documentation needed to make a determination to issue a Certification or Denial for all other target groups where self-attestation is not required. While SWAs may accept documentation provided by an employer, for the majority of the WOTC target groups, they may not rely solely on an employer's efforts.

The SWAs are strongly encouraged to obtain adequate documentation from participating and other welfare or benefit agencies. If the SWAs' efforts fail to secure needed documentation after a reasonable effort conducted over a reasonable period of time, the SWAs must deny Certification and inform the employer/representative of the reason(s) for the Denial (Handbook, pp. VII-8 and 9).

6. **Determining Not Regularly Employed Status for Disconnected Youth.** IRS Notice 2009-28 defines the legal standard to meet the not regularly employed criteria in the definition of a disconnected youth. A youth meets the unemployment criteria if, during each consecutive three-month period within the six months preceding his or her hiring date, the youth earned less than an amount equal to the gross amount he or she would have been paid at the minimum wage if he or she worked 30 hours every week during the three-month period. This would mean that, if the individual was hired June 1, he or she must pass the test for each of the following periods: December - February, January - March, February - April, and March - May.

To minimize the burden on the state agencies, the IRS and the Department of Labor (DOL) have determined that SWAs need not test an individual's eligibility in each of the three month periods. Instead, SWAs must test the most recent completed calendar quarter. If the individual fails to meet the criteria for the tested quarter, he or she will fail the legal standard. If the individual passes for the tested quarter, he or she will qualify, even though we recognize that he or she could possibly fail the test in another three month period that the SWA did not test. The IRS believes that this modified check is sufficient to identify a substantial proportion of the individuals who are not qualified for the credit.

7. **Accessing Unemployment Insurance Claim and Wage Information.** As discussed in section 5, SWAs will need to use Unemployment Insurance (UI) Claims Records to verify receipt of UI compensation by unemployed veterans, and UI wage records to verify that disconnected youth have not been regularly employed. SWAs must negotiate with their state UI agency to determine the most efficient and effective way to access the UI claims records and wage data.

Claim and wage information is required to be kept confidential by the state UI agency, and may only be disclosed under certain circumstances. State UI agencies may disclose data to public officials, such as the SWAs, in the

performance of their public duties. Depending on the volume of anticipated requests and whether SWAs can provide the state UI agency with an informed consent release, SWAs may have to enter into a data exchange agreement that provides for safeguarding the claim and wage information, provides for reimbursement for the costs to the UI agency of providing the information, and provides penalties for the misuse or unauthorized redisclosure of the information. If only a few requests for claim or wage data are anticipated, it may be easier to obtain an informed consent release from the employee. State UI agencies are not required to obtain reimbursement for providing the requested information if the amount of staff time in responding to the request is incidental and only nominal processing costs are involved in making the disclosure. SWAs choosing to use informed consent releases from employees will need to work with employers to ensure that informed consent releases are collected at the time of hire. Because confidentiality laws vary by state, SWAs should work with their state UI agencies to determine the necessary form and content of the informed consent release.

If the SWA anticipates a greater volume of data requests, the agreement with the state UI agency will include a description of the specific information to be furnished, the purposes for which the information is sought, and information on the method and timing of requests, as well as the format to be used for the requests and responses. To obtain information from the state UI agency, SWAs must provide a Social Security Number for each participant for whom claim or wage data is sought. In those instances where the SWA anticipates a large volume of requests for data, the state UI agency may require that the request be made electronically.

8. **Revised Forms**. Please note that the forms and program materials described below have been updated recently to reflect Recovery Act provisions and other program updates.
 - **IRS Form 8850**. IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Tax Credit* and the instructions for Form 8850 have been revised. The August 2009 updated form and the revised Instructions are available at: www.irs.gov.
 - **ETA Form 9061**. In addition to the changes discussed above, ETA added new examples of documentary evidence for all veterans. The August 2009 revised form is attached and available online at: <http://www.doleta.gov/business/Incentives/opptax>.
 - **Reporting Instructions and Requirements**. Pursuant to the Paperwork Reduction Act of 1995, OMB recently approved the information collection requested for the updated WOTC reporting and administrative forms without substantial changes. Current OMB No. 1205-0371 data collection approval covers ETA Form 9058 – Report 1 and ETA administrative and

processing forms 9057, 9059, 9061-9063, and 9065 through November 30, 2011. The updated reporting and administrative/processing forms, Fact Sheet, the revised Spanish versions of IRS Form 8850 and ETA Form 9061, the revised April 2009 Addendum to the November 2002, Third Edition of ETA Handbook 408, and a revised Technical Assistance and Compliance Review Guide are available at:

<http://www.doleta.gov/business/Incentives/opptax>.

9. **Effective Date of Revised Forms.** Training and Employment Guidance Letter (TEGL) 11-08, Change 1, granted SWAs an indefinite extension period for the use of previously OMB-approved June 2007 ETA Forms 9061 or 9062. This TEGL terminates that extension period. For the two new groups added under the Recovery Act, employers and their representatives are required to start using the August 2009 OMB-approved ETA Form 9061 two weeks following the publication of this TEGL. SWAs are expected to also transition to using all revised forms and program materials at the end of this two-week period. After that date, other versions of ETA Forms 9061 and 9062 are not to be accepted by the SWAs.
10. **Technical Assistance.** Webinars focused on the two new targeted groups introduced by the Recovery Act and the amendments of 2006 and 2007 are scheduled for September 2009. The webinars will feature an entire session on the revised and updated reporting requirements.
11. **Action Requested.** SWA administrators are requested to:
 - provide this information to appropriate program staff, employers and their representatives, participating agencies (PAs), and other interested partners. They are to ensure that the SWAs and PAs administer the two new targeted group provisions in accordance with the guidance in this TEGL, the Handbook, the May 2009 Addendum to the Handbook, IR Notice 2009-28 and IR Notice 2009-69, and Section 51 of the IRC of 1986, as amended; and
 - ensure that state coordinators receive a copy of Section 1221 of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (2009), which is attached to this TEGL as Attachment C, and copies of the updated and OMB-approved report, processing and administrative forms and all other updated program materials at:
<http://www.doleta.gov/business/incentives/opptax>.
12. **Inquiries.** Direct all questions to the appropriate Regional WOTC Coordinator.

13. Attachments.

- **Attachment A₁**. Notice 2009-28
- **Attachment A₂**. Notice 2009-69
- **Attachment B**. ETA Form 9061
- **Attachment C**. Section 1221 of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (2009) (to be codified at 26 U.S.C. 51, 26 C.F.R. Pt. 1)