EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WOTC
	CORRESPONDENCE SYMBOL OWI
	DATE December 7, 2012

ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER NO.** 10-12

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS

FROM: JANE OATES
Assistant Secretary

SUBJECT: Guidance for Work Opportunity Tax Credit (WOTC) American Recovery and Reinvestment Act of 2009 (Recovery Act) Two Expired Target Groups' Applications

1. **Purpose.** To provide the state workforce agencies (SWAs) final processing guidance on handling all timely filed certification requests received for new hires that began employment for an employer on or before December 31, 2010, and instructions for all paperwork associated with timely filed certification requests for new hires that began employment for an employer, under the expired groups, after December 31, 2010.

2. **References.**
   - The Veterans Opportunity to Work to Hire Heroes Act of 2011 (VOW Act) (P.L. 112-56);
   - The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312);
   - The American Recovery and Reinvestment Act of 2009 (P.L.111-5) (Recovery Act);
   - Internal Revenue Code of 1986, Section 51, as amended; Internal Revenue Service (IRS) Notices 2009-69 (August 31, 2009) and 2009-28, 2009-24 I.R.B 1082 (June 15, 2009);
   - Training and Employment Guidance Letter (TEGL) No. 21-10, *End Date for the Work Opportunity Tax Credit (WOTC) American Recovery and Reinvestment Act of 2009 (Recovery Act) Temporary Target Groups*;
   - TEGL No. 21-10, Change 1, *Clarification of Certain Work Opportunity Tax Credit (WOTC) Programmatic Policy Issues*;
   - TEGL No. 03-09, *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, *Extension of the Information Collection for the Consolidated Work Opportunity Tax Credit Program: Revised Reporting and Processing Forms*;

RESCISSIONS None	EXPIRATION DATE Continuing

- 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*; and
- ETA Handbook No. 408, November 2002, Third Edition (the Handbook); and August 2009 Addendum to the Handbook.

3. **Background.** The Recovery Act created two new target groups for the WOTC program – unemployed veterans and disconnected youth hired during 2009 and 2010. The legislative authority for these two temporary groups expired on December 31, 2010. TEGL No. 21-10, dated March 31, 2011, provided SWAs with the end date and procedural guidance activities for handling Recovery Act certification requests received for the unemployed veteran and disconnected youth temporary target groups beyond December 31, 2010.

   The TEGL provided guidance to the SWAs on how to handle all timely filed certification requests for individuals who started employment for an employer on or after December 31, 2010. In anticipation of a possible retroactive reauthorization, the Employment and Training Administration (ETA) instructed the SWAs to continue to accept and date stamp applications for the two expired groups after December 31, 2010, but to hold off on processing the requests pending further legislative action and guidance from ETA.

   On November 21, 2011, President Barack Obama signed into law the VOW Act, extending and expanding the original veteran and disabled veteran target groups, creating two new "unemployed veteran" categories, increasing qualified wages and tax credits for certain veterans and granting certain 501(c) tax-exempt organizations the credit for hiring certain veterans. These new provisions are effective through December 31, 2012. However, the VOW Act did not extend other target groups and did not reauthorize the expired Recovery Act disconnected youth or unemployed veteran groups. The two new unemployed veteran categories created by the VOW Act are different from the Recovery Act unemployed veteran group. Currently, ETA is not aware of any bills in Congress seeking reauthorization of the two expired Recovery Act groups.

   On May 24, 2012, ETA published TEGL 30-11 with specific guidance for SWAs and the business sector. The TEGL transmitted information and procedural guidance to the SWAs on how to implement the VOW Act provisions for all veteran groups and the new unemployed veteran categories, and to employers as to how to request certification requests for their veteran new hires. This TEGL explains that all VOW Act provisions apply only to veterans who began to work for an employer on or after November 22, 2011 and before January 1, 2013.

4. **Processing WOTC Recovery Act Applications - Before Expiration Date.** ETA is providing the following instructions for SWAs to process timely filed certification requests for Recovery Act target groups for employees that began to work for an employer on or before December 31, 2010:

a) SWAs should finish processing all timely filed applications (also known as certification requests which use IRS Form 8850 and ETA Forms 9061 or 9062) for the two Recovery Act groups for new hires, who began employment on or before December 31, 2010, and issue all corresponding certifications and/or denials. This includes following instructions detailed in Change 1 to TEGL No. 21-10, dated December 21, 2011, related to the Self-Attestation Form (SAF) eligibility verification for the disconnected youth target group.

b) SWAs should also conduct an inventory of all timely filed but incomplete applications received for new hires, who began employment on or before December 31, 2010, and send a "Needs Letter" to those employers or their representatives with a request for a 45-day return date with the missing information or documentation. SWAs should classify the applications, based on each SWA's resources, as "Actionables" or "Backlogs" and process them immediately. If a SWA does not receive the missing information or documentary evidence at the end of this 45-day period, the SWA is instructed to issue denials to all those incomplete timely filed applications.

Note. While WOTC applications should be complete when they are submitted, the 45-day time period provides employers with a reasonable period of time to obtain missing documentation that would otherwise prevent the SWAs from processing their timely requests. As many employers may apply for WOTC in multiple states in which they operate, the 45-day grace period provides a uniform closeout process for finalizing WOTC certifications across the nation.

5. **Handling WOTC Recovery Act Applications – After Expiration Date.** The following processing guidance is being provided for SWAs' immediate implementation:

a) SWAs should advise employers and their representatives or consultants that the SWA is no longer accepting applications for the expired Recovery Act groups effective the date of this TEGL.

b) SWAs should conduct an inventory of all applications received for new hires, under the two expired groups, who began employment for an employer after December 31, 2010, and issue denials to all certification requests received for the expired Recovery Act temporary target groups effective the date of this TEGL.

- *Denial Letter Template* - To help SWAs expedite the denials to employers and their representatives and provide a consistent explanation for denials nationwide, ETA developed a suggested denial letter template. SWAs may use the attached denial letter template to inform employers or their representatives that all certification requests received after December 31, 2010, for the two expired Recovery Act target groups, unemployed veterans and disconnected youth, have been denied. Eligibility for employees hired under these two

groups ceased when the legislative authority for the groups ended on December 31, 2010.

c) SWAs are instructed to hold for a one-year period, beginning with the publication date of this TEGL, all applications (certification requests) received for the two expired Recovery Act target groups for employees who began to work for an employer after December 31, 2010.

ETA is aware that there are costs for SWAs associated with continuing to store these applications. However, SWAs may not dispose of those applications, including related documentation, at this time. Because there is still a possibility, albeit small, that Congress could retroactively reauthorize one or both of the expired Recovery Act groups, it is important for SWAs to be able to process timely filed applications.

6. **Reporting Requirements.** For purposes of reporting quarterly program data on ETA Form 9058 - Report 1, SWAs are required to report only certifications and denials issued for the two Recovery Act groups for new hires who began employment on or before December 31, 2010. ETA is aware that some states have been reporting certification requests received for the expired Recovery Act groups for new hires who began employment for an employer after the expiration date as "Requests Needing Action" or "Incomplete Requests" in their quarterly reports. Those states are instructed to remove those certification requests from boxes A. "Incomplete Requests" or B. "Requests Needing Action" under Part I "Certification Workload" on ETA Form 9058 - Report 1 in future quarterly reports. States should take this action no later than the report for the quarter ending December 31, 2012, due to ETA by February 15, 2013. This approach will provide a more realistic picture as to the number of pending WOTC applications and certifications for current target groups.

7. **Disconnected Youth Self-Attestation Form.** The SAF, ETA Form 9154, is no longer valid eligibility documentation for the expired disconnected youth group, since the disconnected youth group has expired. Employers and their representatives should refrain from sending SAFs to the U.S. Department of Labor in Washington, DC. ETA has rerouted any SAFs received so far to the correct SWA for processing on its own merits. Please note that starting November 30, 2012, ETA will return SAFs to the respective employer or representative.

8. **Action Requested.** SWA Administrators are requested to:

   a. Provide this information to all appropriate WOTC program staff, employers and their representatives, participating agencies and other interested partners; and

   b. Ensure that the SWAs and participating agencies implement these changes effective upon receipt of this TEGL.

9. **Inquiries.** Questions regarding these instructions should be directed to the appropriate WOTC Regional Coordinator, listed on the WOTC program Web site at:

http://www.doleta.gov/wotc. A nationwide directory with each WOTC State Coordinator's name and contact information is also available at this site.

10. Attachment. Denial Letter Template.

SAMPLE OF DENIAL LETTER

Date: *[Month] xx*, 2012

[Employer's or Representative's Name]
[Address]
[PO Box 0000]
[City, State Zip Code]

Dear [*Consultant's or Employer's Name]*:

RE: Denial(s) of Certification Request(s) for Expired Recovery Act Target Groups

Company Name: _____

The [*SWA's Name*] acknowledges receipt of Internal Revenue Service (IRS) Form 8850 (Pre-Screening Notice and Certification Request for the Work Opportunity Credit) requesting certification for individuals hired after December 31, 2010 under the American Recovery and Reinvestment Act of 2009 (Recovery Act) Unemployed Veteran and/or Disconnected Youth target groups.

The legislative authority for these two Work Opportunity Tax Credit (WOTC) temporary groups expired on December 31, 2010. On December 7, 2012, the U.S. Department of Labor Employment and Training Administration (ETA) issued guidance providing SWAs with final processing guidance for Recovery Act WOTC applications (Training and Employment Guidance Letter No. 10-12). As instructed in that guidance, effective December 7, 2012, the *[SWA's name]* is no longer accepting applications for the Recovery Act target groups, and is issuing denials to all applications received seeking certification under the Unemployed Veteran or Disconnected Youth target groups for hires who began employment after December 31, 2010. The [*SWA's name]* will hold for one year your company's applications and related paperwork, beginning with the publication date of ETA's guidance on December 7, 2012.

***[SWA's name]*, hereby, denies WOTC certification to the above mentioned applications under one or both of the two Recovery Act groups checked below due to expiration of their legislative authority on December 31, 2010.**

☐ _____ Target Group J (Unemployed Vet) ☐ _____ Target Group K (Disconnected Youth)
[Quantity] *[Quantity]*

We encourage you to continue using WOTC in the future. Even though the authorization for these groups expired in 2010, tax credits are available for certain newly hired veterans under the VOW to Hire Heroes Act. See www.doleta.gov/wotc for more details or call your State WOTC Coordinator at *[state contact info]*.

Should you have questions regarding this matter, please contact the WOTC Unit at *(xxx) xxx-xxxx*.

Sincerely,

[Signature]

WOTC State Coordinator