

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 4-12

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Revised Forms for the Work Opportunity Tax Credit (WOTC) Program for Implementation of the Veterans Opportunity to Work to Hire Heroes Act of 2011 (VOW Act) Provisions and Other Program Changes

1. **Purpose.** To transmit revised WOTC forms and instructions, which were updated to reflect the amendments and new provisions in the VOW Act and other legislative changes to the WOTC program.

2. **References.**

- Section 261 of the VOW to Hire Heroes Act of 2011, (title II of Pub. L. 112-56);
- The American Recovery and Reinvestment Act (Recovery Act) of 2009 (Pub. L. 111-5);
- Internal Revenue Code of 1986, Section 51, as amended;
- Internal Revenue Service (IRS) Notices 2009-69 (August 31, 2009) and 2009-28, 2009-24 I.R.B 1082 (June 15, 2009);
- IRS Notice 2012-13, Part III – Administrative, Procedural, and Miscellaneous, Section 51 – Work Opportunity Tax Credit;
- Section 52 – Special Rules;
- Section 3111(e) Credit for Employment of Qualified Veterans (February 9, 2012);
- Training Employment Guidance Letter (TEGL) No. 30-11, *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* (May 24, 2012);
- TEGL No. 15-11, *Work Opportunity Tax Credit (WOTC) Procedural Guidance During Authorization Lapse for Non-veteran WOTC Target Groups* (January 12, 2012);
- TEGL No. 11-08, *Extension of the Information Collection for the Consolidated Work Opportunity Tax Credit Program: Revised Reporting and Processing Forms* (February 19, 2009);
- 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 (WOTC) Program Processing Forms* (March 25, 2009); and

RESCISSIONS None	EXPIRATION DATE Continuing
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- ETA Handbook No. 408, November 2002, Third Edition (the Handbook); and August 2009 Addendum to the Handbook.

3. **Background.** The Recovery Act added two target groups to the WOTC program – unemployed veterans and disconnected youth. These two target groups expired on December 31, 2010. As a result, TEGL No. 20-10 was issued with program guidance in the event of a retroactive reauthorization of those target groups. However, enough time has passed without Congressional activity extending these two groups. Therefore, references to the two Recovery Act groups have been removed from the existing forms. The Youth Self-Attestation Form, ETA Form 9154, which was used as verification of eligibility for the disconnected youth target group, has been discontinued. The Employment and Training Administration (ETA) will be releasing forthcoming guidance on close out procedures of the applications for the expired Recovery Act groups.

On November 21, 2011, President Obama signed the VOW Act into law. Section 261 of the VOW Act, “Returning Heroes and Wounded Warriors Work Opportunity Tax Credit,” amends and expands the definition of the original Qualified Veteran target group. Specifically, Section 261 amends the definition of Qualified Veteran by adding two new unemployed veteran categories and extending the availability of the existing veterans receiving Supplemental Nutrition Assistance Program (SNAP) and disabled veteran categories. The VOW Act does not extend the Recovery Act unemployed veteran and disconnected youth target groups. Guidance regarding eligibility for the veterans amended and expanded target groups was provided in TEGL No. 30-11 dated May 24, 2012.

The provisions in the VOW Act apply to new employees who began working for an employer on or after November 22, 2011 and before January 1, 2013. As a result of the provisions in the VOW Act, the WOTC forms and instructions were revised to reflect current legislative changes.

Several other changes to the WOTC program became effective on December 31, 2011. On this date, as outlined in TEGL No. 15-11, the WOTC program’s legislative authority for all non-veteran target groups expired. However, these target groups remain on the WOTC forms, in recognition that Congress may pass retroactive reauthorization for the non-veteran target groups, as has occurred previously throughout the WOTC program’s history. Also, legislative authorization for Empowerment Zones, which determined eligibility for the summer youth group, has ended and as a result, the summer youth group is no longer a WOTC target group, and has been removed from the WOTC forms.

4. **Revised Forms and Instructions.** ETA has revised the processing, administrative, and reporting program forms to reflect: 1) removal of all references to the expired Recovery Act unemployed veteran and disconnected youth target groups, 2) removal of the summer youth target group, and 3) inclusion of the new VOW Act veteran target group provisions. The revised forms and accompanying instructions were approved by the Office of Management and Budget (OMB) through June 30, 2015.

State Workforce Agencies (SWAs) are required to use, without modification, three of the current five required WOTC reporting, administrative, and processing forms – ETA Form 9058, 9061 and 9062. SWAs are free to design their own formats for the “Employer Certification” form (ETA Form 9063) and “Verification Results” form (ETA Form 9065) so long as they include all the information required in the original optional forms.

ETA Form 9058 – Report 1 is used by the SWAs to report program data to ETA on a quarterly basis via EBSS. ETA Forms 9061, 9062, and 9063 are used by the SWAs and employers. These forms are critical for the operation of the WOTC program. Form 9061 or 9062 is used by employers to submit certification requests (together with IRS Form 8850) to SWAs, and contains all the information SWAs need to process those requests consistent with statutory requirements and the program’s integrity. All SWAs and participating agencies to which SWAs have delegated responsibility for issuing Conditional Certifications are required to use the “Conditional Certification” form (ETA Form 9062) without modification for pre-certifications of certain groups only. Form 9063 is the certification SWAs issue to employers or their representatives upon a positive target group eligibility determination. If audited, employers must provide this certification to the IRS. Finally, ETA Form 9065 is an internal worksheet SWAs use in conducting their quarterly internal audits.

Revisions to the reporting, processing and administrative forms are described in detail in the following paragraphs. The revision date on the bottom of each form has been changed to “June 2012” and the reference to “Division of Adult Services” in the Paperwork Reduction Act paragraph was removed and replaced with “Division of National Programs, Tools and Technical Assistance,” the name of the new division responsible for the WOTC program.

ETA Form 9058 – Report 1, Certification Workload and Characteristic of Certified Individuals and its instructions were revised as follows:

Section 51 of the Internal Revenue Code and the 1996 original target group legislative alpha designation for a Qualified Veteran is “B.” To distinguish among the amended veteran group and the newly introduced veteran categories, and provide the SWAs with a uniform system to report the number of certifications or denials issued to each new group, the “B” designation is being used followed by alpha-numeric identifiers. The current Boxes 2a and 2b (in Column I) “By WOTC Target Group” under Part II. “CHARACTERISTICS OF CERTIFIED INDIVIDUALS”) have been replaced with the following five Boxes:

- Box 2Ba. Added (V) after “Veteran receiving SNAP benefits,”
- Box 2Bb. Added (DV) After “Disabled Veteran,”
- Added Box 2Bc. and titled it “DV unemployed for 6 months,”
- Added Box 2Bd. and titled it “V unemployed for 4 weeks,” and
- Added Box 2Be. and titled it “V unemployed for 6 months”.

Boxes 3 and 4 did not change. Box 3. still collects Ex-felon data and Box 4. still collects Designated Community Resident data. Box 6. Summer Youth was deleted reflecting the

expiration of legislative authority for Empowerment Zones on December 31, 2011. Box 8. Unemployed Veteran and Box 9. Disconnected Youth, the two expired Recovery Act target groups, were deleted.

The rest of the target groups boxes were renumbered as follows:

- Boxes 5a. and 5b. remain as Voc. Rehab Referral and Ticket Holder respectively,
- Box 6. became SNAP Recipient,
- Box 7. became SSI Recipient,
- Box 8. became Long-Term TANF,
- Box 9. became TOTAL (For QTR.), and
- Box 10. became TOTAL (YTD).

Changes were also made to the instructions for ETA Form 9058 to reflect these updates.

Note. SWAs must accept the type of documentation indicated in the revised ETA Form 9061 and its instructions and in TEGL 30-11, issued on May 24, 2012, and may not require additional documentation from employers and/or representatives that sets a higher standard of proof of eligibility.

ETA Form 9061, Individual Characteristics Form and Its Instructions were revised as follows:

- 1) Provided the appropriate documentary evidence required for the two new unemployed veteran groups' eligibility determination;
- 2) Added questions to Boxes 20 and 21 that identify the two new unemployed veteran categories;
- 3) Removed reference to Empowerment Zone in Box 18, indicating that summer youth is no longer a target group due to expiration of the Empowerment Zones;
- 4) Deleted instructions for the two expired Recovery Act groups in Boxes 20 and 21; and
- 5) Added a new form of documentary evidence for Box 13 for service-disconnected disability, which clarifies and discontinues the use of Form Letter 21-802 once issued by Department of Veteran Affairs, and which is no longer available.

ETA Form 9062, Conditional Certification, and its Instructions were revised as follows:

- 1) Former target group references were deleted and all extended and new veteran categories were added to Box 13 (formerly Box 13a);
- 2) Box 13b, containing references to the two expired Recovery Act groups, was eliminated;
- 3) The "Note to Employer" was updated by adding a sentence explaining IRS's updated filing date requirements, the beginning and end of the Relief Period and information when the Relief Period date ends and the "28-day timely filing" after employment-start date requirement begins;
- 4) Part II. "EMPLOYER DECLARATION," Sec. 52 was added to the message to the SWAs; and
- 5) All boxes beginning with Box 13b were renumbered to reflect all final box changes.

Box 11 was not removed pending a potential extension by Congress of the non-veteran WOTC target groups.

The revised instructions indicate that all certifications for the veteran categories are preceded by the original veteran's target group 1996 statutory designation letter "B." Participating agencies and SWAs will check the category that has been determined eligible and pre-certify eligible requests accordingly.

ETA Form 9063, Employer Certification, and its Instructions were revised by:

- 1) Deleting all references to the two expired Recovery Act groups in Box 12;
- 2) Replacing them with the extended and new veteran categories in the same Box 12;
- 3) Updating the information under Part C. "CERTIFICATION"; and
- 4) Updating the "Comments to Employers" to reflect all VOW Act changes and new veteran provisions.

The revised instructions indicate that all certifications for the veteran categories are preceded by the original veteran target group statutory designation letter "B" followed by alpha-numeric identifiers, matching the changes in ETA Form 9058 – Report 1, to help the SWAs differentiate among the different veteran categories certified and facilitate reporting and communication between SWAs and employers or their representatives. SWAs will check the veteran group or category that has been determined eligible and certified in Box 12.

ETA Form 9065, Agency Declaration of Verification Results – Work Opportunity Tax Credit, now "Audit Summary Worksheet" is an optional ETA form for SWAs' internal use in recording the results of verification activities conducted by the SWAs. This form does not require revisions at this time (except updating the expiration and revision dates and changing the name of the ETA division, as mentioned above). This is no longer a required form to be submitted to ETA. The form's design and format is optional and states can change both the design and/or format. If the SWAs elect to use an alternative form to record verification results, the alternative form must contain the information that appears in the optional ETA form.

- 5. Transition Period for State Workforce Agencies (SWAs) and Employers.** SWAs, participating agencies, employers, and their representatives are required to start using the revised OMB-approved "June 2012" version of the ETA Forms. Specifically, ETA Forms 9061 and 9062 must be used to request certifications for new employees 90 days following the publication of this TEGL. After that date, SWAs should not accept other versions of ETA Form 9061 or Form 9062. During the 90-day transition period, SWAs may continue using earlier versions of Forms 9061 and 9062.

SWAs are required to report all program workload processing data using the revised ETA Form 9058 - Report 1 beginning with the report for the third quarter (Q3) of Fiscal Year 2012. SWAs are being granted an extension of the reporting deadline, August 15, 2012, for this quarter. Therefore, SWAs now must report all Q3 program data by September 19, 2012.

This extension provides ETA the time necessary to finalize updates and changes to the electronic ETA Form 9058 in EBSS, and for SWAs to prepare their quarterly report utilizing the revised form. SWAs will be notified by ETA regional WOTC coordinators when the electronic ETA Form 9058 has been updated and states can submit their reports into EBSS.

6. **Reporting for Expired Non-Veteran Target Groups.** As stated above, the WOTC program's legislative authority for all non-veteran target groups expired on December 31, 2011. TEGL No. 15-11 instructs SWAs to accept applications (certification requests) in anticipation of a potential retroactive reauthorization, but to hold off on processing the requests pending further legislative action and guidance from ETA. **During this hiatus period, SWAs should not report certification requests for any of the non-veteran target groups received after December 31, 2011, for any quarter, on ETA Form 9058 – Report 1 until ETA issues further guidance.**
7. **Paperwork Reduction Act Notice and Reporting Authority.** WOTC forms and instructions are approved according to the Paperwork Reduction Act of 1995 (PRA), under OMB Control Number 1205-0371. This authority is effective through June 30, 2015.

According to the PRA, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency may not conduct or sponsor a collection of information, nor is the public required to respond to a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

8. **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. All employers and third parties serving under contract as an employer's representative, for purposes of the employer's participation in the WOTC program, are required to use the January 2012, OMB cleared IRS Form 8850, as modified pursuant to IRS Notice 2012-13, to request certifications from the SWAs for their newly hired veterans. During the current hiatus, employers or their representatives can use the January 2012 IRS 8850 to submit certification requests for individuals hired as members of any or all of the expired non-veteran target groups. The submitted certification requests are subject to a potential retroactive reauthorization by Congress of the program beyond December 31, 2011. Also, as in the past, older versions of IRS 8850s can be submitted to the SWAs to request certifications for only the target groups listed on that form.

9. **Actions.** SWA administrators are requested to:

- Provide this information to all appropriate WOTC program staff, employers and their representatives, participating agencies and other interested partners; and
- Ensure that the SWAs and participating agencies implement these changes in agreement with the specific procedural guidance and required dates in this TEG.

10. **Inquiries.** Questions regarding this guidance should be directed to the appropriate WOTC Regional Coordinator listed on the WOTC program Web site at: <http://www.doleta.gov/wotc>.

11. **Attachments.**

- ETA Form 9058 – Report 1, Certification Workload and Characteristic of Certified Individuals
- ETA Form 9061, Individual Characteristics Form
- ETA Form 9062, Conditional Certification
- ETA Form 9063, Employer Certification
- ETA Form 9065, Audit Summary Worksheet
- IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit