EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
	CORRESPONDENCE SYMBOL OWI
	DATE June 17, 2016

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 25-15

TO: STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARDS AND CHAIRS
STATE WOTC COORIDINATORS
AMERICAN JOB CENTERS

FROM: PORTIA WU
Assistant Secretary

SUBJECT: Work Opportunity Tax Credit 2015 Reauthorization

1. **Purpose.** To inform and provide procedural guidance to the State Workforce Agencies (SWAs), Participating Agencies, and Federal and State partners on the retroactive legislative reauthorization of all Work Opportunity Tax Credit (WOTC) target groups, the Empowerment Zones that expired on December 31, 2014, and the introduction of a new target group and WOTC ETA Forms. Also, to provide procedural guidance to SWAs for processing and issuing determinations for all certification requests.

2. **References.**
   - Sections 142 and 171 of the Protecting Americans from Tax Hikes (PATH Act) of 2015 (Pub. L 114-113);
   - Internal Revenue Code of 1986, Section 51, as amended (the Code);
   - Internal Revenue Service (IRS) Notice 2013-14;
   - IRS Notice 2012-13;
   - IRS Notice 2016-22;
   - IRS Notice 2016-28; and
   - PATH Act - WOTC Interim Instructions for the State Workforce Agencies.

3. **Background and Overview.** On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act) that extends and modifies the WOTC Program (Section 142) and the Empowerment Zones (EZs) (Section 171). In summary, the PATH Act:

   - Retroactively reauthorizes the following WOTC program target groups for a five-year period, from January 1, 2015 to December 31, 2019:
     - a qualified IV-A (TANF) recipient,
     - a qualified veteran,

RESCISSIONS	EXPIRATION DATE
None	Continuing

- a qualified ex-felon,
- a designated community resident,
- a vocational rehabilitation referral,
- a qualified summer youth employee,
- a qualified supplemental nutrition assistance program (SNAP) benefits recipient,
- a qualified SSI recipient, and
- a long-term family assistance (TANF) recipient.

- Provides for an extension of the Empowerment Zones for a two-year period, from December 31, 2014 to December 31, 2016.

- Introduces a new target group, Qualified Long-term Unemployment Recipients, for new hires that begin to work for an employer on or after January 1, 2016 through December 31, 2019.

4. **Procedural Guidance for 2015 Hiatus New Hires.**

   a. **For SWAs that processed all certification requests received during the 2015 hiatus.** SWAs that processed all certification requests received during the 2015 hiatus, and filed but did not issue those determinations, should now issue those certifications and denials to employers or their representatives.

   b. **For SWAs that did not process all certification requests received during the 2015 hiatus.** SWAs that received and filed, but did not process or conduct all required eligibility determination activities for certification requests received during the 2015 hiatus should conduct all required eligibility determination activities for certification requests received during the hiatus, and issue all final determinations (certifications and denials) to employers or their representatives.

   Please see Section 5 of this Training and Employment Guidance Letter (TEGL) for more detailed information on the status of the Empowerment Zones.

5. **Empowerment Zones.** The PATH Act provides an extension of the Empowerment Zones designations for two-years through December 31, 2016. Therefore, termination dates in State and Local government Empowerment Zones designations must be extended from December 31, 2014 to December 31, 2016. Please see IRS Notice 2016-28 for additional guidance on the extension of Empowerment Zone designations at: https://www.irs.gov/pub/irs-drop/n-16-28.pdf.

6. **Eligibility Determinations for Qualified Long-Term Unemployment Recipient.** A qualified long-term unemployment recipient is any individual who on the day before the individual begins work, or, if earlier, the day the individual completes the IRS Form 8850 as a prescreening notice in accordance with the certification provisions described in §51(d)(13)(A)(ii) of the Code, is in a period of unemployment that is: (i) not less than 27 consecutive weeks; and (ii) includes a period (which may be less than 27 weeks) in which the

individual received unemployment compensation under State or Federal law (see IRS Notice 2016-22).

a. To determine whether the individual has been in a period of unemployment for at least 27 weeks before the individual begins work as described above, SWAs will need to use unemployment insurance (UI) wage records. When there is an absence of UI wage records, SWAs may use the ETA Form 9175, Long-Term Unemployment Recipient Self-Attestation Form (SAF), provided by the new hire to make an eligibility determination (see Note on SAF below).

b. To determine whether the individual has received unemployment compensation under State or Federal law during a period of unemployment, SWAs will need to use UI claims records. Note: An individual is not required to be receiving unemployment compensation at the time they are hired. ETA recognizes that some individuals may have exhausted their unemployment compensation during a period of unemployment. In such cases, the State UI agency will have records, either in the current data base or in archives, of the individual's claim series.

Note on SAF: To facilitate the SWAs' eligibility determination and verification processes for this target group, ETA created a national SAF. A completed and signed SAF must be filed with a SWA as part of each certification request (accompanying IRS Form 8850 and ETA Forms 9061 or 9062) for this group or, if filed separately, within a reasonable period of time.

7. **Accessing Unemployment Insurance Claims and Wage Records.** SWAs that have not already done so must negotiate with their State UI agency to determine the most efficient and effective way to access the UI claims records and wage data. Claim and wage information is required to be kept confidential by the State UI agency, and may only be disclosed under certain circumstances. Regulations at 20 CFR 603.5(e) permit the disclosure of unemployment compensation information "to a public official for use in the performance of his or her official duties." Because the SWA is a public official, informed consent is not necessary.

   Note: Each SWA will have to enter into an agreement with its State's UI agency that includes a provision for protecting the data from unauthorized access (section 603.9) and provides for reimbursement for costs (603.8) except as set out below. The agreement must meet the terms and conditions set forth in section 603.10(b).

   To obtain information from the State UI agency, SWAs must provide a Social Security Number for each participant for whom claim or wage data is sought. In those instances where the SWAs anticipate a large volume of requests for data, the State UI agency may require that the request be made electronically.

   State UI agencies are not required to obtain reimbursement for providing the requested information if the amount of staff time in responding to the request is incidental and only nominal processing costs are involved in making the disclosure. SWAs that choose to use informed consent releases from employees will need to work with employers to ensure that informed consent releases are collected at the time of hire. Because confidentiality laws vary

by State, SWAs should work with their State UI agencies to determine the necessary form and content of the informed consent release.

8. **Qualified Wages and Tax Credit Caps Applicable to the Long-Term Unemployment Recipient Group**. The 1996 legislative "qualified wages" provisions that apply to most adult non-veteran target groups also apply to the new target group, as do the amounts of the tax credit employers can claim for certified new hires. Qualified wages for certified new hires under the Long-Term Unemployment Recipient target group are capped at $6,000 during the first year of employment, for a maximum tax credit of up to $2,400 depending on the number of hours the new hire works (i.e., how new hires meet the provisions of the Minimum Employment or Retention Period). Specifically:

   a. For WOTC certified new hires working at least 120 hours, employers can claim 25% of first year wages paid up to $6,000 for a maximum tax credit of up to $1,500; or

   b. For WOTC certified new hires working 400 hours or more, employers can claim 40% of first year wages up to $6,000 for a maximum tax credit of up to $2,400.

   Employers or their representatives may request certifications for individuals who start to work for an employer on or after January 1, 2016.

9. **Transition Relief for Employer Submission of Form 8850.** Section IV.A., page 4, of IRS Notice 2016-22, and IRS Notice 2016-40 available at: https://www.irs.gov/forms-pubs, provide employers, including qualified tax-exempt organizations, with transition relief from the 28-day timely filing requirement by providing additional time to file the pre-screening notice, IRS Form 8850, with SWAs.

   a. **Additional time for employers that hired or hire members of targeted groups (other than qualified long-term unemployment recipients) between January 1, 2015 and August 31, 2016.** An employer that hired or hires a member of a targeted group (described in § 51(d)(1)(A) through (d)(1)(I) of the Code) who began or begins work for that employer on or after January 1, 2015, and on or before August 31, 2016, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) of the Code if the employer submits the completed IRS Form 8850 to the SWA to request certification no later than September 29, 2016.

   b. **Additional time for employers that hired or hire long-term unemployment recipients between January 1, 2016 and August 31, 2016.** An employer that hired or hires an individual who is a long-term unemployment recipient (described in § 51(d)(1)(J) of the Code) and who began or begins work for that employer on or after January 1, 2016, and on or before August 31, 2016, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) of the Code if the employer submits the completed IRS Form 8850 to the SWA to request certification no later than September 29, 2016.

   c. **Application of 28-day requirement to individuals hired on or after September 1, 2016.** An employer that hires a member of a targeted group (described in § 51(d)(1)(A)

through (d)(1)(J) of the Code), including a long-term unemployment recipient, who begins work for that employer on or after September 1, 2016, is not eligible for the transition relief described in this notice.

10. **WOTC ETA Forms.** To help facilitate the eligibility determination and verification process, ETA issued the SAF and made minimal changes that reflect statutory requirements authorized under the PATH Act to the following Forms:
    - ETA Form 9175 (May 2016), Long-Term Unemployment Recipient Self-Attestation Form;
    - ETA Form 9058 (Revised May 2016), Report 1 - Certification Workload and Characteristics of Certified Individuals Form;
    - ETA Form 9061 (Revised May 2016), Individual Characteristics Form;
    - ETA Form Spanish 9061 (Revised May 2016), Individual Characteristics Form;
    - ETA Form 9062 (Revised May 2016), Conditional Certification Form;
    - ETA Form 9063 (Revised May 2016) Employer Certification Form; and
    - ETA Form 9065 (Revised May 2016), Agency Declaration of Verification Results Worksheet.

    The revised Forms are very similar to the old Forms, with the addition of the new target group and updated instructions. These Forms are available at: https://www.doleta.gov/business/incentives/opptax/forms.cfm. Additionally, the IRS Form 8850, Revised March 2016 - Pre-Screening Notice and Certification Request for the Work Opportunity Credit, and related instructions has also been updated to reflect legislative changes, and is available at https://www.irs.gov/pub/irs-pdf/f8850.pdf.

11. **Paperwork Reduction Act of 1995, Notice of Action and Reporting Authority.** The SAF and ETA Forms 9058, 9061, 9062, 9063, and 9065 were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and approved for use through November 30, 2016.

    According to PRA, no persons are required to respond to a collection of information unless such collection displays a valid OMB Control Number 1205-0371. The U.S. Department of Labor 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 provision 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).

12. **Guidance for SWAs and Employers Following ETA's Interim Instructions.** SWAs that received certification requests for the Long-term Unemployment Recipients (LTUR) new target group between January 1, 2016 and the day prior to the issue date of this TEGL can process those certification requests if they can access the required UI wage and claims records to make LTUR eligibility determinations. SWAs should issue final determinations (Certifications or Denials) to the respective employers or representatives beginning on the issue date of this TEGL.

However, if the UI wage records are not available to determine whether the individual has been in a period of unemployment for at least 27 weeks before the individual begins work as described above, SWAs must send "Needs Letters" to those employers and request that they file a signed and dated SAF within 30 days of the receipt date of the letter so the SWAs can process those requests and issue final determinations.

13. **Grace Period for States' and Employers' Automated Systems.** To allow States and the employer community time to modify their automated systems with the revised IRS and ETA Forms, ETA grants a 90-day grace period, which begins on the issue date of this TEGL and ends 90 calendar days later, if needed. During this grace period, employers and their authorized representatives will be required to file certification requests using other filing methods (e.g., via email, fax, scanned, mail) using the OMB Control Number 1205-0371 ETA Forms (Revised May 2016) and OMB Control Number 1545-1500 IRS Form 8850 (Revised March 2016) e 30, 2016 for all WOTC eligible groups. If you are not sure how your State accepts applications, contact the WOTC Coordinator in your State. A directory of State WOTC Coordinators is available at: https://www.doleta.gov/business/incentives/opptax/State_Contacts.cfm.

14. **Program Administration.** The SWA certification and program operation responsibilities will remain the same under the PATH Act. These responsibilities include: a) determining targeted group eligibility by conducting verification activities and issuing certifications and denials; b) establishing working partnerships with different participating agencies at the State and Local levels for issuing Conditional Certifications; c) complying with quarterly reporting requirements; and d) complying with requirements for records' retention time periods.

15. **Action Requested.** SWA administrators are requested to:

- Provide this information to all appropriate State WOTC coordinators and related program staff, employers and their representatives, participating agencies and other interested partners;
- Ensure that the SWAs and participating agencies administer the requirements outlined in this TEGL; and
- Use the WOTC ETA Forms (Revised May 2016) with an expiration date of November 30, 2016, and share them with related program staff, employers and their representatives, participating agencies, and other interested partners.

16. **Inquiries.** Questions regarding this guidance should be directed to the appropriate WOTC Regional Coordinator listed on the WOTC program Website at: http://www.doleta.gov/wotc.