

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
	CORRESPONDENCE SYMBOL OWI
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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-09 Change 1

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

FROM: JANE OATES *Jane Oates*
 Assistant Secretary

SUBJECT: Extension Period Granted to All State Workforce Agencies (SWAs) and Employers for the Uninterrupted Use of 2008 Work Opportunity Tax Credit (WOTC) Processing Forms

- Purpose.** The purpose of this advisory is to inform the SWAs that the Employment and Training Administration (ETA) is granting an extension period for employers or their representatives when filing the WOTC Individual Characteristic Forms (9061) or the Conditional Certification Form (9062).
- 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, dated 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; Training and Employment Guidance Letter (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; 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

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Processing Forms; TEGL No. 3-09, dated September 1, 2009; 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.** Section 1221 of the Recovery Act (P.L. Law 111-5) amended Section 51 of the Internal Revenue Code (IRC) by adding two new target groups to the WOTC Program: Unemployed Veterans and Disconnected Youth who begin work for an employer in 2009. The Internal Revenue Service (IRS) published two issuances, one on June 15, 2009, Notice 2009-28 and a clarifying issuance on August 31, Notice 2009-69, providing guidance on the statutory definitions of these two target groups. The IRS issuances also provided transition relief for employers who hired Unemployed Veterans and Disconnected Youth after December 31, 2008, and before September 17, 2009, if the employer submits the Pre-screening Notice to the designated local agency no later than October 17, 2009. To address the new provisions and statutory requirements of these two new groups, ETA updated the WOTC reporting, administrative and processing forms and other program related materials, including the EBSS Tax Credit Reporting System. All revised and updated forms were approved by the Office of Management and Budget (OMB) on August 2009 with a November 30, 2011, expiration date.

On September 1, 2009, ETA issued TEGL 3-09, transmitting to the SWAs and WOTC partners respectively all OMB approved reporting, processing, and administrative forms and program related Recovery Act materials. The guidance in the TEGL required the SWAs and participating employers to begin using the OMB-cleared ETA 9061, *Individual Characteristics Form*, or 9062, *Conditional Certification Form*, with the November 30, 2011, expiration date for their certification requests within two weeks from the date of issuance of that TEGL (i.e., September 16, 2009).

4. **Extension Period.** In recognition of the challenges of implementing the August 2009 forms under the timeframe set forth in TEGL 3-09 due to the changes required by the two new Recovery Act target groups, ETA is granting employers a transition relief period as follows:
 - a) Employers may continue to file with the SWAs, the November 2008, ETA Forms 9061 or 9062 for the new hires listed in these two forms only as part of their certification requests through October 17, 2009. SWAs are instructed to accept the November 2008, ETA Forms 9061 or 9062 during this extension period.
 - b) SWAs are instructed to process all timely certification requests filed by employers or their representatives for Recovery Act new hires who begin work on or after January 1, 2009, and may process those requests that comply with the following:

- As part of the certification requests, employers or their representatives filed a timely OMB approved 2009 IRS Form 8850 indicating one of the two Recovery Act new target groups: Unemployed Veterans or Disconnected Youth, and
- Accompanied the IRS 8850 with a November 2008, ETA Form 9061.

The above measure applies only to Recovery Act certification requests filed through October 17, 2009.

- c) For Unemployed Veterans' and Disconnected Youth requests, SWAs are required to obtain from adequate participating agencies the eligibility documentation necessary to determine eligibility under each of these target groups. Specifically, for Disconnected Youth certification requests without self-attestation forms, SWAs are required to send a "Needs Notice" informing employers that regardless of when a 2009 IRS Form 8850 was submitted, Self-Attestation Forms, to document criteria 2 and 4, are required for all applications under this target group as a condition for processing such requests.
 - d) The revised August 2009, ETA Forms 9061 or 9062 (with the November 30, 2011, expiration date) must be used in conjunction with the August 2009, IRS 8850 for all certification requests after October 17, 2009.
 - e) It is ETA's understanding from the IRS that employers may continue to file the June 2007, OMB approved IRS 8850 so long as the certification request is for any of the target groups listed in that form. SWAs are instructed to accept the June 2007, IRS 8850 during this extension period.
5. **Self-Attestation Requirements and Documents.** As indicated above, eligibility determinations for members of the Disconnected Youth target group require self-attestation to document (II) *Not regularly attending school*, and (IV) *Not readily employable due to lack of basic skills*. In an effort to ensure the timely processing of certification requests under this target group, SWAs are encouraged to modify current state self-attestation requirements and documentation to reflect the new categories' statutory requirements.
6. **New Target Groups' Designation.** The target group titles and letter designations for the two Recovery Act new WOTC groups are as follows:
- Unemployed Veterans - J
 - Disconnected Youth - K

SWAs are instructed to add these two target group designations to their WOTC processing and certification systems effective upon receipt of this TEGL.

7. **Reporting Authority.** Recovery Act reporting, program administration and processing forms and all other program-related materials are approved according to the Paperwork Reduction Act of 1995, under OMB No. 1205-0371, and all are dated August 2009. This authority is effective through November 30, 2011. SWAs are to report all program workload processing data using the August 2009, ETA Form 9058 beginning with the fourth quarter of Fiscal Year 2009, which closes on September 30, 2009. This information was not included in TEGL 3-09.

8. **Paperwork Reduction Act Notice.** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB Control Number. OMB has approved the collections of information contained herein and the revision thereof under OMB Control Number 1205-0371 (Expiration Date November 30, 2011). Public reporting burden for this particular collection of information is estimated to average 20 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection required to obtain or retain benefits (PL 111-5, Section 1221). Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of the Chief Information Officer, Attention: Departmental Clearance Officer, 200 Constitution Avenue, N.W., Room N-1301, Washington, DC 20210 or email DOL_PRA_PUBLIC@dol.gov and reference the OMB Control Number 1205-0371. Note: Please do not return the completed forms to this address.

The additional burden associated with the collections results from the Recovery Act's two new WOTC target populations, unemployed veteran and disconnected youth, eligible for employers to receive the tax credit retroactively to January 1, 2009. However, guidance was not issued to the SWAs on implementation of these two new target groups until September 1, 2009. Therefore, SWAs will need to request employers to provide the necessary documentation for applications submitted prior to September 1, for these two new target groups, thus creating the estimate of additional burden (see above).

Also, OMB has granted permission to continue using previous versions of the Forms 9061 and 9062 (November 2008 versions), which, when accompanied with the State Self-Attestation Forms, provide the same information otherwise included on the 2009 versions of the Forms that were modified and approved by OMB pursuant to Recovery Act requirements. (The request to continue using the November 2008 approved 9061 will not change the newly approved 9061 certification according to the IRS.) As long as the documentation for the two requirements for disconnected youth is obtained through the self-attestation process, all of the other documentation

will be available through the November 2008 form. The August 25, 2009, OMB-approved form added two new questions that provide information on the Recovery Act-authorized target groups in questions 20 and 21.

9. **Action Requested.** SWA administrators are requested to provide this TEGL to all WOTC State Coordinators and related program staff, and ensure the information and guidance provided is shared with the private sector businesses, their representatives, and all other Federal and state partners effective upon receipt of this TEGL.
10. **Inquiries.** Direct all questions to the appropriate Regional WOTC Coordinator.