

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 30-11

TO: ALL STATE WORKFORCE AGENCIES
 ALL STATE WORKFORCE LIAISONS

FROM: JANE OATES /s/
 Assistant Secretary

SUBJECT: Information and Guidance on the Work Opportunity Tax Credit Provisions Introduced by the Veterans Opportunity to Work (VOW) to Hire Heroes Act of 2011, and IRS Guidance on Submission of Form 8850

1. **Purpose.** The purpose of this advisory is to inform the State Workforce Agencies (SWAs) of new provisions that affect the Work Opportunity Tax Credit (WOTC) Veteran target group, to provide guidance for the effective and timely implementation of eligibility determinations for this group and its new categories, and to inform SWAs of Internal Revenue Service (IRS) guidance on the submission of Form 8850.
2. **References.** VOW to Hire Heroes Act of 2011 (the VOW Act) (Pub. L. 112-56); the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, Recovery Act); Internal Revenue Code of 1986, Section 51, as amended; Paperwork Reduction Act of 1995; Internal Revenue Notice 2012-13, 2012-9 I.R.B.492 (Feb. 27, 2012); the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107-147); the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432); the Working Families Tax Relief Act of 2004 (Pub. L. 108-311); the Small Business and Work Opportunity Tax Credit Act of 2007 (Pub. L. 110-28); Training and Employment Guidance Letter (TEGL) No. 15-11, *Work Opportunity Tax Credit (WOTC) Procedural Guidance During Authorization Lapse for Non-Veteran WOTC Target Groups*; TEGL No. 21-10, Change 1, *Clarification of Certain Work Opportunity Tax Credit (WOTC) Programmatic Policy Issues*, December 21, 2011; TEGL No. 21-10, *End Date for the Work Opportunity Tax Credit (WOTC) American Recovery and Reinvestment Act of 2009 (Recovery Act) Temporary Target Groups*, March 21, 2011; TEGL No. 19-05, *New Streamlined Reporting Requirements and Extension of the Information Collection for the Work Opportunity and Welfare-to-Work Tax Credits*; TEGL No. 20-06, *Reauthorization of the Work Opportunity Tax Credit and Other Program Changes*; TEGL No. 05-07,

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Reauthorization of the Work Opportunity Tax Credit and Other Program Changes; TEGL No. 11-08, Extension of the Information Collection for the Consolidated Work Opportunity Tax Credit Program: Revised Reporting and Processing Forms; 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 Program Processing Forms; ETA Handbook No. 408, November 2002, Third Edition (the Handbook); and the updated November 2009 Addendum to the Handbook (Addendum, OMB No. 1205-0371).

3. **Background.** On November 21, 2011, President Obama signed into law the VOW Act (Pub. L. 112-56). Title II, subtitle D, section 261, "Returning Heroes and Wounded Warriors Work Opportunity Tax Credits," of the VOW Act amends and expands the definition of the WOTC "Qualified Veteran" target group in section 51 of the Internal Revenue Code (IRC) to grant a tax credit to employers for hiring certain qualified veterans.

The changes and new provisions in the VOW Act apply to individuals who begin to work for an employer on or after November 22, 2011, and before January 1, 2013. Section 261 amends the IRC Section 51(d)(3) definition of "Qualified Veteran" by adding two new unemployed veteran categories and also extends the availability of the existing veterans receiving Supplemental Nutrition Assistance Program (SNAP) and disabled veteran categories. The VOW Act also makes WOTC available to "qualified tax-exempt organizations" that hire qualified veterans.

The VOW Act only extends the availability of the WOTC for hiring members of the qualified veteran target group. All other WOTC target groups expired on December 31, 2011. The VOW Act also does not reauthorize the disconnected youth and unemployed veteran target groups that were enacted by the Recovery Act, which expired on December 31, 2010.

4. **IRS Notice 2012-13.** On February 9, 2012, the IRS issued Notice 2012-13 which provides procedural information for the SWAs and guidance for employers and their authorized representatives on the provisions in the VOW Act, and provides requirements related to the submission of IRS Form 8850. This Notice is provided as Attachment A and can also be found at <http://www.irs.gov/pub/irs-drop/n-12-13.pdf>.
5. **Overview of WOTC Provisions in the VOW Act.** The VOW Act includes the following provisions:
 - a) Extends the current category for veterans receiving SNAP benefits with the same qualified wages cap (\$6,000) for a maximum tax credit of up to \$2,400.

- b) Extends the current category for veterans with a service-connected disability with the same qualified wages cap (\$12,000) for a maximum tax credit of up to \$4,800.
 - c) Extends the current category for veterans with a service-connected disability unemployed for at least 6 months, with the qualified wages cap increased to \$24,000 for a maximum tax credit increase of up to \$9,600.
 - d) Establishes two new unemployed veterans categories as follows:
 - Veterans unemployed for at least 4 weeks with a qualified wages cap of \$6,000 and a maximum tax credit of up to \$2,400.
 - Veterans unemployed for at least 6 months with a qualified wages cap of \$14,000 and a maximum tax credit of up to \$5,600.
 - e) Makes WOTC available to “qualified tax-exempt organizations” that hire qualified veterans.
6. **Program Administration.** The VOW to Hire Heroes Act does 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 2009 Addendum to the Handbook. These responsibilities 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 veteran-related technical issues and issuing conditional certifications; c) complying with quarterly reporting requirements; and d) complying with requirements for record retention time periods.
7. **Definitions for WOTC Veteran Group.** Section 51(d)(3) of the IRC provides a two-part definition of the term Qualified Veteran as follows:

First, section 51(d)(3)(B) defines veteran as any individual certified by a SWA as:

- Having: 1) served on active duty (other than active duty for training) for period of more than 180 days in the Armed Forces of the United States of America, **or** 2) been discharged or released from active duty in the Armed Forces of the United States of America for a service-connected disability; **and**
- Not having, during the 60-day period ending on the hiring date, any day of extended active duty in the Armed Forces in the United States of America.

Second, section 51(d)(3)(A) of the IRC identifies and defines five categories of veterans that comprise the second part of the Qualified Veteran definition. Three of the categories for the Qualified Veteran target group are unchanged. A Qualified Veteran is any veteran who is certified by a SWA as:

- Being a member of a family receiving assistance under the Supplemental Nutrition Assistance Program (SNAP) for at least a three-month period ending during the 12-month period, that ends before the hiring date (section 51(d)(3)(A)(i)); **or**
- Entitled to compensation for a service-connected disability; **and**
 - having a hiring date which is not more than one year after discharge or release from active duty (section 51(d)(3)(A)(ii)(I)); **or**
 - having aggregate periods of unemployment of six months or more during the one-year period ending on the hiring date (section 51(d)(3)(A)(ii)(II)).

The VOW to Hire Heroes Act adds two new unemployed veteran categories to the Qualified Veteran definition. For these categories, a Qualified Veteran is any veteran who is certified by a SWA as:

- Having aggregate periods of unemployment of at least 4 weeks but less than 6 months in the year prior to being hired (Section 51(d)(3)(A)(iii)).
- Having aggregate periods of unemployment of 6 months or more in the year prior to being hired (section 51(d)(3)(A)(iv)).

Note 1. The Recovery Act unemployed veteran category is not the same as the VOW Act unemployed veteran category, and the Recovery Act unemployed veteran category has expired.

Note 2. The requirement that a veteran had been discharged or released during the five-year period ending on the hiring day that was part of the definition of the Recovery Act unemployed veteran category is not part of the new unemployed veteran category authorized under the VOW Act.

8. Eligibility Determinations and Documentation Requirements. The documentary evidence that can be used for eligibility certifications for the Qualified Veteran target group and its new categories is provided below.

a) Veteran

For all of the categories in the amended and expanded veteran target group, the following documentation can be used to determine that the individual satisfies the definition of veteran:

- Form DD-214,
- Discharge papers, or

- Documentation for service-connected disability as described below.

b) Service-Connected Disability

The Department of Veterans Affairs (VA) stopped issuing Form Letter 21-802, which had been used by SWAs to verify a “service-connected disability” for the WOTC disabled veteran categories. SWAs should accept other documentation that would verify that an individual is eligible to receive or is receiving compensation for a “service-connected disability,” so long as these documents are issued by the VA, are on agency letterhead or have an agency stamp, and include a signature and contact information from the individual at the agency who verified the disability information.

For example, the VA regularly issues letters to veterans after separation from the Armed Forces indicating that the individual has a service-connected disability for use in civil service preference or the receipt of benefits. If a veteran does not have such a letter, he or she may contact the national VA call center, at 1-800-827-1000, or his/her VA vocational rehabilitation counselor to obtain the letter.

c) Periods of Unemployment

For the four-week unemployed veteran category, the six-month unemployed veteran category, and the six-month unemployed disabled veteran category, the following documentation can be used to verify the required periods of aggregate unemployment:

- Unemployment Insurance (UI) claims records, or
- UI wage records.

9. Determination of Periods of Unemployment. As amended by the VOW Act, IRC Section 51 contains five veterans categories described in more detail in section 7 of this TEG. Three of those categories relate to unemployment.

They are:

- A four-week unemployed veteran category
- A six-month unemployed veteran category
- A six-month unemployed disabled veteran category

For all three of these categories, SWAs will certify a veteran as having the required aggregate periods of unemployment if the veteran received unemployment compensation for the relevant length of time -- either at least four weeks or at least six months. The required periods of unemployment do not need to be continuous, and can be cumulative throughout the one-year period preceding the hiring date. Therefore, receipt of unemployment

compensation does not need to be continuous, and can be any four weeks or six months, respectively, in the one-year period before the hiring date.

UI claims records are the best source of documentation to verify that a veteran received unemployment compensation. However, the Employment and Training Administration (ETA) recognizes that despite being unemployed, some veterans may not have received unemployment compensation during the required four-week or six-month periods, but nonetheless were unemployed during those periods. For example, an individual may have been unemployed, but chose not to apply for unemployment compensation; or an individual may have received unemployment compensation, but has since exhausted those benefits. Therefore, if unemployment cannot be verified through UI claims records, then states also must use UI wage records to determine whether an individual meets the unemployment criteria for the unemployed veteran or the disabled unemployed veteran categories by verifying that there are no earnings in the required time periods.

Most states maintain UI wage records on a quarterly basis. Regarding quarterly UI wage records, it is not possible to determine whether an individual is unemployed on a monthly or weekly basis by looking at that individual's wage records. Therefore, these states will only be able to verify the periods of unemployment if an entire quarter of wage records indicates no earnings. Specifically, section can determine whether a veteran meets the required periods of unemployment as follows:

- For the four-week unemployed veteran category, a veteran meets the unemployment criteria if there are no earnings in the individual's wage records in at least one of the quarters in the one-year period prior to the hiring date.
- For the six-month unemployed veteran category and six-month disabled veteran category, a veteran meets the unemployment criteria if there are no earnings in the individual's wage records in any two of the quarters in the one-year period prior to the hiring date. The two quarters of no earnings do not need to be continuous.

Some states maintain UI wage records on a weekly or monthly basis. These states can determine whether a veteran meets the required periods of unemployment as follows:

- For the four-week unemployed veteran category, a veteran meets the unemployment criteria if there are no earnings in the individual's wage records for any month, or any four weeks, in the one-year period prior to the hiring date. The four weeks of no earnings do not need to be continuous.

- For the six-month unemployed veteran category and six-month disabled veteran category, a veteran meets the unemployment criteria if there are no earnings in the individual's wage records for any six months, or any 24 weeks, in the one-year period prior to the hiring date. The six months or 24 weeks of no earnings do not need to be continuous.

10. Accessing Unemployment Insurance Claims and Wage Records. SWAs will need to use UI claims records and UI wage records to verify the required periods of unemployment for veterans. 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. Regulations at 20 CFR 603.5(g) permit the disclosure of unemployment compensation information "to a public official for use in the performance of his or her official 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. These agreements would provide for safeguarding the claim and wage information, allow for reimbursement of the costs to the UI agency, and include penalties for the misuse or unauthorized redisclosure of the information.

Further, if the SWA anticipates a large volume of data requests, this 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.

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 that choose 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.

- 11. ETA Program Forms.** ETA has revised and updated all program processing, administrative and reporting forms to reflect the amendments and new provisions introduced by the VOW Act, as well as the expiration of the Recovery Act target groups. A package seeking clearance of the forms and a three-year extension, through December 31, 2015, has been submitted to the Office of Management and Budget (OMB). Upon approval from OMB, ETA will release the final forms.

To facilitate the processing job by the SWAs and the application process by employers or their representatives, ETA is providing advanced drafts of ETA Forms 9061, 9062, 9063, 9065 and 9058, stamped with the watermark "SAMPLE" as Attachment I. These are unofficial forms, not to be used by the SWAs or employers/representatives until final clearance by OMB. At that time, ETA will issue a TEGl transmitting all program forms and related procedural guidance for use of the approved forms. The revised ETA forms will then be available at:

<http://www.doleta.gov/business/incentives/opptax/forms.cfm>. **Until forms are officially issued, SWAs and the business sector are to continue to follow the interim instructions on filing forms that were released on December 2, 2011 (for employers) and on quarterly reporting that were released on December 27, 2011 (for SWAs), and both updated in April 2012.**

- 12. IRS Form 8850.** The IRS has updated IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Tax Credit*, and its instructions to reflect the provisions introduced by the VOW Act. (The updated form and instructions are available at: www.irs.gov/form8850.)
- 13. Transition Relief for Employer Submission of Form 8850.** Section III of IRS Notice 2012-13 provides employers with transition relief from the 28-day timely filing requirement by providing additional time to file the pre-screening notice, IRS Form 8850, with SWAs. **Accordingly, an employer who hires a qualified veteran on or after November 22, 2011 and before May 22, 2012 can satisfy the timely filing requirement if the employer submits IRS Form 8850 along with ETA Form 9061 or Form 9062 to the SWA to request certification not later than June 19, 2012. An employer that hires a qualified veteran on or after May 22, 2012 and before January 1, 2013 must meet the 28-day timely filing requirement.**
- 14. Qualified Tax-Exempt Organizations.** Section 261(e) of the VOW Act also makes WOTC available to "qualified tax-exempt organizations." Specifically, the Act provides that qualified tax-exempt organizations that hire qualified

veterans on or after November 22, 2011 and before January 1, 2013 may claim a credit against the employer's share of social security tax. A qualified tax-exempt organization for purposes of the WOTC is an organization described in IRC section 501(c) that is exempt from tax under IRC section 501(a). IRS Notice 2012-13 provides detailed information on the use of WOTC by tax-exempt organizations. Information on 501(c) organizations is available in the IRS Publication 557, *Tax-Exempt Status for Your Organization*, available at: <http://www.irs.gov/pub/irs-pdf/p557.pdf>.

15. Filing of Form 8850 with Electronic Signatures. Section IV of IRS Notice 2012-13 provides the following guidance on the filing of Form 8850 with electronic signatures:

Before any employer may claim the WOTC for hiring any member of a targeted group (or, for qualified tax-exempt organizations, the § 3111(e) credit for hiring a qualified veteran), that individual must be certified by the [SWA] as a member of a targeted group. Section 51(d)(13)(A)(ii)(II) requires that, not later than the 28th day after the individual begins work for the employer, the employer submit a notice, signed by the employer and the individual under penalties of perjury, to the [SWA] as part of a written request for certification. For purposes of this Section IV, "employer" refers to any employer required to submit a Form 8850 in order to obtain the WOTC under § 51 or the equivalent credit under § 3111(e), or an authorized representative of such an employer.

Employers may submit Form 8850 to the [SWA] electronically if the employer's system satisfies the requirements in Ann. 2002-44, 2002-1 C.B. 809. This Notice makes available to employers two alternative methods of certification using electronic signatures in addition to the electronic submission of Form 8850 as provided in Ann. 2002-44. The alternative methods are available to any employer required to submit a Form 8850 in order to obtain the WOTC for any member of any targeted group under § 51 or the equivalent credit under § 3111(e).

First, an employer may print out a paper copy of the Form 8850 that was signed electronically by both the applicant and the employer in accordance with the requirements of Ann. 2002-44, and transmit that paper copy to the [SWA] (by mail or by facsimile following the rules in Section V of this notice).

Second, an employer may file Form 8850 using a method under which the applicant signs electronically but the employer signs in ink. More specifically, the applicant signs Form 8850 electronically and the Form 8850 is transmitted electronically to the employer in accordance with the requirements detailed below. Once received and printed out, the paper copy of the Form 8850 shows "signed electronically" in the field for the applicant's signature. The employer signs that paper copy of that Form 8850 in ink, complying with the signature and jurat requirements on Form 8850 and the Form 8850 instructions for the paper copy of Form 8850, and transmits that

paper copy to the [SWA] (by mail or by facsimile following the rules in Section V of this notice). Under this second alternative method, the employer must satisfy all five of the following requirements with respect to the Form 8850 that is electronically signed by the applicant:

(i) In General. The electronic system must ensure that the information received is the information sent, and it must document all occasions of access that result in the transmission of a Form 8850. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the applicant signing the Form 8850, accessing the system, and submitting the Form 8850 is the applicant identified in the form.

(ii) Same Information as Paper Form 8850. The electronically signed Form 8850 must provide the [SWA] with exactly the same information as the paper Form 8850.

(iii) Jurat and Signature Requirements. The Form 8850 must be signed electronically by the applicant under penalties of perjury.

(A) Jurat. The jurat (perjury statement) must contain the language that appears on the paper Form 8850 for the applicant. The electronic system must inform the applicant that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form 8850. The instructions and the language of the jurat must immediately follow the information provided by the applicant, and must immediately precede the applicant's electronic signature.

(B) Electronic Signature. The electronic signature must (1) identify the applicant whose name is on the Form 8850 and the employer submitting the Form 8850, and (2) authenticate and verify the form. For this purpose, the terms "authenticate" and "verify" have the same meaning as they do when applied to a written signature on a paper Form 8850. An electronic signature can be in any form that satisfies the foregoing requirements.

(iv) Copies of Form 8850. The employer must be able to supply and, upon request by the IRS, the employer must supply (1) a paper copy of the Form 8850 submitted to the [SWA], and (2) a statement that, to the best of the employer's knowledge, the Form 8850 was submitted by the employer with respect to the named applicant. The paper copy of the electronically signed Form 8850 must provide exactly the same information as, but need not be a facsimile of, the paper Form 8850.

(v) Retention of Forms 8850 by the [SWAs] and Employers. Forms 8850 with an applicant's electronic signature have the same status as paper Forms 8850.

Therefore, guidance that applies to paper Forms 8850 also applies to these Forms 8850. For example, as is the case for paper Forms 8850, electronic Forms 8850 are required to be retained by employers under their established record-keeping systems. For further information, see Rev. Proc. 98-25, 1998-1 C.B. 689, on information regarding the retention of records within an Automatic Data Processing System.

For additional information, a copy of IRS Notice 2012-13 and Announcement 2002-44 are included as attachments to this guidance.

Note 1. The IRS instructions to Form 8850 also indicate that electronic filing of Form 8850 is permitted and include a list of states equipped to receive the form electronically at the time the instructions were published. However, this list was not intended to limit electronic filing of Form 8850 to only those states. SWAs may implement electronic filing as long as all of the requirements in IRS Announcement 2002-44 and IRS Notice 2012-13 are met. SWAs do not need prior approval from either ETA or the IRS for electronic submission of Form 8850.

Note 2. The IRS guidance regarding filing of Form 8850 with electronic signatures, as well as the alternative method of filing or signing by facsimile addressed below, applies to all target groups authorized under WOTC. Therefore, when the non-veteran WOTC groups are re-authorized by Congress, then this guidance will be applicable to those target groups as well.

16. Alternative Method of Filing or Signing Form 8850 – Filing or Signing by Facsimile. Section V of IRS Notice 2012-13 provides the following guidance on alternative methods of filing or signing Form 8850 by facsimile:

In addition to the electronic signature method of filing Form 8850 described in Section IV [of IRS Notice 2012-13], the IRS will also allow the facsimile transmission of applicant and employer signatures on a Form 8850 if the applicable [SWA] accepts Form 8850 via facsimile, the applicant and employer intend the signatures on the faxed copy to be their signatures for purposes of the document, and the requirements of paragraphs (1) and (2) below are satisfied:

(1) Same Information as Paper Form 8850. The facsimile submission is a reproduction of Form 8850 that provides the [SWA] with exactly the same information as the paper Form 8850.

(2) Signature and Transmission Requirements. The Form 8850 is signed by the applicant and the employer, under penalties of perjury, and transmitted to the [SWA] in the following manner:

(i) *An original Form 8850 is completed in paper copy and then signed in ink by the applicant;*

(ii) *The original Form 8850, signed by the applicant, is delivered to the employer either in person or by facsimile;*

(iii) *The employer signs in ink either the paper copy of Form 8850 that was signed by the applicant or the facsimile of that paper copy; and*

(iv) *The employer mails or faxes the signed Form 8850 to the [SWA] within the time prescribed by § 51(d)(13)(A)(ii) (or within the period authorized under Section III of this notice).*

For purposes of this Section V, “employer” refers to any employer required to submit a Form 8850 in order to obtain the WOTC for any member of any targeted group under § 51 or the equivalent credit under § 3111(e), or an authorized representative of such an employer.

Note 1. SWAs may choose to accept the facsimile transmission of the Form 8850, but are not required to do so.

17. Action Requested. ETA requests SWA administrators to:

- a) Provide this information to appropriate program staff, employers and their representatives, participating agencies, and other interested partners;
- b) Ensure that the SWAs and participating agencies administer the new provisions and changes to the veteran groups in accordance with the guidance in this TEGl, the Handbook, and sections 51, 52 and 3111(e) of the IRC of 1986, as amended;
- c) Remind SWAs and employers to wait for the TEGl transmitting the OMB approved and final forms before using the new WOTC forms. During this waiting period both SWAs and employers must follow the Interim Instructions ETA released in December 2011 and updated in April 2012; and
- d) Ensure that state coordinators receive copies of the attached “sample” forms, VOW legislation and IRS guidance notice.

18. Inquiries. Direct all questions to the appropriate Regional WOTC Coordinator, whose names and contact information are available at: <http://www.doleta.gov/business/incentives/opptax/contacts.cfm>.

19. Attachments.

- **Attachment A.** IRS Notice 2012-13
- **Attachment B.** Section 261 of the VOW to Hire Heroes Act of 2011, Title II, Subtitle D, (P. L. 112-56), November 21, 2011
- **Attachment C.** Drafts of "SAMPLE" ETA Forms 9061, 9062, 9063, 9065 and 9058
- **Attachment D.** IRS Announcement 2002-44