

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

CHANGE 3

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

FROM: JANE OATES
 Assistant Secretary

SUBJECT: Clarification to 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 clarify the requirements regarding timing of submission of the Youth Self-Attestation Form and to transmit the revised instructions to the Youth Self-Attestation Form.

2. References. The American Recovery and Reinvestment Act (ARRA or Recovery Act) of 2009 (Public Law 111-5); 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 Period Granted to All State Workforce Agencies (SWAs) and Employers for the Uninterrupted Use of 2007 Work Opportunity Tax Credit (WOTC) Processing Forms; TEGL 3-09, dated September 1, 2009, Groups Introduced by the American Recovery and Reinvestment Act Of 2009; TEGL 03-09 Change 1, Extension Period Granted to all State Workforce Agencies (SWAs) and Employers for the Uninterrupted Use of All 2007 Work Opportunity Tax Credit (WOTC)

RESCISSIONS	EXPIRATION DATE
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Processing Forms; TEGL 3-09, Change 2, 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; TEGL No. 11-08, dated February 19, 2009, Extension of the Information Collection for the Consolidated Work Opportunity Tax Credit Program: Revised Reporting and Processing Forms; TEGL No. 11-08, Change 1, Extension Period Granted to the State Workforce Agencies and Employers for the Uninterrupted Use of All 2007 and 2008 Work Opportunity Tax Credit (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 Change 2, ETA received inquiries asking for clarification about the timing of submission of the national Youth Self- Attestation Form together with IRS Form 8850 and ETA Form 9061.

4. New Guidance. To address the questions raised, ETA issues the following clarifications:

- a. TEGL 03-09, Change 2 stated, in a paragraph designated as a “Note,” that “employers are instructed to submit the national Youth 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.” ETA recognizes that IRS Form 8850 is the only certification request form that has a 28-day statutory filing period requirement to be considered timely filed. ETA clarifies that the intent behind the “Note” was not to require that the SAF, ETA 9061 and IRS 8850 be filed within 28 days of the employment-start day of the new hire, but rather that the SAF be filed with either ETA 9061 or IRS 8850. Therefore, if the SAF cannot be submitted with IRS 8850 within the statutory 28-day time period, it should be submitted to the SWA with ETA 9061 when both are signed and completed.

ETA recognizes that in infrequent and limited numbers of cases, employers may not be able to obtain the Youth SAF from the employee in a timely manner and may choose to submit the ETA Form 9061 without the SAF. States have the flexibility to accept ETA 9061s without the SAF in these infrequent cases.

ETA strongly recommends and encourages all three forms to be submitted together to prevent unnecessary processing delays by the SWAs trying to find and match ETA 9061s, SAFs, and IRS 8850s when these forms are filed separately. This delay can increase backlogs. ETA reiterates its position and guidance during the early implementation years and strongly recommends that the ETA 9061,

IRS 8850, and now the SAF, be filed at the same time, when feasible, as a “best business practice” that benefits employers and the SWAs at the same time.

- b. ETA has updated the instructions on the national SAF (attached). Please note, the content of the form has not changed; only the instructions have been modified to be consistent with the guidance in paragraph a.
- c. To assist the SWAs in implementing this guidance, attached a signed copy of the 3-09 Change 2 TEGL.

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 Office of Management and Budget (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 two of the four eligibility requirements for the new ARRA Disconnected Youth group, use of the attached national Youth SAF supersedes past ETA guidance in TEGL 3-09 and in the Change 1 to TEGL 3-09. This guidance clarifies the guidance issued in the 03-09 Change 2 TEGL, and the attached Youth SAF supersedes the previously issued SAF. ETA is providing the national SAF to states so they can uniformly meet DOL’s policy guidance and IRS’s legal interpretations to the Internal Revenue Code’s current ARRA legislative requirements for this ARRA target group. Additionally, the national Youth SAF attached to this TEGL does not add to or change the states’ burden 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. Attachments.

- I. Youth Self-Attestation Form (April 2010)
- II. Spanish Version of Youth Self Attestation Form (April 2010)
- III. TEGL 03-09 Change 2