

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION
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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 3-09 Change 2

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

FROM: JANE OATES
 Assistant Secretary

SUBJECT: Final Guidance to State Workforce Agencies (SWAs) and Employers for the Implementation of the Two American Recovery and Reinvestment Act (ARRA) of 2009 Work Opportunity Tax Credit (WOTC) Target Groups' Requirements

1. Purpose. The purpose of this advisory is to inform the SWAs about a change in guidance jointly reached by the Employment and Training Administration (ETA) and the Internal Revenue Service (IRS). ETA and IRS have jointly agreed to a number of processing changes that will allow the states to accept and process all ARRA certification requests submitted between January 1, 2009 and October 17, 2009, and beyond October 17, provided certain conditions are met.

2. References. The American Recovery and Reinvestment Act (ARRA) 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 Small Business and Work Opportunity Tax Credit Act of 2007 (Public Law 110-28); the Tax Relief and Health Care Act of 2006 (Public Law 109-432); Training and Employment Guidance Letter (TEGL) 3-09 Change 1, dated October 7, 2009, Extension to All State Workforce Agencies (SWAs) and Employers for the Uninterrupted Use of 2008 Work Opportunity Tax Credit (WOTC) Processing Forms; TEGL 3-09, dated September 1, 2009, Information and Guidance on the Two New Work Opportunity Tax Credit (WOTC) Targeted Groups Introduced by the American Recovery and Reinvestment Act of 2009; 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

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Uninterrupted Use of All 2007 and 2008 Work Opportunity Tax Credit (WOTC) Program Processing Forms; ETA Handbook No. 408, November 2002, Third Edition (the Handbook); and the updated August 2009 Addendum to the Handbook (Addendum, OMB No. 1205-0371).

- 3. Background.** Following the release of TEGL 03-09 and 03-09 Change 1, ETA and IRS received numerous inquiries for clarification around: 1) the use of the June 2007 or May 2009 version of the IRS Form 8850 for certification requests submitted prior to October 17, 2009; 2) the information that must be contained in youth self-attestation forms; and 3) whether states can accept employer created self-attestation forms that were submitted prior to October 17, 2009. The questions and concerns submitted to ETA and IRS are in regards to the workload and logistical challenges of resubmitting an August 2009 IRS Form 8850 and the numerous versions of youth self-attestation forms (SAFs) created by the states.
- 4. New Guidance.** To address the current challenges faced by the SWAs in processing all ARRA certification requests for the two new WOTC groups filed by employers/consultants, ETA announces the following changes:

A. Use of IRS Form 8850 -

Pursuant to our authority to determine procedures for administering the WOTC Program, and following communications with IRS, ETA has determined that timely submission of either the June 2007 or 2009 version of IRS Form 8850 satisfies the requirement to submit Form 8850 with the request for certification. Accordingly, SWAs are to accept and process immediately, all certification requests submitted by employers or their consultants for the two new ARRA groups using either the June 2007 or May 2009 OMB approved versions of IRS Form 8850 that were submitted between January 1, 2009, and October 17, 2009, and accompanied by a November 2008 ETA Form 9061.

B. Self-Attestation Documentation Requirements, Title and Required Language -

ETA clarifies that the only information required for the youth self-attestation form is that which ensures that the individual meets the legislative requirements in Section 51(d)(14)(B)(ii) not regularly attending any secondary, technical or post secondary school during the 6-month period preceding the hiring date; and (iv) not readily employable by reason of lacking a sufficient number of basic skills. Additional information, including employment or education history; names of previous employers or educational institution; wages; and date of birth for

individuals older than 24, are not required by this legislation, the IRS Code or ETA.

To facilitate timely certifications for the disadvantaged youth category, ETA is now issuing a National Youth Self-Attestation Form (SAF), which is attached to this TEGL. This attestation meets the legislative requirements while incorporating the IRS definitions for Disadvantaged Youth categories II., and IV., described above and in IRS Bulletins 2009-28 and 2009-69. The national Youth Self-Attestation Form will reduce burden for: 1) states who were required to create their own attestation forms; 2) for multi-state employers who will not have to manage multiple state forms; and 3) for individuals, as the Attestation will require only the necessary information that states need to verify eligibility under the above two statutory provisions.

No later than 90 days after issuance of this TEGL, ETA expects employers and states to use only this national Youth Self-Attestation Form and cease use of any previously created state or employer created forms. After 90 days, the national self-attestation form is required for all Disconnected Youth certification requests. Applications submitted prior to this date that contain youth self-attestations that meet the legislative requirements outlined above may be certified without the new hire filling out the national self-attestation form. However, ETA encourages states and employers begin using the national self-attestation form, in lieu of previously created state attestation forms, as soon as possible as the national youth self-attestation form contains only the information necessary to meet both legislative and IRS requirements.

Note: Employers are instructed to submit the national self-attestation form at the same time as the ETA Form 9061 and IRS Form 8850 for each certification request for the disconnected youth target group.

C. Employer/Consultant Created Self-Attestation Forms -

TEGL 03-09 Change 1, dated October 7, 2009, required SWAs to send out a Needs Notice and a Self-Attestation Form to all employers/consultants that submitted certification requests for new hires under the Disconnected Youth group. It has come to ETA's attention that after the Recovery Act passed, some employers and employer consultants created youth self-attestation forms, based on the legislative requirements, in order to meet the filing deadlines. ETA's goals for the WOTC program are to have expeditious processing of certification requests submitted for the two ARRA target groups; to avoid or reduce backlogs; and to prevent additional burden for SWAs or employers. Therefore, ETA examined possibilities to improve the efficiency of processing and reducing burden on the SWAs and employers. ETA believes it is in the interest of administrative efficiency to accept the previously submitted employer-

created self-attestations so long as they meet the legislative requirements outlined above in Section B of this TEGL.

Therefore, ETA would like to clarify that states have the authority to- and should accept employer created SAFs for previously submitted ARRA applications. For those applications already submitted, states should only reject the employer generated SAFs if they determine the SAFs do not provide the information necessary to certify the two statutory provisions requiring self-attestation for the Disconnected Youth group. States should note ETA is aware that the National Employment Opportunity Network (NEON), a group of consultants which represents the interests of those employers they work for on behalf of the WOTC, created two youth self-attestation forms: 1) the first self-attestation form was used by NEON members (consultants) and their employers and was submitted to SWAs with their requests for certification for the ARRA Disconnected Youth group prior to release of IRS Notices 2009-28 and 2009-69, and 2) the second form was created and used after the release of these IRS' bulletins. ETA's opinion is that the NEON created forms satisfy the legislative requirements. Other employer or employer consultant created forms may also satisfy the legislative requirements as detailed in Section B of this TEGL, and if so, they should be accepted as well.

This clarification eliminates the need for the SWAs to undertake additional processing of previously submitted certification requests because it removes the requirement to send out Needs Notices for those applications that were submitted with an employer-created self-attestation form that meets the legislative requirements.

This clarification is only intended to reduce the burden related to already submitted requests for certifications. ETA and IRS issued guidance regarding the definitions of the legislative terms and believe that the clarifications regarding self-attestation requirements contained in Section B of this TEGL and the attached national Youth Self-Attestation Form will result in a more comprehensive self-attestation documentary form for individuals, employers, and SWAs. Therefore, it is ETA's expectation that 90 days after the issuance of this TEGL, the employer created SAFs will no longer be accepted by the SWAs and will be replaced by the national Youth Self-Attestation Form attached to this TEGL. Please note that until the 90 day period is up, states should continue to accept and process applications that contain employer or consultant-created forms that meet the statutory requirements in Section B of this TEGL.

Also, OMB's approval includes permission for the SWAs to continue to accept the November 2008 Forms 9061 and 9062 through October 17, 2009 only. States can process these previously submitted forms when accompanied by a state, employer, or employer consultant created SAF as detailed above. SWAs do not have to go back and require use of the national self-attestation form retroactively.

D. Guidance for Employer-ARRA Certification Requests Filed after October 17, 2009 -

Consistent with the guidance in the Change 1 to TEGL 3-09, all certification requests submitted after October 17, 2009, must be filed by using only the OMB approved August 2009, IRS Form 8850 in conjunction with either an OMB approved August 2009 ETA Form 9061 or 9062 with the November 30, 2011 expiration date.

However, the IRS has also indicated 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 on that form and not for the new ARRA target groups.

- 5. 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 first quarter of Fiscal Year 2010, which closed on December 31, 2009.
- 6. Paperwork Reduction Act (PRA) Notice.** According to the PRA, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency may not conduct or sponsor a collection of information, nor is the public required to respond to a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512). The currently valid OMB Control Number for this collection is OMB 1205-0371.

Please note that while self-attestation requirements are mandated by the IRS to document eligibility for the new ARRA Youth group, use of the attached national Youth Self-Attestation Form supersedes past ETA guidance in TEGL 3-09 and in the Change 1 to TEGL 3-09. ETA is providing the national form to states so they can uniformly meet DOL's policy guidance and IRS's legal clarifications to the IRS Code's current ARRA legislative requirements related to the ARRA Disconnected Youth target group. Additionally, the national self-attestation form attached to this TEGL does not add to or change the burden of states in processing requests for certification or for individuals/employers in applying for certification. The burden for providing the information to meet the self-

attestation requirements is estimated to average five minutes per respondent.

- 7. 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, immediately, upon receipt of this TEGL.
- 8. Inquiries.** Direct all questions to the appropriate Regional WOTC Coordinator.
- 9. Attachment.** Youth Self-Attestation Form.