

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> WOTC
	<b>CORRESPONDENCE SYMBOL</b> OWI
	<b>DATE</b> November 20, 2023

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-20, CHANGE 1**

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

**FROM:** BRENT PARTON /s/  
Principal Deputy Assistant Secretary

**SUBJECT:** Updated 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 Change 1 and the materials and forms it discusses supersede the guidance outlined in Training and Employment Guidance Letter (TEGL) No. 16-20, *Work Opportunity Tax Credit (WOTC) Procedural Guidance* (March 31, 2021).
2. **Action Requested.** This updated guidance becomes effective three months from the issuance date of this Change 1 TEGL. In the interim three-month transition period while SWAs are updating their processes and systems, SWAs should continue with the WOTC application process established in TEGL 16-20, and the current policies and procedures their state has in place as of the issuance date of this Change 1 TEGL. SWAs should update their processes and systems to administer the program requirements outlined in this TEGL. SWAs must apply this guidance to all certification requests including any “backlog” or unprocessed certification requests. SWAs should disseminate this transition period information to all appropriate staff, employers, participating agencies, and other interested partners.
3. **Summary and Background.**
  - a. Summary – This Change 1 TEGL provides SWAs with updated procedural guidance for processing and issuing determinations for WOTC certification requests submitted by employers, including any unprocessed certification requests submitted in prior years.
  - b. Background – Section 51 of the Internal Revenue Code of 1986 (26 U.S. Code section 51), as amended (the “Code”) establishes the WOTC. Congress has currently authorized WOTC to continue through December 31, 2025, under section 113 of Division EE of Pub. L. 116-260 -- Consolidated Appropriations Act of 2021. States can continue to

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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review and prepare WOTC certification requests when there is a WOTC authorization lapse but may not issue a certification.

WOTC provides incentives for employers to hire and employ individuals from certain targeted groups who face barriers to employment. Employers must request and receive a certification from the SWA verifying the new hire is a member of a targeted group before they can claim the tax credit. After receiving the required certification from the SWA, the employer may apply the work opportunity credit towards their taxes. (Note that 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).<sup>1</sup> More information on WOTC, including targeted group eligibility definitions, is available on the Internal Revenue Service (IRS) website (<http://www.irs.gov/wotc>) and the ETA website (<https://www.dol.gov/agencies/eta/wotc>).

#### 4. **Details.**

- a. **Roles and Responsibilities.** The U.S. Departments of Labor and the Treasury jointly administer the WOTC. The roles and responsibilities are discussed below:
  - i. **U.S. Department of the Treasury.** The U.S. Department of the Treasury, through IRS, administers all tax-related provisions of the WOTC.
  - ii. **U.S. Department of Labor.** The U.S. Department of Labor, through ETA, oversees the administration of the WOTC, including the allocation of grant funding to SWAs, which conduct the certification activities of employers' certification requests. 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.
  - iii. **State Workforce Agencies.** SWAs are the statutorily designated state agencies authorized to administer the operation of the WOTC certification process.<sup>2</sup> WOTC 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 the type of system(s) they use, including electronic submissions and by postal mail. Forms submission instructions can be found on SWAs' WOTC websites. The national SWA directory is available at: <https://www.dol.gov/agencies/eta/wotc/contact>.

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

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<sup>1</sup> 26 U.S.C. section 52 provides Special Rules for computing the work opportunity credit. Section 52(c)(2) of the Code makes the credit available to qualified tax-exempt organizations employing qualified veterans. Additional information about the WOTC for tax-exempt employers is found in section 3111(e) of the Code.

<sup>2</sup> Law designates SWAs as the only agencies that can issue a Certification (26 U.S.C. § 51(d)(12)). That statute refers to SWAs as State employment security agencies, established in accordance with 29 U.S.C. 49.

Work (SOW). ETA includes the SOW with annual WOTC funding allotment TEGLs. See [TEGL No. 06-22, Work Opportunity Tax Credit \(WOTC\) Initial Funding Allotments for Fiscal Year 2023](#), for a sample SOW.

- b. WOTC Certification Request Forms.** The processing forms used to complete WOTC certification requests are available online on the ETA website at: <https://www.dol.gov/agencies/eta/wotc/how-to-file/>. ETA updates the website with the Office of Management and Budget (OMB) approved forms when there are WOTC program or legislative updates that require form changes (for example, a form revision for the addition or removal of a targeted group). Employers and SWAs use the IRS and ETA Forms detailed below to submit and process WOTC certification requests:
- i. **IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit.** This is the form employers must use to pre-screen job applicants and to make a written request to the SWA to certify an individual as a member of a targeted group(s), for purposes of qualifying for the work opportunity credit. 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 online at: <https://www.irs.gov/forms-pubs/about-form-8850>. Additional information on IRS Form 8850 and the pre-screening requirement is available on the IRS website (<http://www.irs.gov/wotc>) and in TEGL section 4.d "WOTC Application Process."
  - ii. **ETA Form 9061, Individual Characteristics Form.** This form is used together with IRS Form 8850 by employers and their employees, to request certification of the employee under any targeted group. Additionally, ETA Form 9061 provides examples of supporting documentation that SWAs will accept for each targeted group. The ETA Form 9061 and its instructions is available at: <https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/Attachment%20I%20-%20ETA%20Form%209061%20-%20Individual%20Characteristics%20Form.pdf>. Note: The website provides ETA Form 9061 in Spanish, to help Spanish speaking applicants successfully complete the form in English.
  - iii. **ETA Form 9062, Conditional Certification.** The employer uses this form rather than 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.<sup>3</sup> The ETA Form 9062 and its instructions is available at: <https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/Attachment%20II%20-%20ETA%20Form%209062%20-%20Conditional%20Certification.pdf>.

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<sup>3</sup> 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 Centers, WIOA grantees, School to Work Transition grantees, Vocational Rehabilitation agencies, city and county welfare offices, Veterans' Affairs offices, and other organizations that serve the designated categories of workers.

- iv. **ETA Form 9175, Self-Attestation Form (SAF) for Qualified Long-term Unemployment Recipient (LTUR).** An applicant uses this form only for LTUR certification requests, to facilitate processes used by SWAs to make eligibility determinations for the LTUR targeted group. Only the individual seeking to be certified as a member of the LTUR targeted group should complete the SAF. When the job applicant's unemployment insurance (UI) data are available – specifically, UI wage records and/or UI claim records, SWAs should issue determinations to employers (certifications or denials) based on available wage data information. When there is an absence of UI wage records and/or UI claims records, SWAs may use ETA Form 9175 to make an eligibility determination. The ETA Form 9175 and its instructions is available at:  
<https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/Attachment%20III%20-%20ETA%20Form%209175%20-%20LTUR%20Self%20Attestation%20Form.pdf>.

**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. The completion of IRS Form 8850 by the job applicant 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](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.

- c. **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.
- i. **Intake Phase:** During the intake phase, SWAs collect required forms and supporting documentation that is necessary to verify WOTC eligibility. SWAs and employers should follow the guidance outlined below for correct submission of completed certification requests.

**Submission Methods:** SWAs have the discretion to determine preferred submission method(s) for employers to submit certification requests in their state, depending on the SWAs' capacity and resources. SWAs should inform employers of preferred submission methods, such as fax or online/electronic application portal submission, by providing this information on their WOTC websites. Some states that have automated their intake, verification, and notification systems may prefer e-file submission method(s), and ETA encourages states to automate their WOTC processes to the extent feasible. However, there is no specific requirement that employers must

e-file WOTC certification requests (required forms and/or supporting documentation) for their certification requests to be accepted and processed by the SWA. In circumstances when a SWA uses an automated system to receive and process certification requests, and an employer does not have access to, or is unable to use that system, SWAs should identify an alternative method(s) for application submission consistent with IRS Notice 2012-13, available at: <https://www.irs.gov/pub/irs-drop/n-12-13.pdf>. Therefore, SWAs must make available to employers at least two (2) acceptable submission methods, which may include: 1) electronic; 2) postal mail and/or 3) fax.

**Timely Submission Requirements:** SWAs must update their WOTC websites to communicate that effective February 20, 2024, employers will be required to submit IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, together with either: 1) ETA Form 9061, *Individual Characteristics Form*, or 2) ETA Form 9062, *Conditional Certification*, no later than the 28<sup>th</sup> calendar day after the employee begins working for the employer. For certification requests submitted by postal mail, the submission must be postmarked no later than the 28<sup>th</sup> calendar day after the employee begins working for the employer. SWAs have noted that receiving IRS Form 8850 separately from ETA Form 9061 / ETA Form 9062 creates significant delays in the certification process. While IRS Form 8850 and ETA Form 9061/9062 do not need to be submitted simultaneously, employers must submit both forms (IRS Form 8850 and ETA Form 9061/9062) to the SWA within 28 days of the new hires' start date. SWAs and employers must follow the instructions below in section 4.c.iii, "Notification Phase" when employers submit supporting documentation separately from the certification request (IRS Form 8850 and ETA Form 9061/9062).

**Electronic Signatures:** SWAs may accept electronic signatures or ink signatures for the required signatures across all WOTC processing forms. SWAs and employers must put proper controls in place to ensure that electronic signatures are safeguarded and that electronic signatures are signed by the correct individual(s). IRS Notice 2012-13 provides guidance on electronic signature requirements for IRS Form 8850 and ETA recommends that SWAs apply this guidance to ETA's WOTC processing forms.

**Initial Review:** 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 (IRS Form 8850 and ETA Form 9061/9062) was submitted in a timely manner and is complete. Additional information about the initial review process is available in section 4.i "Initial Review."

States' policies and procedures must adhere to the provisions in the Code (26 U.S.C. §51 and §52), related Treasury regulations (26 C.F.R. §1.51-1, 1.52-1, 1.52-2, and 1.52-3), any applicable sub-regulatory guidance, ETA procedural guidance, and uphold the integrity of ETA's WOTC certification process. SWAs must not allow

employers to revise the IRS Form 8850 and/or ETA Form 9061/9062 after the 28th calendar day of the new hire's start date (for example, altering a certification request by selecting new targeted groups, or providing a different Employer Identification Number (EIN) or applicant social security number). Employers / consultants should verify the EIN provided on IRS Form 8850 is the appropriate EIN to use on certification requests submitted to the applicable SWA. ETA recommends that SWAs develop their own policies and procedures to address typographical errors or similar issues on the WOTC Forms (for example, when an identifier is off by a digit or letter, or two characters are transposed).

- ii. **Verification Phase:** Once an employer submits to the SWA a complete and timely certification request, the SWA must determine whether the employee meets the requirements to be certified as a member of the targeted group(s) that the employer specified on both IRS Form 8850 and ETA Form 9061/ETA Form 9062. SWAs may choose to conduct a review of each verification result before issuing a determination. Establishing this type of quality review process is supported under WOTC SOW activities. SWAs should follow the guidance outlined below for correct verification activities for employer certification requests.

**Supporting Documentation:** State coordinators and other Wagner-Peyser Employment Service staff rely on the information provided on the IRS Form 8850 and ETA Form 9061/9062, as well as required supporting documentation, to verify applicants' targeted group eligibility. As necessary, states use supporting documentation submitted by the employer and/or other documentary evidence available to the SWA to make eligibility determinations. Employers often specify more than one targeted group on IRS Form 8850 and ETA Form 9061. Depending on available data sources and automated processing capabilities, SWAs may be able to verify targeted group eligibility for multiple targeted groups simultaneously. Based on the applicant's targeted group eligibility verification results, the SWA will issue a notification for the employer.

Without the required supporting documentation, SWAs may be unable to verify that an employer hired a qualifying member of a WOTC targeted group. Employers will continue to have the preferred option of directly submitting supporting documentation with a completed certification request (IRS Form 8850 and ETA Form 9061/9062) to the SWA, all within 28 calendar days of the new hire's start date. SWAs will process these complete certification requests and issue determinations (certification or denial) based on the outcome of the eligibility determination review. Depending on the targeted group(s) specified on IRS Form 8850 and ETA Form 9061/9062, SWAs may have access to data, either internally or through a data-sharing agreement with a partner agency (i.e., MOU), that is needed to verify an individual meets targeted group eligibility requirement(s).

For example, the SWA may have internal access to State wage records for verifying long-term unemployment recipients (LTUR), or access to Social Security Administration records to verify SSI beneficiary recipients. Prior to application

submission, employers should confirm which data sources are accessible to the SWA, and which targeted groups require the employer to submit supporting documentation. SWAs should make this information available to employers on their WOTC websites and/or within their electronic WOTC portals.

There may be circumstances when employers will need additional time beyond the 28-day timeframe to obtain and submit supporting documentation to the SWA. When supporting documentation is not readily available within 28 days of the new hire's start date, employers will have the secondary option to specify that the supporting documentation is "forthcoming" by marking box 24 on ETA Form 9061. SWAs must follow the procedural guidance detailed in section 4.c.iii "Notification Phase" for when supporting documentation is noted as "forthcoming" with submission of ETA Form 9061.

**External Verification Requests:** ETA encourages SWAs to 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/residing in a state that differs from the state they are working in, based on where the employer's business is located. SWAs should also establish formal agreements with appropriate state agencies and other partner agencies to expedite verification of information employers submitted in the certification request, such as whether a new hire receives Temporary Aid to Needy Families (TANF) or was justice system-involved. SWAs must update their WOTC websites to communicate examples of supporting documentation that are acceptable for each targeted group, and which data sources are available to the SWA for eligibility determinations. Additional information about eligibility criteria and documentary evidence for targeted groups is listed in the ETA Form 9061 and the WOTC eligibility desk aid, available at: <https://www.dol.gov/agencies/eta/wotc/how-to-file>.

- iii. **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 sections 51 and 52 of the Code, sections 1.51-1, 1.52-1, 1.52-2, and 1.52-3 of the Treasury Regulations, and this TEG. If the SWA determines that the employee is a member of the targeted group(s) selected on IRS Form 8850 and ETA Form 9061/9062, the SWA will issue a certification using ETA Form 9063. However, if the SWA is not able to determine whether the new hire meets the eligibility requirements for the targeted group(s) selected, the SWA will issue a denial. In circumstances when the SWA needs additional information to complete the eligibility determination for a certification request, the SWA must issue a 'Denial Pending More Information' notification to the employer. SWAs should follow the guidance provided below for employer notifications following the completion of job applicant verification activities.

SWAs must issue a **Certification** notification (ETA Form 9063) to an employer when the SWA determines that an employee is a member of the targeted group specified on IRS Form 8850 and ETA Form 9061/9062.

SWAs must issue a **Denial** notification to an employer when the SWA determines that an employee is not a member of the targeted group specified on IRS Form 8850 and ETA Form 9061/9062. A denial notification must provide a basis for the denial. The reasons for a denial vary and may include that a new hire does not meet the eligibility criteria of the designated targeted group, or that a certification request was incomplete, not submitted timely, or included erroneous information.<sup>4</sup>

SWAs must issue a **Denial Pending More Information**, also known as an “Employer Needs” letter, when additional information is needed to complete verification activities. SWAs should use available data and supporting documentation to verify applicant targeted group eligibility and issue determinations. When additional information is needed to determine eligibility, the SWA must provide an “Employer Needs letter” that outlines missing/required information. At minimum, an Employer Needs letter must: 1) set forth the additional information and/or documentation that must be submitted; 2) include a one-year (365-calendar day) deadline for the employer’s response; and 3) communicate that the SWA will automatically deny the pending certification request if the employer does not submit the additional information and/or required documentation within the one year deadline. This denial will not be eligible for an appeal. See section 4.e “Employer Appeals” for additional information on the WOTC appeals process.

**Possible reasons for issuing a Denial notification:**

- **Failure to meet timely submission requirements.** An employer did not submit a complete certification request, IRS Form 8850 and either ETA Form 9061 or ETA Form 9062, 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. Forms are incomplete when they miss information requested on IRS and ETA WOTC Processing Forms, such as selected targeted group(s), employer information, job applicant information, and required signatures. SWAs should not review an employer’s written appeal for a denied certification request that was not timely submitted unless the question of timely submission is the subject of the appeal.
- **Does not meet eligibility requirements.** If the SWA’s review of an employer’s certification request yields that the employee does not meet the eligibility requirements of the targeted group that the employer specified on both IRS Form 8850 and ETA Form 9061/9062, the SWA will issue a Denial

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<sup>4</sup> 26 C.F.R. §1.51-1. The procedures outlined in the Treasury regulations 1.51-1(d)(6) and (7) provide that “the employer will not be allowed to claim a credit under section 51 with respect to any wages paid or incurred to an employee whose certification or request for certification is not timely,” and “if an individual has been certified as a member of a targeted group, and such certification is based on false information provided by such individual, the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.”



notification. SWAs must adhere to the eligibility requirements and necessary supporting documentation for the targeted group as indicated on the IRS and ETA Forms.

- **Certification request (WOTC processing forms and/or supporting documentation) was submitted by an unauthorized individual.** See section 4.d “Authorized Representatives” for additional information on unauthorized individuals.

**Possible reasons for issuing a Denial Pending More Information notification:**

- **Use of obsolete IRS and ETA Forms.** SWAs may deny a certification pending more information if an employer submits a certification request using obsolete IRS or ETA Forms. 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 IRS and ETA Forms if the targeted group is still active (pursuant to section 51 of the Code) and shown on the form. When there is a legislative change in targeted groups or other provisions of the WOTC, ETA will provide guidance to communicate the terms of a grace period to phase out obsolete forms, as needed.
  - **Incomplete supporting documentation.** SWAs may deny a certification pending more information if an employer submits a certification request (IRS Form 8850 and ETA Form 9061/9062) without the required supporting documentation. Under this TEGL, employers/consultants will have one year (365 calendar days) from the issuance date of the Employer Needs letter to submit the required supporting documentation before the SWA will deny the certification request.
- d. **Authorized Representative.** Historically, employers have authorized an individual to represent them for WOTC purposes by submitting an IRS Form 2848, *Power of Attorney and Declaration of Representative*,<sup>5</sup> or an equivalent form, to the applicable SWA(s). To reduce the administrative burden of reviewing, maintaining, and updating employers’ records of IRS Form 2848, and to establish more uniform guidance for employer representatives, ETA proposed a new form, ETA Form 9198, *Employer Representative Declaration Form*, during a recent Paperwork Reduction Act (PRA) information collection request (ICR). ETA Form 9198 was approved for use for three years, effective May 31, 2023, under OMB Control No. 1205-0371. The use of IRS Form 2848 for declaring authorized representatives under WOTC will be discontinued effective May 31, 2024 (the OMB expiration date for IRS Form 2848, currently in use as of the date of this TEGL). All previously submitted IRS Forms 2848 will be removed from SWAs’ systems and automatically expire on May 31, 2024. Any employers that wish to designate an authorized representative for WOTC purposes after May 31, 2024, will be required to submit the authorization using ETA Form 9198, regardless of whether they previously

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<sup>5</sup> More information on the IRS Form 2848 is available at: <https://www.irs.gov/forms-pubs/about-form-2848>.

submitted an IRS Form 2848. Employers and SWAs must follow the procedural guidance outlined below for use of ETA Form 9198.

**i. ETA Form 9198, *Employer Representative Authorization Form*.**

To facilitate an employer's certification requests on behalf of an employer, including the submission of WOTC pre-screening forms (i.e., IRS Form 8850), an individual must be listed on the ETA Form 9198 as an authorized representative of the employer. SWAs may request that employers attach an ETA Form 9198 with each individual request or set of certification requests. In cases where an employer does not submit an ETA Form 9198 with each individual or set of certification requests, a SWA may use the valid ETA Form 9198 that is on file for that employer's EIN. Only one EIN may be provided per employer representative authorization form. SWAs should not process a certification request nor communicate with an individual who is not listed as an authorized representative on an employer's ETA Form 9198 that is on file with the SWA at the time the certification request is submitted. ETA advises SWAs to automatically deny certification requests submitted by unauthorized individuals. SWAs should not communicate updates regarding an employer's certification request with individuals listed on ETA Form 9198 if the form was submitted to the SWA after the WOTC certification request (IRS Form 8850 and ETA Form 9061/9062) was submitted to the SWA.

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

- Signature (on behalf of the employer) and Submission of IRS Form 8850 and ETA Forms 9061, 9062 and/or 9175;
- Submission of missing information/documentation that is necessary to complete an employer's certification request;
- Providing updates or clarifying information to a SWA regarding an employer's certification request; and
- Providing/receiving copies of any notices related to an employer's certification request.

An employer's authorization will automatically terminate five years from the date it is signed by the employer, unless revoked or withdrawn earlier (by either party).

Authorized representatives should not make changes to the information provided by the employee or employer 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 revised 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 ETA Form 9198 on file at the time the employer requests certification, and if box 2 of the Form, "Representative(s): Check if to be sent copies of notices and communication," is selected by the employer. If the SWA does not have an ETA Form 9198 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 only. The ETA Form 9198 and its instructions are available online at:

<https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/Attachment%20IV%20-%20ETA%20Form%209198%20-%20Employer%20Representative%20Declaration%20Form.pdf>.

- e. **Employer Appeals.** After an employer receives a denial from a SWA for a complete, timely submitted certification request, an employer may submit a written appeal to the SWA within 90 calendar days 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, for example, 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 the employer submits the required supporting documentation by the deadline specified above, and the SWA did not consider the submitted documentation when issuing the determination, the employer may appeal the determination. The SWA will then review and redetermine the certification request based on certification requirements of the Code and Treasury regulations, taking into consideration the additional supporting documentation submitted. If an employer disagrees with a SWA's decision on an appeal, an employer may submit an appeal in writing (with supporting documentation and other relevant information) to the ETA Regional Administrator for a determination review. The ETA Regional Office will issue the final determination on the matter. The WOTC Regional Office contact information is available on the ETA WOTC website at: <https://www.dol.gov/agencies/eta/wotc/contact>.
- i. **Supporting Documentation Policy:** When an employer marks that supporting documentation is forthcoming on ETA Form 9061, the employer will have an additional 365 calendar days (beginning the day after the issuance date of the Employer Needs Letter) to submit the required supporting documentation for the targeted group(s) specified on IRS Form 8850 and ETA Form 9061/9062. The SWA will not determine the pending certification request until after the supporting documentation is submitted, or the one-year deadline has expired, whichever comes first. If an employer does not submit the required supporting documentation by the deadline, the SWA will process the pending certification request as is, based on any information/eligibility data that is available to the SWA, and issue a determination. If the certification request is denied, the denial determination will be final and ineligible for an employer appeal. If the SWA determines the applicant meets the eligibility requirements of the targeted group(s) selected on IRS Form 8850 and ETA Form 9061/9062, the SWA will issue a certification for the employer for the targeted group that results in a higher tax credit for the employer.
- ii. **Certification Redetermination Policy:** If the original certification request was certified for a targeted group that results in a lower tax credit (for a targeted group that was also initially selected on IRS Form 8850 and ETA Form 9061/9062), the employer may submit an appeal request for a certification redetermination. If the

employer appeals the SWA's certification determination (for an alternate targeted group that results in a higher tax credit), the SWA is not required to process the employer's appeal. The decision to process employer appeals for certification redeterminations will be at the discretion of the SWA. ETA encourages SWAs to update their WOTC state policies and standard operating procedures to notify employers of their state-specific policy on appeals and redeterminations.

**Note:** This appeal process has changed from the process specified in ETA Handbook 408 and TEGL 16-20. In particular, the previous procedural guidance allowed for a one-year appeal timeline, and an additional level of review by 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.

- f. **Workflow Process to Eliminate Backlog.** Many states have adjusted their certification processes to both process current year submissions and eliminate their backlog of certification requests (applications pending review and processing by the SWA). 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.
- g. **WOTC Performance Reporting and Administrative Forms.** SWAs use the forms below for administrative purposes:
  - i. **ETA Form 9058** – *WOTC Report 1, Certification Workload and Characteristics of Certified Individuals*. This form collects program activity by the SWAs and is submitted to 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.
  - ii. **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.
  - iii. **ETA Form 9063**, *Employer Certification*. The SWA issues this form to an employer (or its representative) to inform the employer that the employee has been certified as 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 as needed.

With the exception of ETA Form 9063, ETA's WOTC administrative forms are available online at: <https://www.dol.gov/agencies/eta/wotc/resources>. These forms are available for use by SWAs only.

- h. Recordkeeping for SWAs.** States must keep copies (hard copy or electronic) of IRS Forms 8850, ETA Forms 9061, 9062, 9063, denial letters, supporting documentation, and any other forms relating to certification requests (including ETA Form 9175) for a minimum of three years after issuance of a determination (certification or denial). IRS publishes guidance to employers on IRS record-keeping responsibilities, and 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 and Employers 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>.
- i. 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.
- j. 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 that SWAs review certifications for the following:
- Timely submission of required forms and documentation;
  - Completeness of forms (for example, signatures and dates);
  - Review of available data (for example, Unemployment Insurance Wage Records, public welfare benefits case number/letter, etc.);
  - Accuracy of supporting documentation;
  - Forms were submitted by the employer or the employer's authorized representative;
  - The applicant is a first-time hire for the employer seeking certification.

In addition to verifying that an individual is a member of the WOTC targeted group selected on IRS Form 8850 and ETA Form(s), SWAs must implement audit verification activities to ensure certifications issued are for "first-time hires." Pursuant to section 51(i)(2) of the Code, "nonqualifying rehires," is defined as an individual who had been employed by the employer seeking WOTC certification at any time prior to their hiring date, and rehires are ineligible for WOTC certification.<sup>6</sup> SWAs will compare the state's available wage data to the information employers provide on IRS Form 8850, including the EIN, employee's social security number, and applicant hire date, to verify that: (1) the employee receives/d wages from the employer; and (2) the employee did not receive

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<sup>6</sup> Section 51(i)(2) of the Code states that "No wages shall be taken into account under subsection (a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time."

wages from the employer prior to their hire date, per IRS Form 8850. SWAs will check for wage records preceding the new employee's hire date, based on the availability of data and SWA capacity. When a SWA determines that an employer certification was issued for a nonqualifying rehire, the SWA will issue a Denial notice. ETA will not require SWAs to review employers' appeals for certification requests that do not meet the eligibility requirements of section 51(i)(2) of the Code. This verification activity should be completed as part of the SWA's quarterly audit activities.

**Incorrect Determinations:** If a SWA issues an incorrect denial, the SWA must re-determine the certification request and, where the certification request meets eligibility requirements, issue a certification. If a SWA issues an incorrect certification, the SWA must revoke the certification using the directions below.

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 as 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.

5. **Inquiries.** Please direct all questions to the appropriate WOTC Regional Coordinator, listed on the ETA WOTC website at: <https://www.dol.gov/agencies/eta/wotc/contact>.
6. **References.**
  - Training and Employment Guidance Letter No. 16-20, *Work Opportunity Tax Credit (WOTC) Procedural Guidance* (March 31, 2021),

- <https://www.dol.gov/agencies/eta/advisories/training-and-employment-guidance-letter-no-16-20>;
- Section 51 of the Internal Revenue Code (26 U.S.C. §51), [https://uscode.house.gov/view.xhtml?req=\(title:26%20section:51%20edition:prelim\)#51\\_1\\_target](https://uscode.house.gov/view.xhtml?req=(title:26%20section:51%20edition:prelim)#51_1_target);
  - Section 52 of the Internal Revenue Code (26 U.S.C. §52), <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title26-section52&num=0&saved=%7CKHRpdGxIOjI2IHNIY3Rpb246NTEgZWRpdGlvbjpwcmVsaW0p%7C%7C%7C0%7Cfalse%7Cprelim>;
  - Department of the Treasury Regulations under sections 1.51-1, 1.52-1, 1.52-2, and 1.52-3 of the Code of Federal Regulations (26 C.F.R. §1.51-1, 1.52-1, and 1.52-3), <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1>; and
  - Section 113 of Division EE of Public Law 116-260 -- Consolidated Appropriations Act of 2021, <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>.

**7. Attachment(s).**

- Attachment I: Notice of Invalidation (NOI)
- Attachment II: Notice of Revocation (NOR)