

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. 24-12

TO: STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS

FROM: JANE OATES
Assistant Secretary



SUBJECT: Reauthorization of the Work Opportunity Tax Credit Program and Continuation of the VOW to Hire Heroes Act Veteran Groups and Provisions

1. **Purpose.** To inform the State Workforce Agencies (SWAs) of the retroactive legislative reauthorization of the Work Opportunity Tax Credit (WOTC) for non-veteran target groups and the Empowerment Zones that expired on December 31, 2011, and continuation of the WOTC for veteran groups, including the VOW to Hire Heroes Act of 2011 (VOW Act) expanded veteran groups. To provide guidance to SWAs, participating agencies and other Federal and State partners for processing WOTC certification applications.

2. **References.**

- Sections 309 and 327 of the American Taxpayer Relief Act of 2012 (Pub. L. 112-240);
- Section 261 of the VOW to Hire Heroes Act of 2011 (Pub. L. 112-56) (VOW Act);
- The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act);
- Internal Revenue Code of 1986, Section 51, as amended;
- Internal Revenue Service (IRS) Notice 2013-14 (March 7, 2013);
- IRS Notice 2012-13 (February 27, 2012);
- Training and Employment Guidance Letter (TEGL) No. 10-12, *Guidance for Work Opportunity Tax Credit (WOTC) American Recovery and Reinvestment Act of 2009 (Recovery Act) Two Expired Target Groups' Applications*;
- TEGL No. 4-12, *Revised Forms for the WOTC Program for Implementation of the Veterans Opportunity to Work to Hire Heroes Act of 2011 (VOW Act) Provisions and Other Program Changes*;
- 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);
- ETA Handbook No. 408, November 2002, Third Edition (the Handbook); and
- August 2009 Addendum to the Handbook.

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3. **Background.** The VOW Act amended and expanded the definition of the qualified veteran target group. Specifically, the VOW Act extended the availability of existing veteran categories and amended the definition of “qualified veteran” by adding two new unemployed veteran categories: a) veterans certified as having aggregate periods of unemployment of at least 4 weeks but less than 6 months in the year prior to being hired, and b) veterans certified as having aggregate periods of unemployment of 6 months or more in the year prior to being hired. The VOW Act also significantly increased the amount of qualified wages taken into account for purposes of calculating the credit for certain veteran groups, which resulted in certain increased tax credits available to employers that hired individuals from this group. Finally, the VOW Act also made a reduced WOTC available to certain tax-exempt organizations for hiring qualified veterans. The Employment and Training Administration (ETA) provided guidance in TEGL No. 30-11 regarding eligibility for the amended and expanded veteran target group and for the tax-exempt organizations permitted to claim the WOTC for hiring veterans. The provisions in the VOW Act applied to new employees who began working for an employer on or after November 22, 2011, and before January 1, 2013.

On December 31, 2011, the legislative authority for all WOTC non-veteran target groups expired. ETA provided guidance in TEGL No. 15-11 regarding requests for certifications for the non-veteran target groups submitted to SWAs during the authorization lapse. This guidance directed states to continue accepting applications for employees in these groups hired on or after January 1, 2012, but to postpone final processing of those certification requests pending further legislative action and guidance.

4. **Overview of New Legislative Provisions.** On January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012. Section 327 reauthorizes the Empowerment Zones and Section 309 reauthorizes the extension of the WOTC program.

In summary, this legislation:

- Continues the uninterrupted implementation of all veteran target groups, including those implemented under the VOW Act through December 31, 2013.
- Retroactively reauthorizes all WOTC non-veteran target groups from December 31, 2011 through December 31, 2013.
- Provides legislative authorization for Empowerment Zones from December 31, 2011 through December 31, 2013. (**See Section 10 of this TEGL for more detailed information on the status of Empowerment Zones.**)
- Does not reauthorize the Recovery Act disconnected youth and Recovery Act unemployed veteran target groups that expired at the end of 2010.

5. **Veteran Target Groups.** The following WOTC veteran groups and categories were extended, expanded or created under the VOW Act, and are now extended through the American Taxpayer Relief Act. The VOW Act’s provisions apply to individuals who begin to work for an employer on or after November 22, 2011, and before January 1, 2014. The groups are:

- Veterans receiving Supplemental Nutritional Assistance Program (SNAP) (formerly food stamps) benefits,
- Veterans with a service-connected disability hired within 1 year of leaving active duty,
- Veterans with a service-connected disability unemployed for at least 6 months,
- Veterans unemployed for at least 4 weeks, and
- Veterans unemployed for at least 6 months.

Note. For additional information on the eligibility requirements for these veteran groups, visit the following page on the WOTC Website:
<http://www.doleta.gov/business/incentives/opptax/eligible.cfm>.

6. **Tax-Exempt Organizations.** The VOW Act made WOTC available to qualified tax-exempt organizations. Specifically, the Act amended the Internal Revenue Code to provide that qualified tax-exempt organizations that hired qualified veterans could claim a credit against the employer's share of social security tax. This provision remains in effect and the reauthorization of WOTC means that qualified tax-exempt organizations may continue to claim WOTC for qualified veterans that begin work for the organization before January 1, 2014. This provision only pertains to qualified veterans and the tax credit is not available for tax-exempt organizations for the hiring of non-veteran target groups. More information on tax-exempt organizations is available in TEGE No. 30-11 and IRS Notice 2012-13.
7. **Transition Relief for Employer Submission of Form 8850 for Qualified Veterans.** Section IV(2) of IRS Notice 2013-14 provides employers, including qualified tax-exempt organizations, with transition relief from the 28-day filing requirement by providing additional time to file IRS Form 8850 with the SWAs. Under the Notice, an employer who hires a qualified veteran on or after January 1, 2013, and on or before March 31, 2013, is deemed to satisfy the 28-day filing requirement if the employer submits IRS Form 8850 to the SWA to request certification not later than April 29, 2013. The transition relief is not available to employers that hire qualified veterans after March 31, 2013, and before January 1, 2014, in which case the regular 28-day rules applies.
8. **Non-Veteran Target Groups.** The following WOTC non-veteran target groups were reauthorized retroactively through December 31, 2013. ETA provided interim instructions to SWAs in early January to indicate that they may finish processing and begin issuing determinations on applications for non-veteran groups received during the legislative hiatus (those instructions are available on the following page on the WOTC Web site: <http://www.doleta.gov/business/incentives/opptax/documents/interimInstructions2013.pdf>).

The retroactive extension applies to individuals who began to work for an employer on or after December 31, 2011, and before January 1, 2014. The eight non-veteran target groups are:

- Long-term Temporary Assistance for Needy Families (TANF) recipients,
- Short-term TANF recipients,
- 18-39 year-old SNAP (formerly food stamps) recipients,

- 18-39 year-old designated community residents residing in EZs (See Section 10 of this TEGL for more detailed information on the status of Empowerment Zones),
- Vocational Rehabilitation referrals,
- Ex-felons,
- Supplemental Security Income recipients, and
- Summer youth employees (See Section 10 of this TEGL for more detailed information on the status of Empowerment Zones).

Note. For additional information on the eligibility requirements for these non-veteran groups, visit the following page on the WOTC Web site:

<http://www.doleta.gov/business/incentives/opptax/eligible.cfm>.

9. Transition Relief for Employer Submission of Form 8850 for Non-Veteran Groups.

Section IV(1) of IRS Notice 2013-14 provides taxable employers with transition relief from the 28-day filing requirement by providing additional time to file IRS Form 8850 with the SWAs. Under the Notice, a taxable employer who hires a qualified member of any of the eight non-veteran target groups on or after January 1, 2012, and on or before March 31, 2013, is deemed to satisfy the 28-day filing requirement if the employer submits IRS Form 8850 to the SWA to request certification not later than April 29, 2013. The transition relief is not available to an employer that hires a qualified non-veteran target group member after March 31, 2013, and before January 1, 2014, in which case the regular 28-day rule applies.

10. Empowerment Zones. According to the current instructions to IRS Form 8850, while the American Taxpayer Relief Act of 2012 did provide legislative reauthorization for the Empowerment Zone (EZ) designation, to extend the designations, state and local governments must amend their nominations for designation to change the termination date to December 31, 2013. These designations expired at the end of 2011. The IRS is currently working with the U.S. Departments of Agriculture and Housing and Urban Development to provide guidance on amending nominations for designation.

SWAs are instructed to continue to accept certification requests for the Summer Youth and Designated Community Resident (DCR) groups, which require residence in the expired EZs, but to hold off on processing those requests pending further guidance from ETA. It is expected that SWAs will be able to process the pending applications as soon as state and local governments amend their nominations for designation to change the termination date to December 31, 2013. SWAs may continue to process timely filed certification requests for eligible members of the DCR target group who reside in Rural Renewal Counties.

11. ETA Program Forms. Through separate guidance, ETA will issue revised versions of the following three processing forms: 1) ETA Form 9061, *Individual Characteristics Form*; 2) ETA Form 9062, *Conditional Certification Form* (and its Spanish version); and 3) ETA Form 9058, *Certification Workload and Characteristics of Certified Individuals Form*. These forms and their instructions are being revised to reflect the reauthorization of the WOTC program and to add the summer youth target group. SWAs can continue to use the current versions of these forms until this guidance is issued.

12. **IRS Form 8850.** On April 1, 2013, the IRS released a substantively unchanged Form 8850 and revised instructions for that form. The form and instructions are available at: www.irs.gov/form8850.

13. **Action Requested.** 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 WOTC State Coordinators and participating agencies implement the requirements outlined in this TEGE effective the date the guidance is issued.

14. **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>.

15. **Attachment.**

- IRS Notice 2013-14 (March 7, 2013)

Notice 2013-14

I. PURPOSE

This notice provides guidance on § 309 of the American Taxpayer Relief Act of 2012 (the Act), Pub. L. No. 112-240, enacted on January 3, 2013, and transition relief for employers claiming the Work Opportunity Tax Credit (the WOTC) under §§ 51 and 3111(e) of the Internal Revenue Code (the Code), as extended by the Act. Section 309 of the Act amended § 51 to extend the WOTC through December 31, 2013, for taxable employers and for qualified tax-exempt organizations. Specifically, this notice provides employers that hire members of targeted groups additional time beyond the 28-day deadline in § 51(d)(13) of the Code for submitting Form 8850, Pre-screening Notice and Certification Request for the Work Opportunity Credit, to Designated Local Agencies (DLAs).

II. BACKGROUND

Section 51 of the Code provides for the WOTC for employers that hire individuals who are members of targeted groups. An employer must obtain certification that an individual is a targeted group member before the employer may claim the credit. Certification of an individual's targeted group status is obtained from a DLA. A DLA is a State employment security agency established in accordance with 29 U.S.C. §§ 49-49n. An employer must submit Form 8850 to the DLA not later than the 28th day after the individual begins work for the employer.

The Returning Heroes and Wounded Warriors Work Opportunity Tax Credits, contained in § 261 of the VOW to Hire Heroes Act of 2011, Tit. II, subtitle D, of Pub. L. No. 112-056 (the VOW Act), enacted on November 21, 2011, amended § 51 of the Code to extend and expand the WOTC to employers hiring certain qualified veterans (as defined in § 51(d)(3)) before January 1, 2013. The VOW Act did not extend the WOTC for targeted group members other than qualified veterans. Thus, the WOTC was not available with respect to targeted group members who began work after December 31, 2011, other than qualified veterans.

The VOW Act also amended §§ 52 and 3111 to make a reduced WOTC available to organizations described in § 501(c) and exempt from taxation under § 501(a) ("qualified tax-exempt organizations") as a credit against the employer share of social security tax imposed under § 3111(a). The reduced credit is available for qualified tax-exempt organizations that hire qualified veterans for which the WOTC would have been allowable under § 51 if the organization were not a qualified tax-exempt organization. The credit was first available to qualified tax-exempt organizations for qualified veterans hired on or after November 21, 2011. For additional guidance on the WOTC for qualified tax-exempt organizations and changes made to the WOTC under the VOW Act, see Notice 2012-13, 2012-9 I.R.B. 421.

Notice 2012-13 provided transition relief for all employers that hired any qualified veteran described in § 51(d)(3) of the Code on or after November 22, 2011, and before May 22, 2012. Those employers were considered to have satisfied the requirements of § 51(d)(13)(A)(ii) if they submitted the completed Form 8850 to the DLA to request certification not later than June 19, 2012.

III. AMENDMENTS MADE BY THE ACT

The Act extends the WOTC through December 31, 2013, for taxable employers hiring individuals in targeted groups as defined in § 51(d)(1) through (d)(10) of the Code, and for qualified tax-exempt organizations hiring qualified veterans as defined in § 51(d)(3) of the Code. This extension does not apply to the “unemployed veterans” or “disconnected youth” targeted group categories (as defined in § 51(d)(14) of the Code), which had expired as of January 1, 2011. As mentioned above, during 2012, the WOTC was available for employers hiring qualified veterans, and not for hiring members of other targeted groups. Thus, the Act retroactively extended the availability of the WOTC for taxable employers who hired individuals from those other targeted groups in 2012.

Because the Act did not amend §§ 52 or 3111(e), qualified tax-exempt organizations may continue to claim the WOTC under § 3111(e) only for hiring qualified veterans, and not for hiring any other targeted group members.

IV. TRANSITION RELIEF

Section 51(d)(13)(A) of the Code provides that an individual shall not be treated as a member of a targeted group unless (1) on or before the day the individual begins work, the employer obtains certification from the DLA that the individual is a member of a targeted group; or (2) the employer completes a pre-screening notice (Form 8850) on or before the day the individual is offered employment and submits such notice to the DLA to request certification not later than 28 days after the individual begins work.

Because the WOTC was extended retroactively for 2012 for members of targeted groups (other than qualified veterans), employers need additional time to comply with the

requirements of § 51(d)(13)(A) for those targeted groups. Similarly, because the WOTC for qualified veterans was set to expire for qualified veterans hired after December 31, 2012, employers that hire qualified veterans after December 31, 2012, may also need additional time to comply with the requirements of § 51(d)(13)(A). For these reasons, the Treasury Department and the IRS have determined that it is appropriate to provide employers with additional time to file Form 8850 with a DLA.

(1) Transition relief for taxable employers that hire members of targeted groups (other than qualified veterans)

A taxable employer that hires a member of a targeted group (as defined in § 51(d)(2) through (10), other than a qualified veteran described in § 51(d)(3)) on or after January 1, 2012, and on or before March 31, 2013, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) if it submits the completed Form 8850 to the DLA to request certification not later than April 29, 2013.

(2) Transition relief for all employers that hire qualified veterans

An employer that hires any qualified veteran described in § 51(d)(3) on or after January 1, 2013, and on or before March 31, 2013, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) if it submits the completed Form 8850 to the DLA to request certification not later than April 29, 2013.

DRAFTING INFORMATION

The principal authors of this notice are Shoshanna Tanner and Ligeia Donis of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding the WOTC, contact Ms. Tanner at (202) 622-6080

(not a toll-free number). For further information on how to claim the WOTC on behalf of tax-exempt organizations, contact Ms. Donis at (202) 622-6040 (not a toll-free number).