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Employment and Training Administration**

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for the:

**Work Opportunity Tax Credit Program & the
Welfare-to-Work Tax Credit**

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CONTENTS

F O R E W O R D.....	vi
I. THE WORK OPPORTUNITY TAX CREDIT PROGRAM.....	I-1
BACKGROUND.....	I-1
A. General.....	I-1
B. Legislative Authority WOTC/WtWTC.....	I-2
C. Legislative Intent.....	I-3
D. WOTC/WtWTC and Employment and Training Objectives.....	I-4
E. Effective Date.....	I-4
II. WORK OPPORTUNITY TAX CREDIT PROVISIONS.....	II-1
A. Target Groups At-A-Glance.....	II-1
Qualified IV-A Recipient.....	II-2
Qualified Veteran.....	II-3
Qualified Ex-Felon.....	II-5
High-Risk Youth.....	II-7
Vocational Rehabilitation Referral.....	II-8
Qualified Summer Youth Employee.....	II-10
Qualified Food Stamp Recipient.....	II-12
Qualified Supplemental Security Income (SSI) Recipient.....	II-14
New York Liberty Zone Business Employee (NYLZBE).....	II-15
B. Essential Terms.....	II-16
Agency Declaration of Verification Results (ETA 9065).....	II-16
Audit.....	II-16
Certification (ETA 9063).....	II-16
Conditional Certification (ETA 9062).....	II-16
Deferred Adjudication.....	II-17
Designated Local Agency (DLA).....	II-17
Employer Representative.....	II-17
Employment Start Date.....	II-17
Empowerment Zone/Enterprise/Renewal Community.....	II-17
Extended Active Duty.....	II-18
Family/Member of a Family.....	II-18
Family/Member of a Family Receiving Food Stamps (i.e., Food Stamp Recipient).....	II-18
IV-A Successor Program.....	II-19
Hiring Date.....	II-19
Individual Characteristics Form.....	II-19
Member of a Target Group.....	II-19

Minimum Employment Period.....	II-19
Non-Certified Individual.....	II-19
Participating Local Agency.....	II-20
Pre-Screening Notice & Certification Request (PSN/CR).....	II-20
Principal Place of Abode.....	II-20
Qualified Ex-Felon.....	II-20
Family Size.....	II-21
Family Income.....	II-21
"Includable" Income:.....	II-22
"Excludable" Income:.....	II-22
Qualified Veteran.....	II-24
Quality Review.....	II-24
Two-Tier Employment Retention Period.....	II-25
Verification.....	II-25
Work Release.....	II-25
III. QUALIFIED WAGES AND SPECIAL RULES.....	III-1
A. Qualified Wages.....	III-1
1. Wages.....	III-1
2. Qualified First-Year Wages.....	III-1
3. Qualified Summer Youth Wages.....	III-1
4. Eligibility of Resident Aliens and Non-Citizens.....	III-2
5. Agricultural and Railroad Employees.....	III-3
6. Trade or Business Employment Wages.....	III-4
7. On-the-Job Training Payments.....	III-5
8. Work Supplementation Payments.....	III-6
B. Special Rules - <i>Tier 1</i>	III-7
1. Credit Allowed.....	III-7
C. Special Rules - <i>Tier 2</i>	III-7
1. Credit Allowed.....	III-7
2. Tax Liability Limitation.....	III-9
3. Carryback and Carryover of Unused Credits.....	III-9
4. Limitation on Unused Credit in a Carryback or Carryover Year.....	III-9
5. In General.....	III-10
6. Nepotism.....	III-11
7. Non-qualifying Rehires.....	III-12
8. Breaks in Employment.....	III-13
9. Successor Employers.....	III-13
IV. THE WELFARE-to-WORK TAX CREDIT.....	IV-1
Background.....	IV-1
A. General.....	IV-1

B.	Legislative History.....	IV-1
V.	WELFARE-TO-WORK TAX CREDIT NEW PROVISIONS.....	V-1
A.	Group At-A-Glance.....	V-1
	Long-Term Family Assistance Recipient.....	V-2
B.	Essential Terms.....	V-3
1.	Minimum Employment Period.....	V-3
2.	Qualified First-Year Wages.....	V-3
3.	Qualified Second-Year Wages.....	V-3
4.	Certification Process.....	V-3
5.	Coordination of the WOTC and the Welfare-to-Work Tax Credit.....	V-4
VI.	ROLES AND RESPONSIBILITIES.....	VI-1
A.	Federal Level.....	VI-1
1.	The Employment and Training Administration (ETA) and the Internal Revenue Service (IRS).....	VI-1
2.	Department of Treasury.....	VI-1
3.	Department of Labor.....	VI-1
4.	Other Federal Agencies/Programs.....	VI-3
5.	ETA Regional Offices.....	VI-4
B.	State Level.....	VI-5
1.	State Role.....	VI-5
2.	Designated Local Agency Role.....	VI-5
3.	Other State Agencies.....	VI-8
C.	Local Participating Agencies.....	VI-8
1.	Local Welfare.....	VI-8
2.	One-Stop Career Centers.....	VI-8
3.	Parole and Probation.....	VI-8
4.	Veteran Organizations.....	VI-8
5.	Food Stamp Program Agencies.....	VI-8
6.	Vocational Rehabilitation,.....	VI-8
7.	ETA Grantees;.....	VI-8
VII.	WORK OPPORTUNITY & WELFARE-TO-WORK TAX CREDITS' CERTIFICATION PROCESS.....	VII-1
A.	Administrative Forms.....	VII-1
1.	IRS Form 8850.....	VII-1
2.	USDOL ETA Form 9061.....	VII-2
3.	Agency Verification Forms.....	VII-4
4.	Conditional Certification Form.....	VII-5
5.	Employer Certification Form.....	VII-6
6.	Miscellaneous State Addendum.....	VII-7
7.	WOTC/WtWTC Worksheet.....	VII-8
B.	Supporting Documentation.....	VII-8

C.	Certification Process.....	VII-10
1.	General Provisions.....	VII-10
2.	Participating Local Agency.....	VII-10
3.	Conditional Certification.....	VII-10
4.	Pre-Screening Notice and Certification Requests.....	VII-14
5.	Verification and Audits.....	VII-17
6.	Audit Methodology.....	VII-21
D.	Mailed WOTC and WtWTC Documents.....	VII-26
1.	Evidence of Mailing.....	VII-26
2.	Recording by the Designated Local Agency.....	VII-27
3.	Timely Mailing Treated As Timely Filing.....	VII-28
4.	Mailing Requirements.....	VII-29
5.	Acceptability of Postmarks.....	VII-29
E.	Examples of Documentary Evidence.....	VII-32
F.	Special Rules for Conditional Certifications.....	VII-33
1.	Validity Period of Conditional Certifications.....	VII-33
G.	Special Rules for Timeliness.....	VII-34
H.	Employer Representatives.....	VII-35
	Power of Attorney -.....	VII-35
VIII.	ADMINISTRATION AND REPORTING REQUIREMENTS...	VIII-1
A.	Cooperative Agreements at State and Local Levels.....	VIII-1
B.	WOTC Funding.....	VIII-2
1.	Authorization.....	VIII-2
2.	Accounting Costs.....	VIII-2
C.	Identifying WOTC and WtWTC Job Orders.....	VIII-2
D.	Liability.....	VIII-2
E.	Records' Retention.....	VIII-3
1.	Designated Local Agencies.....	VIII-3
2.	Participating Agencies.....	VIII-4
F.	Policy Clarification/Appeals Resolution....	VIII-5
G.	WOTC/WtWTCs' Appeals' Guidelines.....	VIII-5
H.	Documentation That Can Be Used for Employers' Appeals.....	VIII-6
	Category A. AFDC/TANF Recipient.....	VIII-6
	Category B. Veteran.....	VIII-6
	Category C. Ex-Felon.....	VIII-7
	Category D. Empowerment Zone/Enterprise/ Renewal Communities.....	VIII-7

Category E. Vocational Rehabilitation.....	VIII-7
Category F. Summer Youth.....	VIII-7
Category G. Food Stamps.....	VIII-8
Category H. Supplemental Security Income....	VIII-8
Category I. Welfare-to-Work Long Term Assistance Recipient.....	VIII-8
Employer Information is Incomplete.....	VIII-8
IRS Form 8850, Denied for Failure to Submit in a Timely Manner.....	VIII-8
I. Program Reporting Requirements.....	VIII-9
J. Reporting Procedures.....	VIII-10
1. Submitting the Reports.....	VIII-10
2. Completing the Forms.....	VIII-11
K. Paperwork Management.....	VIII-26
1. Forms.....	VIII-26
2. Reporting.....	VIII-27

APPENDICES

Appendix I	Legislation
Appendix II	Administrative Forms
Appendix III	Reporting Forms
Appendix IV	IRS Forms/Publications
Appendix V	Tools and Resources
Appendix VI	Miscellaneous

F O R E W O R D

The November 2002, third edition, of ETA Handbook No. 408, for the Work Opportunity Tax Credit (WOTC) Program and the Welfare-to-Work Tax Credit (WtWTC) describes and explains the modifications to the WOTC program and a new provision introduced by the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147). Also, this edition includes a series of legislative updates since 1998, policy changes and clarifications to past program practices previously issued as directives to the State Workforce Agencies (SWAs), and introduces the SWAs to the newly electronic EIMS, Tax Credits' Reporting System, which replaces the current paper reporting process. The majority of the clarifications and/or new information are the result of the coordinated efforts of the members of a National Work Group that met twice in the Summer of 2001 to seek ways to simplify and streamline the tax credits' working cycle.

The Internal Revenue Code of 1986, Section 51, as amended and its enacting legislation, P.L. 104-188, specify that the "State Employment Security Agencies (SESAs)" are the "designated" agencies responsible for administering the WOTC and WtWTC certification procedures of this program. This law defines a "designated local agency (DLA)," as a SESA --now referred to as a State Workforce Agency or SWA, according to the Workforce Investment Act of 1998-- established by the Wagner-Peyser Act of 1933, as amended. WOTC and WtWTC certification decisions by the SWAs must conform to all Internal Revenue Service rules and regulations (§51, 51A, and 52 of the Internal Revenue Code) governing the operation of these two tax credits and to the policies and interpretations of the U.S. Employment Service and ALMIS, Office of Workforce Investment, U.S. Department of Labor.

This third edition reiterates the key role that private sector employers --large, medium and small-sized-- represent for the success of both tax credits. For smaller employers, every new hire represents some investment and high risk on their part since hires from the different targeted groups are viewed as representing an even higher risk and monetary investment. To this end, the administration of the program should be designed so the two tax credits can be easily obtainable and not impose a significant administrative burden on the participating employers.

Enhanced quality control designed to promote program integrity remains a primary program objective. SWAs have the primary responsibility for quality control and have the flexibility to apply the documentation and verification activities in a manner that is reasonable and consistent with states' resources and the legislative intent of both tax credits.

I. THE WORK OPPORTUNITY TAX CREDIT PROGRAM

BACKGROUND

A. General.

The Work Opportunity Tax Credit (WOTC) Program was created by the Small Business Job Protection Act of 1996 (P.L. 104-188) --Act of 1996-- and the Welfare-to-Work Tax Credit (WtWTC) was created by the Taxpayer Relief Act of 1997 (P.L. 105-34)--Act of 1997. These two tax credits were reauthorized by the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170) --Act of 1999-- through December 31, 2001. On December 31, 2001, the credits' legislative authority expired.

On March 9, 2002, the President signed into law the *Job Creation and Worker Assistance Act of 2002 --the Act--* (Public Law 107-147) reauthorizing and extending the WOTC and WtWTC for 24 months, under Sections 51 and 51A of the Internal Revenue Code (IRC). The 2002 Act also enacted section 1400L of the IRC, which creates a new target group, the "New York Liberty Zone Business Employee (NYLZBE)." This target group applies only to those workers and employers located in the New York City Liberty Zone, (generally, South of Canal Street in the Borough of Manhattan), affected by the September 11, 2001, terrorist attack. This provision applies to both new hires and existing employees. Certification by the SWAs/SESAs is not required for these employees. Therefore, this target group will not be discussed further in this Handbook.

The WOTC program was designed to help individuals from certain groups who consistently have had a particularly high unemployment rate. P.L. 105-34 changed the WOTC to a two-tiered credit based on how long the individual is employed. The actual amount of the tax credit depends on several factors, including the target group of the

applicant and the amount of wages earned. (For information on the WtWTC, see Chapter V.)

There are nine (9) target group designations for the expanded WOTC program. The target group titles and designations are as follow:

- ❖ Qualified IV-A Recipient (A)
- ❖ Qualified Veteran (B)
- ❖ Qualified Ex-felon (C)
- ❖ EZ/EC/RC High-Risk Youth (D)
- ❖ Vocational Rehabilitation Referral (E)
- ❖ EZ/EC/RC Qualified Summer Youth Employee (F)
- ❖ Qualified Food Stamp Recipient (G)
- ❖ Qualified Supplemental Security Income Recipient (H)
- ❖ New York Liberty Zone Business Employee (no designation)

Under *Tier 1 of the Two-Tier Retention Period* introduced by the 1997 Act, before claiming the tax credit, employers must employ the WOTC eligible for at least 120 hours but less than 400 hours to qualify for a credit of 25 percent of up to \$6,000 in qualified wages for a maximum credit of \$1,500. Under *Tier 2*, employers must employ the WOTC eligible for at least 400 hours or more to qualify for a credit of 40 percent of up to \$6,000 in qualified wages for a maximum credit of \$2,400. This is calculated using the actual first-year wages paid or incurred.

- B. Legislative Authority WOTC/WtWTC.
 Sections 604, 605 and 301(a), Title VI, of the *Job Creation and Worker Assistance Act of 2002* (P.L. 107-147), March 9, 2002, for the WOTC Program; Sec. 1002 for the WOTC program and 1003 for the WtWTC of the *Tax and Trade Relief Extension Act of 1998*, part of the *Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999*, (P.L. 105-277) --See *Appendix I--*, October 21, 1998; and Sections 51

and 51A of the *Internal Revenue Code of 1986*, as amended. Please, note that Title 26 of the United States Code (USC) is the Internal Revenue Code.

C. Legislative Intent.

1. The WOTC was designed to appeal to a wide range of employers, to impose a minimal burden upon participating employers, and to promote the hiring of targeted group individuals. The Work Opportunity Tax Credit was designed specifically to streamline the eligibility determination process used by previous tax programs as well as to close the gaps that appeared between and within some target group designations.
2. The WtW Tax Credit was designed to appeal to a wide range of employees, to impose a minimal burden on participating employers, and to promote the hiring of long-term welfare assistance recipients. The WtWTC credit was designed to use the same certification process as is in place for the WOTC target group members.
3. The Departments of Treasury and Labor share administrative responsibility for the WOTC program. Treasury, through the Internal Revenue Service (IRS), administers the tax provisions of the credit. Labor, through the Employment and Training Administration (ETA), Division of the United States Employment Service/ALMIS, awards grants to States for administration of the eligibility determination and Certification provisions. Certifications are issued by the State Workforce Agencies (SWAs), also known as "Designated Local Agencies (DLAs)" established in accordance with the Wagner-Peyser (W-P) Act of 1933, as amended (29 U.S.C. 49-49n). Where a "SESA," now a "SWA," no longer exists, and the Employment Service functions traditionally performed by

the SWA/SESA are incorporated into another state agency approved by the State Legislature, that agency will then be the DLA having approval authority for issuing Certifications.

D. WOTC/WtWTC and Employment and Training Objectives

1. The WOTC and WtWTC are intended to further the partnership between the employment and training system and the private sector in dealing with problems of the disadvantaged and the unemployed. These two tax credits are significant complements to the welfare reform effort and can be used as incentives for employers to hire regular as well as long-term welfare recipients. DLAs should market WOTC and WtWTCs in this vein.
2. Enhanced quality control designed to promote program integrity remains a primary program objective. The procedures provided in this Handbook are integrated to allow for a standardized, reportable audit system. SWAs/DLAs have the primary responsibility for quality control and have the flexibility to apply the documentation and verification provisions in a manner that is both reasonable and consistent with state resources and the legislative intent of both the WOTC and the WtWTCs. The WOTC/WtWTC audit process will serve as a major basis for assuring program integrity.

E. Effective Date.

Guidelines in the ET Handbook 408, Third Edition, November 2002, are effective upon receipt.

II. WORK OPPORTUNITY TAX CREDIT PROVISIONS

A. Target Groups At-A-Glance

The following pages offer a complete and concise description for eight of the nine target groups under the WOTC program. In some areas additional information is provided to clarify already existing definitions and/or policy practices. Also, this chapter includes the specific WOTC law, target group requirements and information regarding the calculation of this credit.

Qualified IV-A Recipient

target group designation (A)

This target group refers to any individual who is certified by the Designated Local Agency as being a member of a family:

- ❖ receiving AFDC/TANF, or benefits under a successor program for *any 9 months* during the 18-month period ending on the hiring date.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

Note. A **IV-A Recipient** is, for purposes of the WOTC, a family member who is specifically listed on the grant. Only such family members make the employer eligible to receive the credit. Medicaid and Medicare are not IV-A benefits.

HHS's Method for Counting Months - according to the Department of Health, and Human Services, receipt of benefits for as little as one day in a month count as benefits received for the entire month (i.e., 1 day = 1 month). The Department of Labor has adopted HHS's method for verifying eligibility of benefits.

Qualified Veteran
target group designation (B)

This target group refers to any veteran certified by the Designated Local Agency as one who:

- ❖ is a member of a family receiving assistance under a Food Stamp Program under the Food Stamp Act of 1977 for, at least, a 3-month period within the last 15 months (See IRS Form 8850, Rev. October 2002), and
- ❖ has served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or was discharged or released from active duty in the Armed Forces of the United States for a service-connected disability; and
- ❖ did not have any day during the 60-day period ending on the hiring date which was a day of "extended active duty" in the Armed Forces of the United States. The term "extended active duty" means a period of more than 90 days during which the individual was on active duty, other than active duty for training.

Clarification. Dishonorably Discharged. The initial legislative history of the former Targeted Jobs Tax Credit (TJTC) Program is specific in its intent to include persons who were "dishonorably discharged" from military service if they meet the eligibility requirements of a targeted group, including the current "Qualified Veterans" target group. This legislation does not change the veterans' definitions for other employment and training programs administered by the Department of Labor.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

Qualified Ex-Felon
target group designation (C)

This target group refers to any person certified by the Designated Local Agency as one who:

- ❖ has been convicted of a felony under any statute of the United States or any State; and
- ❖ has a hiring date which is not more than one (1) year after the last date on which he/she was so convicted or was released from prison; and
- ❖ is a member of an economically disadvantaged family.

Clarification. The definition of the Ex-Felon target group has been clarified, in past legislation, to treat an individual as convicted if a State Court places the individual on probation without a finding of guilty...[but only if the court considers this to have been a "conviction,"] (i.e., "deferred adjudication," for this definition and source, please, see Congressional Record, October 26, 1990, p. H12733).

Note 1. Ex-Felons who are participating in a transitional program; e.g., "work release," are eligible for the WOTC program if they were convicted of a felony and are members of an economically disadvantaged family.

Note 2. Individuals convicted of a felony while in military service may also be eligible under the ex-felon target group.

Note 3. **A member of an economically disadvantaged family** means being a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such income determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor's most current "Lower Living Standard Income Levels" (LLSILs). In

addition, a determination that an individual is a member of an economically disadvantaged family is valid for a 45-day period beginning on the date of the determination.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

High-Risk Youth

EZ/EC and Renewal Community (RC) High-Risk Youth
target group designation (D)

This target group refers to any person certified by the Designated Local Agency as one who:

- ❖ is at least age 18, but not yet age 25, on the hiring date; and
- ❖ has his/her "principal place of abode" within an empowerment zone (EZ), enterprise community (EC) or renewal community (RC)¹.

In the case of a high-risk youth, the term "qualified wages" must not include wages paid or incurred for services performed while he/she lived outside an EZ, EC or RC.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

¹ Renewal Communities are economically distressed urban and rural communities identified and designated as a result of the "Community Renewal and New Markets Initiative" enacted in 2000. Through a tax-incentive package designed to attract businesses, the Congress enables these distressed areas to flourish through economic and social renewal. The Renewal Tax Relief Act of 2000 authorized the designation of 40 Renewal Communities and nine additional EZs. On December 31, 2001, HUD designated 40 Renewal Communities, 28 in urban areas and 12 in rural areas.

Vocational Rehabilitation Referral

target group designation (E)

This target group refers to any person certified by the Designated Local Agency as:

- ❖ having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment; and
- ❖ was referred to the employer upon completion of or while receiving rehabilitative services pursuant to an individualized written plan of employment (IWPE) under a state plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973; or

Clarification. ETA's and IRS's guidance and interpretation allows the State Workforce Agencies or DLAs to issue certifications to Vocational Rehabilitation (VR) Referrals for individuals who have received rehabilitation services up to two years after receipt of the last VR services.

Note. Title IV. "Technical Corrections," Section 4006, "Other Amendments," of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (P.L. 105-277), under (c) "Clerical Amendments," states the following:

(1) Clause (i) of section 51(d)(6)(B) of the 1986 [Internal Revenue] Code is amended by striking "rehabilitative plan" from the [individualized written ~~rehabilitative plan (IWRP)~~] and inserting "plan of employment." It should read, "*individualized written plan of employment*," instead. (For legislative language see Appendix I. Conference Report to H.R. 4328, Making Omnibus Consolidated and Emergency Appropriations for Fiscal Year 1999, p. 944)

- ❖ a vocational rehabilitation program for veterans, carried out under Chapter 31 of Title 38, U.S. Code.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400. This allows a maximum credit of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

Qualified Summer Youth Employee

EZ/EC and Renewal Community (RC) Summer Youth Employees
target group designation (F)

This target group refers to any person certified by the Designated Local Agency as one who:

- ❖ performs services for the employer between May 1 and September 15; and
- ❖ has attained age 16, but not yet age 18, on the hiring date or, if later, on May 1 of the calendar year involved; and
- ❖ has not been employed by the same employer prior to the 90-day (summer) period between May 1 and September 15; and
- ❖ has her/his "principal place of abode" within an empowerment zone, enterprise community, or renewal community (for information on renewal communities, see p. II-7). In the case of a summer youth, the term "qualified wages" must not include wages paid or incurred for services performed while he/she lived outside of the zone.

Credit Limitation for this target group. Qualified wages for this target group are limited to wages paid for any 90-day period between May 1 and September 15,

Note. Special Rule for Continued Employment. An individual, who was a "Qualified Summer Youth" employee and meets the eligibility criteria for another target group, may be recertified by the SWA/DLA, and qualify the employer to claim the remainder balance of the one-year tax credit. A new IRS Form 8850 and ETA Form 9061 must be filed by the employer/consultant and the SWA/DLA should issue a new Certification. The total period of eligibility for the credit, including the time the individual is certified as a

"Qualified Summer Youth" employee, cannot exceed one year. In those cases where the second certification is issued for the WtW target group, the employer may qualify for a two-year credit.

The tax credit for this target group is calculated at a rate of 25% of the qualified first year's wages up to \$3,000. This allows a maximum credit amount of \$750. For those employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified wages up to \$3,000 for a maximum tax credit of \$1,200.

Qualified Food Stamp Recipient
target group designation (G)

This target group refers to any person certified by the Designated Local Agency as one who:

- ❖ has attained the age of 18, but not yet age 25, on the hiring date; and
- ❖ is a member of a family:
 - receiving assistance under a food stamp program under the Food Stamp Act of 1977 for the 6-month period ending on the hiring date; or
 - receiving such assistance for at least 3 months out of the 5-month period ending on the hiring date, [in the case of an able-bodied adult without dependents who has been determined ineligible to participate in the Food Stamp Program as the result of a failure to comply with the work requirements of section 6(o) of the Food Stamp Act of 1977.]

Clarification. An "able-bodied adult without dependents" is an individual who is subject to section 6(o) of the Food Stamp Act (see below). To comply with the requirements of section 6(o), an individual must (A) work 20 hours or more per week, averaged monthly; (B) participate in and comply with the requirements of a work program for 20 hours or more per week, as determined by the SESA or DLA; or (C) participate in and comply with the requirements of a program under section 20 or a comparable program established by a State or political subdivision of a State.

Note. An individual is subject to section 6(o) of the Food Stamp Act if he or she satisfies the following: (a) is at least age 18 but not 25, (b) is physically and mentally fit for employment, (c) is not responsible for a dependent child, (d) is not pregnant, (e) is not exempt from any of the requirements listed here because of geography or a state's discretion, and (f) does not meet any of the following exceptions: (1) complies with the work requirements of Title V of the Social Security Act, (2) receives unemployment compensation, (3) is a drug or alcohol center participant, or (4) is an eligible student.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

Qualified Supplemental Security Income (SSI)Recipient

target group designation (H)

This target group refers to any individual who is certified by the designated local agency as being an individual who is:

- ❖ receiving supplemental security income benefits under Title XVI of the *Social Security Act* (including benefits of the type described in Section 1616 of the *Social Security Act* or Section 212 of Public Law 93-66) for any month ending within the 60-day period ending on the hiring date.

Note. Social Security Disability Income (SSDI) Recipient is not the same as Supplemental Security Income (SSI) Recipient.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

New York Liberty Zone Business Employee
(NYLZBE)

- * No target group designation

This target group refers to individuals who perform:

- ❖ substantially all their services in the recovery zone for a business located on or South of Canal Street, East Broadway (East of its intersection with Canal Street), or Grand Street (East of its intersection with East Broadway) in the Borough of Manhattan, New York, New York (the New York Liberty Zone), or
- ❖ substantially all their services in New York City for a business that relocated from the New York Liberty Zone elsewhere within New York City due to a physical destruction or damage of their workplaces by the September 11, 2001 terrorist attack.

The tax credit for this target group is calculated at the rate of 25% of the qualified first-year wages up to \$6,000 for employees working at least 120 hours but less than 400 hours. This allows a maximum credit amount of \$1,500. For employees working at least 400 hours or more, the credit is calculated at the rate of 40% of the qualified first-year wages up to \$6,000. This allows a maximum credit amount of \$2,400.

Clarification. This target group applies only to employers who were located in the New York Liberty Zone on September 11, 2001 or to those employers who relocated somewhere in the City of New York due to substantial structural damage to their building as a result of the September 11, 2001 terrorist attack. *Also, this target group does not require certification from the New York Department of Labor to qualify employers for a WOTC. Therefore, there is no target group designation.

B. Essential Terms

Agency Declaration of Verification Results (ETA 9065)

is an optional USDOL-ETA form for DLA use only to record the results of verification activities conducted by the DLA. If the DLA elects to use an alternative form to record verification results, the alternative form must contain all of the information that appears on ETA Form 9065.

Audit

means the post-issuance examination, performed on a quarterly basis by someone other than the person who approved the Certification, of a prescribed random sample of Certifications and supporting documentation.

Certification (ETA 9063)

is an optional form issued to an employer by a SWA/DLA, which certifies that the person named on the Certification was determined to be a member of a WOTC target group, a long-term Family Assistance Recipient, or both and will, therefore, qualify the specified employer, who receives the Certification, to claim the appropriate tax credit for qualified wages paid to that person upon completion of the minimum employment period.

Conditional Certification (ETA 9062)

is a required form (formerly called a voucher) issued by a DLA or a participating local agency to an eligible WOTC applicant before the applicant is hired. This is done to assist the applicant in his or her job search. These documents are time-limited and require that the applicant still meets all eligibility criteria at the time of hire. Additionally, the employer must return the document accompanied by an IRS Form 8850 to the DLA not later than the 21st day following the individual's employment start date.

Deferred Adjudication

occurs when an individual is accused of a felony and a State Court places the individual on probation without a finding of guilty. For WOTC purposes, this judgment is treated as a conviction, if the court of competent jurisdiction considers it as such. This qualifies an individual for the Ex-felon target group. Not all State judicial systems use "deferred adjudication," although procedures placing accused felons on probation without a finding of guilty should be considered "deferred adjudication" for WOTC purposes. (See Congressional Record, October 26, 1990, p. H12733).

Designated Local Agency (DLA)

means a State Workforce Agency (SESA) or the agency established in accordance with the Wagner-Peyser Act of June 6, 1933, as amended (29 U.S.C. 49-49n).

Employer Representative

means a person authorized to act on behalf of any employer in the WOTC Certification process; e.g., a management consultant, accountant, or contractor. For this purpose, a valid Form 2848, Power of Attorney and Declaration of Representative, to execute Form 8850 or otherwise represent the employer is acceptable.

Employment Start Date

is the date the person actually begins working for the employer. This may be, but is not necessarily, the same as the "hiring date." The start date is the date that is critical when determining timeliness of mailing the Pre-Screening Notice (PSN).

Empowerment Zone/Enterprise/Renewal Community

refers to an area or combination of areas designated by the U.S. Housing and Urban Development (HUD) and/or the United States

Department of Agriculture (USDA) that meet certain population, size and poverty criteria. This definition does not include champion communities. **Note.** IRS section 51(d)(5)(A) and (B), as amended by P.L. 106-554, December 31, 2001, authorizes the inclusion of members of the High-Risk and Summer Youth WOTC targeted groups for new hires made after January 1, 2002, that reside in the new Renewal Communities. Also, see p. 2 "Members of Targeted Groups," Instructions for Form 8850, Rev. October 2002, Department of the Treasury, Internal Revenue Service.

Extended Active Duty

means a period of more than 90 days during which the person was on active duty (other than U.S. Military active duty for training). This legislation does not change the veterans' definitions for other employment and training programs administered by the Department of Labor.

Family/Member of a Family

The definition of a family/member of a family depends on the particular targeted group for which a person will be certified.

Family/Member of a Family Receiving Food Stamps (i.e., Food Stamp Recipient)

refers to a member of a certified food stamp "household" (including households certified to participate under a Simplified Food Stamp Program), regardless of whether the individual is currently an "ineligible household member" or whether the household has actually received its benefits. State agencies need not concern themselves with whether the individual is a member of a "family" because information that might be germane to whether a group of people constitutes a "family" is not required to be collected in the determination of a household's eligibility or benefit level for the Food Stamp Program.

IV-A Successor Program

includes Temporary Assistance for Needy Families (TANF) or any program enacted by the Congress to replace it.

Hiring Date

is the date that a definite oral or written agreement to employ is reached between a jobseeker and a prospective employer, in which an employment starting date is specified.

Individual Characteristics Form

is form ETA 9061 which identifies applicants' categories of eligibility.

Member of a Target Group

means any person who meets the eligibility criteria for one of the nine WOTC and one WtWTC target group(s).

Minimum Employment Period

refers to the minimum number of hours an employer must retain a WOTC hire to get the credit. Before claiming the credit, an employer must employ the WOTC eligible individual for a minimum of 400 hours of service in order to qualify for the 40-percent credit or 120-399 hours in order to claim the 25-percent credit. This is also referred to as the "retention period". No credit is available for any employee who works less than 120 hours.

Non-Certified Individual

means an individual, who has not been previously certified eligible as a member of a target group, by a participating, qualified certifying WOTC agency. Requests for certification, in writing (i.e., IRS Form 8850 "Pre-Screening Notice and Certification Request"), by an employer, for "non-certified" individuals must be received at the Designated Local Agency or submitted within 21 calendar days of the employment start day.

Participating Local Agency

is an organization authorized via a Memorandum of Understanding or Cooperative Agreement with the SWA/DLA to issue Conditional Certifications for members of specified target groups.

Pre-Screening Notice & Certification Request (PSN/CR)

is the IRS Form 8850 completed "on or prior to" the job offer date indicating an applicant's potential eligibility for a target group. The IRS 8850 Form must be submitted to the SWA/DLA no later than the 21st day after the employment start date. **Note. The SWA/DLA, the IRS or the U.S Employment Service/USDOL cannot waive this statutory timeliness requirement.**

Principal Place of Abode

is that place where one physically lives while earning wages from an employer.

Qualified Ex-Felon

For purposes of the ex-felon target group under WOTC, a **family** is:

1. one or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent is considered to be related by marriage;
2. for purposes of paragraph "1." above,
 - a.) one or more persons not living in the single residence, but who were claimed as "dependents" on another person's Federal Income Tax return for the previous year, may be presumed, unless otherwise demonstrated in a manner satisfactory to the DLA (but not including self-attestation), to be part of the other person's family;

- b.) an older worker, 55 years of age or older, whether living in the residence or not, or a handicapped individual 16 years of age or older, may be considered a "family of one;"
- c.) a person 18 years or older, except as provided in (2) above, including students at college, may be determined to be a "family of one" if he/she can demonstrate, in a manner satisfactory to the SWA/DLA, that he/she received less than 50 percent of support from the family during the months used for establishing economic eligibility, and who is not the principal earner, nor the spouse of the principal earner. This may be done even if the person was claimed as a dependent on another person's tax return for the previous year.
- d.) In some instances, an individual who is separated from a spouse may be considered a "family of one" if the absent spouse lives apart and provides no assistance to the applicant.

Family Size

is the maximum number of family members during the income determination period as used by the LLSILs.

Family Income

means all income actually received from all sources by all members of the family (as defined above), during the income determination period. The following examples of "includable" income and "excludable" income are to be used in determining economic eligibility for the Ex-Felon target group only:

"Includable" Income:

- e.) Gross wages and salary (before deductions);
- f.) Net self-employment income (gross receipts minus operating expenses);
- g.) Cash income received from other sources such as:
 - (1.) net rents;
 - (2.) Old Age and Survivors Insurance (OASI) benefits under Title II of the Social Security Act;
 - (3.) pensions;
 - (4.) alimony; and
 - (5.) periodic lifetime income from insurance policy annuities, (if not precluded below).

"Excludable" Income:

- a.) Non-cash income such as food stamps, energy assistance or compensation received in the form of food or housing;
- b.) Imputed value of owner-occupied property, i.e., rental value;
- c.) Public assistance payments, including vouchers or scrip;
- d.) Cash payments received pursuant to a State plan approved under Title I (Grants to States for Old Age Assistance and Medical Assistance for the Aged), Title IV (Grants to States

for Aid and Services to Needy Families With Children and for Children Welfare Services), Title X (Grants to States for Aid to the Blind), Title XVI (Supplemental Security Income (SSI) for the Aged, Blind and Disabled), of the Social Security Act;

- e.) Disability insurance payments received under Title II (*Federal Old Age, Survivors, and Disability Insurance Benefits*), of the Social Security Act; and disability insurance payments received under Title IV (*Black Lung Benefits*) of the Federal Coal Mine Health and Safety Act;
- f.) Child support;
- g.) Federal, State or local unemployment insurance payments;
- h.) Payments to participants in employment and training programs, except wages paid for Federal OJT;
- i.) Uncollected capital gains and losses and assets withdrawn from a bank account;
- j.) One-time unearned income, such as, but not limited to:
 - (1.) Payments received for a limited fixed-term, i.e., for a set period or length of time, under income maintenance programs and supplemental (private) unemployment benefits' plans;
 - (2.) One-time or fixed term scholarships and fellowship grants, e.g., a fixed-term scholarship may include Financial

- Aid granted for either one or two consecutive semesters);
- (3.) Accident, health and casualty insurance proceeds;
 - (4.) Disability and death payments, including fixed-term (but not lifetime) life insurance annuities and death benefits;
 - (5.) One-time awards and gifts;
 - (6.) Inheritance, including fixed-term annuities;
 - (7.) Fixed-term worker's compensation awards;
 - (8.) Terminal leave payments;
 - (9.) Soil bank payments;
 - (10.) Agriculture crop stabilization payments;
 - (11.) Alaska oil trust fund disbursements for economic development; and
 - (12.) gambling.
- k.) Pay or allowance which were previously received by any ex-service person while serving on active duty in the Armed Forces (this does not include National Guard or Reserve pay for training or active duty for training); and
- l.) Payments received under the Trade Act of 1974 and any amendments.

Qualified Veteran

is an individual who is a veteran as defined in Chapter II of this Handbook.

Quality Review

means the review of WOTC/WtWTC forms and other documents, including the Certification itself, to ensure that the required information is complete, consistent and accurately recorded. Quality reviews are performed at several "key points" in the eligibility determination and Certification process.

Two-Tier Employment Retention Period

(also referred to as the "minimum employment retention period") refers to the minimum number of hours an employer must retain a WOTC hire to get the credit. Under **Tier 1**, before claiming the tax credit, employers must employ the WOTC eligible for at least 120 hours but less than 400 hours to qualify for a credit of 25 percent of up to \$6,000 in wages for a maximum credit of \$1,500. Under **Tier 2**, employers must employ the WOTC eligible for at least 400 hours or more to qualify for a credit of 40 percent of up to \$6,000 in wages for a maximum credit of \$2,400. The tax credit is calculated using the actual wages paid or incurred.

Verification

means the process of ensuring or testing the validity of all Certifications issued by the DLA, including preliminary eligibility and other supporting documentation. The verification process includes "Quality Reviews" and "Audits".

Work Release

is a state-approved transitional program, usually commencing not earlier than 12-months prior to release, which prepares a felon for return to mainstream society. Work release may include work inside or outside the institution (i.e., prison). Work release felons may be eligible for the qualified ex-felon target group.

Note. Except for "work release," persons currently incarcerated are not eligible for the program because they are not considered available for employment.

III. QUALIFIED WAGES AND SPECIAL RULES

A. Qualified Wages.

The Work Opportunity Tax Credit is figured only on qualified first-year wages paid or incurred to target group individuals who begin work for the employer after September 30, 1996 and before January 1, 2004.

In general, "qualified wages" for WOTC purposes, means "wages" as defined by the Internal Revenue Code (IRC), and also section 3306 (b) of the Federal Unemployment Tax Act (FUTA).

1. Wages
generally mean all remuneration paid for employment, including non-monetary payments; e.g., room and board provided by the employer. To figure the credit, use "wages" as defined in Section 3306 (b) of the Federal Unemployment Tax Act determined without regard to any dollar limitation contained in such section.
2. Qualified First-Year Wages
are wages that an employee earns during the one-year period, which begins the day the employee starts work. The maximum amount of wages to which the 25 or 40 percent credit may be applied must not exceed \$6,000 of first-year wages for all target groups, except qualified summer youth, which may not exceed \$3,000.
3. Qualified Summer Youth Wages.
The maximum amount of wages to which the credit may be applied must not exceed \$3,000 of first-year wages for the qualified summer youth group (for any 90-day period between May 1 and September 15).

4. Eligibility of Resident Aliens and Non-Citizens.

Generally, amounts paid for services performed in the United States by an alien individual (whether a resident of the United States or a nonresident) for an employer are considered "qualified wages." Generally, amounts paid for services performed outside of the United States by an alien individual (whether a resident of the United States or a nonresident) for an employer are not considered "qualified wages."

Note. For this purpose, 1) an individual who is a resident of Puerto Rico or the Virgin Islands is a U.S. citizen and, therefore, not an alien, and 2) "United States" geographically includes Puerto Rico and the Virgin Islands. For further information, see section 3306 of the IRC (26 USC 3306).

- a.) Remuneration for services performed outside the contiguous United States, Alaska and Hawaii; e.g., Puerto Rico is "wages, only if performed by a United States citizen or by a Resident Alien for an American employer. Remuneration for services performed for an American employer outside the United States by an individual who is not a United States citizen or resident alien is not "wages."
- b.) Remuneration paid for services performed by a non-resident alien individual who has a (J) visa for the period he/she lives temporarily in the United States as a non-immigrant under subparagraph (J) of Section 101(a)(15) of the Immigration and Nationality Act as amended [8 U.S.C. 1101 (a)(15)(J)], and performed as specified in

subparagraph (J), as the case may be, is not "wages."

c.) Thus, for purposes of the WOTC program the credit cannot be extended to an employer on wages paid to the nonresident employees referenced above if Federal employment taxes are not withheld.

d.) In the case of the Commonwealth of Puerto Rico, employers who have a Federal income tax liability are eligible to participate in the WOTC program and as such are eligible to claim the WOTC and/or the WtWTC(s) provided they meet all the participating and timeliness requirements.

e.) See also "Non-eligibility of H2-A Workers."

5. Agricultural and Railroad Employees.
A different wage definition applies to certain agricultural and railroad employees.

a.) Agricultural Employees.

(1.) Qualified Wages.

If, in any year a WOTC eligible employee performs services that qualify during more than half of any pay period as agricultural labor for FUTA, use the same wages that are subject to the Social Security Tax (FICA) to figure the credit for that employee. Count only the first \$6,000 of the employee's FICA wages for the calendar year. (A pay period is 31 consecutive days or less during which the employer ordinarily pays wages to the employee.)

(2.) Farm Labor Contractors.

Except in cases where the farmer/grower pays wages directly to the laborers, the farm labor contractor is the employer and is, therefore, entitled to the tax credit on WOTC certified laborers, if the contractor has his/her own IRS employer identification number.

(3.) Non-Eligibility of H-2A Workers.

Non-resident aliens working in the U.S. under H-2A visas do not receive "wages" as defined in Section 3121(a), (i.e., the FICA or Social Security Tax). Employers of these workers are not eligible for Certifications from the SWAs/DLAs for employment of such H-2A workers.

b.) Railroad Employees.

If more than half of the wages paid to an employee during any year qualify under the Railroad Unemployment Insurance Act (RUIA), figure the credit by using wages subject to RUIA tax, but without RUIA dollar limitations.

6. Trade or Business Employment Wages.

To claim the credit on an employee's wages, the employee in an employer's trade or business must earn over half of those wages paid during any tax year. Therefore, maids, chauffeurs and other employees who work only in the home are not qualified for the WOTC.

7. On-the-Job Training Payments.

If, for any period, an employer receives Federally funded payments for on-the-job training (OJT) for an employee, none of the wages paid to that employee for the OJT period qualify for the WOTC.

- a.) While the wages paid to the employee during the OJT period do not qualify the employer for a tax credit, the time spent by the employee receiving on-the-job training qualifies the employer towards fulfilling the "minimum employment" period requirement (or retention period).

Exception: An employer, while participating in the Veterans-OJT program under Title 38 USC, may claim the WOTC on qualified wages paid to certified employees because training assistance payments under this program are paid to the employee and not to the employer.

Example: On January 1, 2001, a certified member of a targeted group begins work. From January 1 through March 31, 2001, the employee received on-the-job training, and the employer received federally funded payments for the on-the-job training for that period. In computing the Work Opportunity Tax Credit, an employer cannot use as qualified wages any wages earned by that employee for services between January 1 and March 31, 2001.

However, the one-year WOTC eligibility period is calculated from January 1 and a Pre-Screening Notice for Certification must have been postmarked not later than January 22, 2001, for the employer to be subsequently

eligible for the remainder of the year's credit. The retention period begins January 1, 2001. Wages paid for services from April 1, 2001 through December 31, 2001, are qualified wages. Wages earned during the OJT contract period do not count toward the \$6,000 limit on wages.

8. Work Supplementation Payments.

The amount of wages (which would otherwise be qualified wages) is reduced by the amount of any payments received by the employer with respect to the employee under a program established under Section 482(e) of the Social Security Act.

B. Special Rules - Tier 1.1. Credit Allowed.

Credit allowed for the tax year is twenty-five (25) percent of the qualified wages up to \$6,000 (\$3,000 for Summer Youth) for that year.

Example 1. On April 1, 2002, A, a member of a target group begins work for X, a calendar-year taxpayer. A terminates the employment on June 1, 2002, after working 320 hours. X pays A \$2,000 in wages for the work performed during 2002. X's WOTC for 2002 with respect to A's wages is \$500. This is \$2,000 x 25%.

Under *Tier 1*, the WOTC for 2002 is \$500 because this employee worked less than 400 hours for employer X. (See Table below)

TIER 1	
Qualified first-year wages:	\$2,000
April 1 - June 1, 2002	
Multiplied by 25 percent	.25
WOTC Credit for 2002:	\$ 500

C. Special Rules - Tier 21. Credit Allowed.

Credit allowed for the tax year is forty (40) percent of the qualified wages for that year.

Example 2: On August 1, 2002, B, a member of a targeted group begins work for X. B works full time for X for the remainder of 2002 and all of 2003. X pays B \$1,000 a month in wages on the last day of each month.

Qualified first-year wages for B for 2002 are \$5,000, the amount paid for service rendered from August 1, 2002. Accordingly, X's WOTC for 2002 with respect to B's wages is \$2,000 (\$5,000 x 40%).

TIER 2	
Qualified first-year wages:	\$5,000
August 1 - December 31, 2002	
Multiplied by 40 percent	.40
WOTC Credit for 2002:	\$2,000

Qualified first-year wages for B for 2002 are \$5,000, the amount paid for service rendered from August 1, 2002, through July 31, 2003. Because only the first \$6,000 in qualified first-year wages can be taken into account (and \$5,000 was taken into account in 2002), X's WOTC for 2003 with respect to B's wages is \$400 (\$1,000 x 40%).

TIER 2	
Actual Wages for B 1/1/03-7/31/03	\$7,000
Qualified wages: (1/1-3/31/03)	\$1,000
Multiplied by 40 percent	.40
Total WOTC Credit 2003	\$ 400
Total WOTC Credit 2002	+2,000
Total WOTC for 2003 & 2002	\$2,400

Note. For certified employees who complete their minimum work requirement after the end of the employer's tax year but before the due date (including extensions) for the employer's federal income tax return for the tax year in which the employee began work, the employer may claim the credit at the appropriate rate, i.e., 25 percent (120-399 hours) or 40 percent (400 or more hours) even though all those hours were not worked until the succeeding tax year. **Note.** Qualified wages are always capped at \$6,000 for the WOTC Credit, except for the Summer Youth target group.

2. Tax Liability Limitation.
The WOTC, as a component of the general business credit, is subject to the net tax liability limitation of Section 38 of the Internal Revenue Code and the carryback and carryover rules of Section 39.
3. Carryback and Carryover of Unused Credits.
If, because of the tax liability limitation, an employer does not take the full amount of the WOTC credit arising in a taxable year beginning before January 1, 1997, he/she may claim a refund of all or part of the taxes paid in the three taxable years before the year the credit arose. This is done by carrying back the unused credit to the prior tax year. Any credit that cannot be taken in that year may be carried forward 15 years or until the credit is all used, whichever comes first.
4. Limitation on Unused Credit in a Carryback or Carryover Year.
Unused WOTC credits that can be taken in a carryback or carryover year cannot be more than the tax liability limitation for that year, less any WOTC tax credit that is:
 - a.) earned in the carryback or carryover year, or
 - b.) claimed in the carryover year from a year earlier than the current year.

Caution: [Internal Revenue] Code Section 39(a), below, as amended by the Taxpayer Relief Act of 1997 (P.L. 105-34) applies to credits arising in tax years beginning after December 31, 1997.

5. In General:

a.) 1-YEAR CARRYBACK AND 20-YEAR CARRYFORWARD. If the sum of the business credit carries forward to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the "unused credit year"), such excess (to the extent attributable to the amount of the current year business credit) must be:

(1.) a business credit carryback to each of the taxable year(s) preceding the unused credit year, and

(2.) a business credit carryforward to each of the 20 taxable years following the unused credit year, and, subject to the limitations imposed by subsections (b) and (c), must be taken into account by the provisions of section 38(a) in the manner provided in section 38(a).

b.) AMOUNT CARRIED TO EACH YEAR

(1.) ENTIRE AMOUNT CARRIED TO FIRST YEAR. The entire amount of the unused credit year must be carried to the earliest of the 22 taxable years to which (by reference to paragraph (1)) such credit may be carried.

(2.) AMOUNT CARRIED TO OTHER 21 YEARS. The amount of the unused credit must be carried to each of the

other 21 years to the extent that the credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c). (For legislative language see Appendix I. Internal Revenue Code of 1986, as amended, Sec. 39(a), "Income Tax--Unused Credits--Carryback/Carryforward," p. 4355)

6. Nepotism.

- a.) No WOTC tax credit can be claimed for wages paid to relatives employed by a taxpayer-employer. The tax credit is not valid if the employer/employee relationship is any of the following:
- (1.) A son or daughter of the employer or descendant of a son or daughter;
 - (2.) A stepson or stepdaughter of the employer;
 - (3.) A brother, sister, stepbrother, or stepsister of the employer;
 - (4.) A father or mother of the employer, or an ancestor of either;
 - (5.) A stepfather or stepmother of the employer;
 - (6.) The nephew or niece of the employer;
 - (7.) The uncle or aunt of the employer; or,

- (8.) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the employer.
 - b.) Also excluded is an employee who is a dependent of the employer who lives in his/her home, and is a member of the employer's household.
 - c.) This rule also applies if the individual who is a member of a targeted group is:
 - (1.) The employer, i.e., self-employed;
 - (2.) A shareholder who owns more than 50 percent of the value of the outstanding stock of the employing corporation;
 - (3.) A beneficiary, grantor, or fiduciary of the employing estate or trust;
 - (4.) A member of an employing partnership; or,
 - (5.) A shareholder in a Subchapter S corporation that is the employer.
 - d.) In addition, an employee of an estate or trust is not eligible for the credit if he or she is a grantor, beneficiary or fiduciary of the estate or trust.
7. Non-qualifying Rehires.
A person may not qualify an employer for the tax credit if, prior to the hiring date, the person was employed by the employer at any time during which he/she was not a member of a targeted group. The person must have been WOTC-qualified and certified as such only

the first time she/he was hired by a particular employer.

8. Breaks in Employment.

A WOTC-certified individual may experience one or more breaks in employment, i.e., be laid off or quit and be re-hired by the same employer, and continue to qualify his/her employer for the tax credit. However, the employer may take the credit only on wages paid during the one-year period (or 90-day period for summer youth) beginning on the employment start date, including any breaks in employment. In determining whether an employee satisfies the "minimum retention" period, the employer totals the cumulative days or hours the employee actually worked during the employee's first year of employment.

9. Successor Employers.

If an employer acquires substantially all the property used in the business, or a separate unit of the business of another employer, the WOTC that can be taken on employees (of that employer) who continue work for the new successor employer, may be limited. Credit must be computed under section 51(k)(1), with respect to wages paid by such successor employer in the same manner as if such wages were paid by the predecessor employer. This means that the successor employer is entitled to claim only the remaining balance of the credit.

Example: A worker receives \$2,000 in wages from the predecessor employer and subsequently receives \$4,000 in wages for the successor employer within one year from the date the worker started work for the predecessor employer; the successor employer may compute his credit on only \$4,000.

IV. THE WELFARE-to-WORK TAX CREDIT

Background

A. General.

The Welfare-to-Work Tax Credit (WtWTC) was created by section 801 of the Taxpayer Relief Act of 1997, (P.L. 105-34). The WtWTC is available to employers who hire individuals certified by the SWA/DLA as Long-Term Family Assistance Recipients. The credit became effective on January 1, 1998. It was, initially, authorized for 18 months. This credit has been reauthorized and now applies to new hires that begin work for an employer before January 1, 2004.

The amount of the credit is 35 percent of qualifying first-year wages and 50 percent of qualifying second-year wages. For this purpose, "wages" include amounts excludable from the employee's gross income, including amounts received under accident and health plans, contributions by the employer to accident and health plans, amounts paid under certain educational assistance programs, and amounts paid under certain dependent care assistance programs. Up to \$10,000 of wages, per year (for a two-year period), paid to these individuals may be considered in determining the amount of the Welfare-to-Work tax credit.

B. Legislative History.

Section 604 and 605, Title VI, of the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147); Section 801 of the Taxpayer Relief Act of 1997 (Public Law 105-34); Section 51A of the Internal Revenue Code of 1986, as amended; and Section 1003 of the "Tax and Trade Relief Extension Act of 1998" (P.L. 105-277).

V. WELFARE-TO-WORK TAX CREDIT NEW PROVISIONS

A. Group At-A-Glance.

The following pages offer a complete and concise overview of the group created by P.L. 105-34, including the statutory definition, the specific WtWTC law, and the group's eligibility requirements.

Long-Term Family Assistance Recipient

Group Designation (I)

This group refers to any recipient certified by the Designated Local Agency as one, who is a member of a family that:

- ❖ has received family assistance (i.e., AFDC/TANF or a successor program) for at least 18 consecutive months ending on the hiring date; or
- ❖ has received family assistance for a total of at least 18 months (whether or not the 18 months are consecutive) beginning after the day of enactment (i.e., August 5, 1997), and has a hiring date that is not more than two years after the end of the earliest 18-month period; or
- ❖ whose AFDC/TANF eligibility expired under a Federal or State law after the day of enactment (i.e., August 5, 1997), for applicants hired within two years after their eligibility expired.

Note. TANF means Temporary Assistance to Needy Families.

B. Essential Terms.1. **Minimum Employment Period.**

refers to the minimum number of hours and days an employer must retain the new hire to get the WtWTC. Before claiming the credit, an employer must employ the WtWTC eligible for a minimum of 400 hours of service.

2. **Qualified First-Year Wages.**

are wages that an employee earns during the first-year period, which begins the day the employee starts work. The maximum amount of wages to which the 35 percent credit may be applied during the first year must not exceed \$10,000 for a maximum credit of \$3,500.

3. **Qualified Second-Year Wages.**

are wages that an employee earns during the second-year period. During the second year, the maximum amount of wages to which the 50 percent may be applied must not exceed \$10,000 for a maximum credit of \$5,000. Under the WtWTC, employers can claim up to \$8,500 of combined tax savings per new hire.

4. **Certification Process.**

Before claiming the Welfare-to-Work tax credit, an employer must obtain certification of a worker's eligibility as a member of a family receiving long-term family assistance benefits/payments. SWAs/DLAs are the "designated local agencies" responsible for issuing the required certification. The rules for certifying a worker as a *Long-Term Family Assistance Recipient* are the same as the rules for certifying target group membership under the WOTC. Also, the rules governing who is ineligible under the WOTC are the same for Long-Term Family Assistance Recipients.

There are two ways an employer can satisfy the requirement to obtain a certification that a worker is a member of a targeted group. The employer can, either:

- a.) obtain a certification from the SWA/DLA, on or before the day on which the individual begins work, stating that the individual belongs to a targeted group, or
- b.) complete a "Pre-Screening Notice" (IRS Form 8850) with respect to the prospective employee on or before the day the individual is offered employment.

Within 21 calendar days after the individual begins work, the employer submits IRS Form 8850, to the SWA/DLA, as part of his/her request for certification.

5. Coordination of the WOTC and the Welfare-to-Work Tax Credit.

The WtWTC is coordinated with the WOTC so that in any one taxable year an employer cannot claim both credits with respect to the same individual.

For Example: "A" begins work for employer "X," a calendar year taxpayer, on October 1, 2002, and works at least 400 hours for "X." "A" is certified as both a member of a WOTC target group and as a Long-Term Family Assistance Recipient. "X" pays wages of \$1,000 per month on the last day of each month. "X" pays "first-year wages" for service performed from October 1, 2002, through September 30, 2003. "X" pays "second-year wages" for service performed from October 1, 2003, through September 30, 2004.

For tax year 2002, "X" may claim either a WOTC credit of \$1,200, ($\$3,000 \times 40\%$) or a WtWTC of \$1,050 ($\$3,000 \times 35\%$).

For tax year 2003, "X" also has choices. With respect to the first-year wages paid for service performed from January 1 through September 30, 2003, "X" may claim either a WOTC credit of \$1,200 (the remaining $\$3,000 \times 40\%$) or a WtWTC of \$2,450 (the remaining $\$7,000 \times 35\%$). Note that, although "X" paid \$9,000 in first-year wages during 2003, the WOTC limit is \$6,000 in wages and the WtWTC limit is \$10,000 in wages. If "X" claims the WtWTC for 2003, "X" may also claim the WtWTC with respect to the second-year wages paid for service performed by "A" from October 1, 2003, through December 31, 2003. The amount of the credit is \$1,500 ($\$3,000 \times 50\%$).

For tax year 2004, "X" may claim a WtWTC with respect to the second-year wages paid to "A" for service performed from January 1, through September 30, 2004. The amount of the credit is \$3,500 (the remaining $\$7,000 \times 50\%$).

VI. ROLES AND RESPONSIBILITIES

A. Federal Level

1. The Employment and Training Administration (ETA) and the Internal Revenue Service (IRS) have a Memorandum of Understanding (MOU), which delineates the responsibilities of each agency in conducting the WOTC program and the WtWTC.
2. Department of Treasury.
The Department of Treasury, the lead agency for the WOTC/WtWTC program, administers the tax credits' provisions through the IRS. The IRS:
 - a.) has the sole responsibility for the design and issuance of the Pre-Screening Notice, IRS 8850 Form.
 - b.) is the sole source of policy interpretations or rulings relating to tax provisions of the credits.
 - c.) develops tax credit regulations, as needed, and related informational materials for employers.
 - d.) reviews ETA policies and information materials for the WOTC program and WtWTC and participates in designing the processing, verification and Certification system.
3. Department of Labor.
The U.S. Department of Labor, through ETA, has the authority and responsibility for:
 - a.) Developing policy and program guidance for WOTC/WtWTC processing, verification and Certification processes, in collaboration with the IRS, to assure

proper administration of the tax provisions, including maintaining and distributing WOTC/WtWTC forms.

- b.) Providing interpretations of national policy and guidance as they affect WOTC/WtWTC verification, processing and Certification.
- c.) Managing, providing oversight of, and issuing basic operating guidelines for the WOTC program. This includes:
 - (1.) Resolving policy issues raised at the National and Regional levels;
 - (2.) Disseminating nationally determined policy and procedural decisions in a uniform manner;
 - (3.) Overseeing program implementation at the Regional level, including, but not limited to:
 - (A.) Ensuring that policies and procedures are disseminated to the States in a timely and effective manner;
 - (B.) Participating in Regional on-site reviews of State operations to ensure uniformity and adherence to policy.
 - (4.) Tracking, reviewing, and keeping Regions apprised of pending and recently enacted legislation, which has an actual or potential impact on the WOTC program;
 - (5.) Providing national program statistics to the Regions and States on a regular basis and

other agencies and individuals, as requested;

(6.) Allocating appropriated funds for program operations to the Regions for allocation to the States;

d.) Developing agreements with other Department of Labor components, as well as other Federal agencies and national organizations;

e.) Reporting annually to the Congress on the results of verification activities carried out by the States; and

f.) Performing other functions as necessary to properly and efficiently administer the WOTC program and the WtWTC.

4. Other Federal Agencies/Programs

Also, ETA is negotiating MOUs with other Federal agencies for administering the WOTC program and the WtWTC. The following Federal agencies/programs have or will enter into agreements with ETA/USES and ALMIS. These agreements address cooperation in facilitating the SWAs' verification of eligibility determinations, issuing Conditional Certifications, and/or in the development and distribution of outreach information on the WOTC/WtWTC:

- ❖ Department of Treasury
- ❖ Department of Veterans Affairs
- ❖ Rehabilitation Services Administration
- ❖ Department of Health and Human Services
- ❖ Department of Agriculture
- ❖ Department of Housing and Urban Development
- ❖ Social Security Administration
- ❖ One-Stop Career Centers

5. ETA Regional Offices.
ETA Regional Offices are responsible for ensuring that the SWAs/DLAs follow prescribed standards and requirements for administering the WOTC program and the WtWTC. Regional Administrators are responsible for:
- a.) Designating a Regional Coordinator for WOTC/WtWTC to direct and assist the SWAs/DLAs in administering the WOTC program and the WtWTC;
 - b.) Ensuring that there is a WOTC/WtWTC Coordinator in each State, and that State and Regional staff are adequately trained;
 - c.) Ensuring that the SWAs/DLAs are provided all ETA/USES/ALMIS guidance and instructions on the two tax credits;
 - d.) Ensuring that the SWAs/DLAs implement and maintain certification and verification systems; and
 - e.) Monitoring the SWAs'/DLAs' administration of the WOTC/WtWTCs. The Regions have the primary Federal oversight responsibility on the states' implementation of the program, particularly on:
 - (1.) Verification, eligibility determinations, verification and certification activities;
 - (2.) Operational management of the program, including record-keeping, timely reporting and on-site monitoring and audit reviews of each office;

- (3.) Communicating information on the operation of the tax credit program; and
 - (4.) Educating SWAs/DLAs on how to enter into Cooperative Agreements with other state and local agencies.
- f.) Responding to special requests from the National Office for reports, analyses, studies, etc., in a timely manner;
 - g.) Handling public complaints and inquiries concerning state administration of the program, and bringing to the attention of the National Office policy issues arising in the field, and
 - h.) Allocating program funds to the states as available, and monitoring funds' utilization.

B. State Level

- 1. State Role.
States, through state legislatures, designate the agency vested with the authority necessary to cooperate with the USES/ALMIS. Governors are responsible for coordinating the full participation of the SWAs/DLAs under the Wagner-Peyser Act in the WOTC program and WtWTC. Such participation includes assistance in negotiating state and local cooperative agreements.
- 2. Designated Local Agency Role.
SWAs/DLAs are responsible for the operational management of the WOTC/WtWTC Certification process at the state and local level. Where a "SESA" no longer exists and the functions traditionally performed by the Employment Service are incorporated into

another state agency approved by the state legislature, that agency will then be the approved authority to issue Certifications. Certifications may take two forms: the Certification issued to employers who have properly completed all WOTC/WtWTC Certification requirements and Conditional Certifications to applicants who meet the basic WOTC target group requirements and/or those of the Long-Term Family Assistance WtWTC group.

SWAs/DLAs operating walk-in WOTC/WtWTC programs may issue Conditional Certifications. Issuance of a Conditional Certification does not automatically guarantee a Certification to the employer hiring that individual. To obtain the Certification, the employer must submit a properly completed IRS Form 8850 with the completed Conditional Certification form (ETA Form 9062) in a timely manner. To be considered timely the IRS Form 8850 must be submitted not later than the 21st calendar day following the individual's employment start date.

The SWAs'/DLAs' responsibilities are to:

- a.) Determine the eligibility of individuals as members of targeted groups.
- b.) Issue employer Certifications for the two tax credits.
- c.) Establish and maintain a processing and forms review, quality control, record-keeping and reporting capability;

- d.) Establish a system for orderly management of WOTC/WtWTC job orders, applicant referrals, and records' retention.
- e.) Establish and maintain a systematic and orderly system for periodically verifying the eligibility of a randomly chosen sample of individuals certified under the WOTC program and the WtWTC Long-Term Family Assistance group;
- f.) Establish a record-keeping and reporting capability for such activities, and initiate effective corrective action when appropriate as indicated by the result of such activities.
- g.) Establish and maintain a system and procedures to regularly monitor cooperative agreements and initiate appropriate corrective actions.
- h.) Negotiate formal cooperative agreements with state and local agencies and organizations to assist in the WOTC/WtWTCs' program by performing eligibility determinations to augment the SWA/DLA WOTC/WtWTC services. These cooperatives agreements may include issuing conditional certifications or procedures for verifying eligibility.
- i.) Train SWA/DLA and participating agency staff, as needed and appropriate.
- j.) Provide information to employers or their designated representatives, participating agencies, government agencies, applicants and the general public on the WOTC program and the WtWTC.

k.) Monitor formal cooperative agreements for WOTC/WtWTC eligibility determinations and/or public information.

l.) Develop Certification forms if the state chooses not to utilize the Employer Certification, ETA Form 9063.

3. Other State Agencies.

Certain state agencies; e.g., Departments of Health and Human Services and Vocational Rehabilitation may, through formal agreements, participate in the WOTC/WtWTCs' program. Such agreements will define any responsibilities for pre-eligibility determinations (i.e., issuing Conditional Certifications), referrals, reporting, records' retention, publicity, and facilitating the SWAs'/DLAs' verification activities.

C. Local Participating Agencies.

Local agencies serving targeted group populations as part of their regular functions may participate in the eligibility pre-determination (issuing Conditional Certification), referral and/or publicity related functions of the program. Formal agreements between the SWAs/DLAs and participating agencies are required in order to issue conditional certifications. Participating agencies/organizations may include, but are not limited to:

1. Local Welfare
2. One-Stop Career Centers
3. Parole and Probation
4. Veteran Organizations
5. Food Stamp Program Agencies
6. Vocational Rehabilitation, including agencies for the blind,
7. ETA Grantees; (e.g., Native American and Farm Workers' Groups).

VII. WORK OPPORTUNITY & WELFARE-TO-WORK TAX CREDITS' CERTIFICATION PROCESS

All eligibility criteria should be fully documented prior to the issuance of a Certification. All supporting documentation obtained should be retained in the WOTC or WtWTC files as instructed in this handbook.

A. Administrative Forms

1. IRS Form 8850.

"Pre-Screening Notice and Certification Request (PSN/CR) for the Work Opportunity and Welfare-to-Work Credits," IRS Form 8850, revised October 2002, (copy included in Appendix IV), is to be used without modification of content by employers/consultants to establish a record of their belief that a job applicant is a member of a WOTC target group and/or the Long-Term Family Assistance Recipient group under the WtWTC. However, employers may add their corporate logos, use a different color for this form, shade-in areas on the form and add notations, as long as there is no substantive change to the content of this form. **Note.** The SWA/DLA should not deny certification to employers who submit an IRS Form 8850 that contains these kinds of modifications or which does not include the instructions from the back of the form.

Note. A properly submitted IRS Form 8850 is one completed in every relevant detail and *signed, either, in pencil or in pen and ink* by the applicant and employer, and mailed (see pp. VII- 27-30) to the SWA/DLA by the 21st calendar day after the applicant begins work for the employer.

The IRS recently granted employers and their consultants the option to file the PSN/CR electronically. The electronic filing mode

is strictly contingent on a SWA's/DLA's technical ability to design and implement such a system.

2. USDOL ETA Form 9061.

The "Individual Characteristics Form (ICF), Work Opportunity and Welfare-to-Work Tax Credits," ETA Form 9061, is a U.S. Department of Labor, Employment and Training Administration (ETA) form required to be used without modification by all employers and their representatives. The purpose of the ICF is to expedite Certification processing by enabling the individual for whom Certification is requested to be identified with one or more target group categories --as the case may be-- under the WOTC and/or the WtWTC. The ICF also provides other information needed to support verification and reporting.

Employers and their representatives must submit an ICF as part of the Certification process, except when an employer's Certification request is based on a valid Conditional Certification. ***Employers and their representatives are encouraged to submit the ICF together with the IRS Form 8850 when requesting certification for a target group.*** No ICF is required to be filed for employer Certification requests that are based on a valid Conditional Certification Form (i.e., ETA Form 9062).

For employer Certification requests that are not based on a Conditional Certification, the ICF may be executed at any time during the selection process. The ICF may also be executed after an employee begins work. ***Employers should be advised that the processing of a Certification request cannot proceed without an ICF on file.*** Thus, SWAs/DLAs are advised to set processing guidelines that encourage employers (and

their representatives) to attach an executed ICF to each PSN/CR that is submitted. (The exception is an ICF that is filed electronically; and, therefore, cannot be attached to the PSN/CR. In this case, steps should be taken to match the ICF with the relevant PSN/CR.)

Employers and their representatives may execute the ICF by interviewing job applicants and employees either in person or electronically; e.g., via telephone, or by using information obtained from records under the employer's and/or employer representative's control or other accessible records. Employers have the obligation to notify the job applicant or employee that the information and supporting documentation collected in executing the ICF will be used to qualify the employer for an employer tax credit available through the Work Opportunity Tax Credit program or the Welfare-to-Work Tax Credit. The ICF paragraph on page three of this form may be used for this purpose.

The ICF may be signed by the person to whom the information on the form pertains; or by an authorized official directly employed by the employer; or by an employer's representative; or by a person having legal status to verify the information on the form in the case of a minor. Authorized officials of SWAs/DLAs and participating agencies may also sign the ICF.

The ICF may be filed electronically; e.g., via fax, E-Mail, or the Internet if available. ICFs filed electronically are presumed to be "signed" by the individual or corporate entity under whose authorization the filing was made.

When the ICF is filed electronically,

employers and employer representatives are encouraged to take steps that enable the ICF to be matched with the relevant PSN/CR, IRS Form 8850. The state should notify the employers and employer representatives of the type of information needed for matching the IRS Form 8850 to the ICF.

3. Agency Verification Forms.

- a.) "Agency Declaration of Verification Results, Work Opportunity and Welfare-to-Work Tax Credits," ETA Form 9065, is an optional U.S. Department of Labor, ETA form for SWA/DLA use only. The SWA/DLA records the results of its verification activities. If the SWA/DLA elects to use an alternative form to record verification results, the alternative form must contain all of the information that appears on the optional ETA Form 9065.
- b.) "State Verification Form and/or Release of Information/Documentation Forms are optional state-designed forms that are used in verifying the individual's eligibility. These forms may grant an applicant's "release of information" so that the SWA/DLA, employer and/or employer representative may request documentation directly from the applicable state agency.

The Food Stamp Act, section 2020(e)(8) (also see Cumulative Supplement, May 1977, USCS § 2011, Appendix I) limits the use and disclosure of recipient information to persons (and for that purpose) directly related to the administration or enforcement of this Act, regulations issued pursuant to this Act, other Federal Assistance programs, and certain federally-

assisted state programs. Case-file information about a recipient or household may not be disclosed to an employer, unless the recipient has provided the Food Stamp Program (FSP) agency, SWA/DLA, or local participating agency, as appropriate, written authorization to do so.

Each SWA/DLA is responsible for contacting the FSP state agency and becoming familiar with that agency's disclosure policy. The SWA/DLA must negotiate with the FSP agency, as needed, to develop a mutually satisfactory process for the disclosure and safeguarding of necessary FSP recipient case-file information.

4. Conditional Certification Form.

The "Conditional Certification (CC), Work Opportunity and Welfare-to-Work Tax Credits," ETA Form 9062, is a required U.S. Department of Labor form that must be used without modification by all SWAs/DLAs and all participating agencies and programs to which the SWA/DLA may delegate responsibility for Conditional Certification. This form establishes that the named individual has been tentatively determined eligible as a member of a WOTC and/or WtWTC target group(s) indicated; and, therefore, hiring this person may lead to an employer Certification under the WOTC program and/or the Welfare-to-Work Tax Credit. When the employer receives a Conditional Certification, the employer, to request Certification, submits this form, together with an executed PSN/CR, to the SWA/DLA. No ICF needs to be submitted by the employer when a valid Conditional Certification Form is filed with a PSN/CR.

If an employer seeks WOTC and/or WtWTC

Certification for a job applicant who has a Conditional Certification when the PSN/CR is executed, the SWA/DLA may render a Certification decision based on the employer's timely submission of the PSN/CR and a copy of the Conditional Certification form that displays an expiration date confirming that the named individual qualifies as a member of the specified WOTC target group and/or WtWTC group given the hiring date indicated on the PSN/CR. The SWA/DLA must also ensure that the individual's status has not changed since issuance of the Conditional Certification.

SWAs/DLAs may delegate Conditional Certification responsibility (but not final Certification) to a participating agency. Such delegation of authority must be made pursuant to a written agreement with the participating agency. The agreement must specify the scope of the participating agency or program's Conditional Certification arrangements and indicate whether the scope of conditional certifying authority extends to all WOTC target groups or only to a specific target group(s).

5. Employer Certification Form.

The "Employer Certification, Work Opportunity and Welfare-to-Work Tax Credits," ETA Form 9063, is an optional U.S. Department of Labor, form. The form provides the employer with a record of results of the SWA's/DLA's action on the employer's Certification request. **Note.** By law, this form can only be issued by the SWA/DLA.

If a SWA/DLA opts to develop and use a state-specific, Employer Certification form, the state-specific form must contain ALL of the information that appears on the optional ETA Form 9063.

Under the reauthorized WOTC and new WtWTC, SWAs/DLAs should issue dual certifications when the applicant qualifies under a WOTC target group and the *Long-Term Family Assistance Recipient group*.

The national office has included specific language in the "Comments Box" of ETA Form 9063, alerting employers who receive dual certifications as follow: *"employers are, hereby, informed that they cannot claim both the WOTC and the WtW credits for the same employee in the same taxable year."*

Issuing an Employer Certification cannot be made contingent on the SWA/DLA conducting a personal or "walk-in" interview of the person whose employment establishes the employer's claim to the tax credit. Although personal or walk-in interviews may be used in conjunction with issuing a Conditional Certification, they may not be mandated, as part of the SWA's/DLA's Certification process that follow an employer's submission of a Certification request.

6. Miscellaneous State Addendum.

SWAs/DLAs may attach supplemental information to the ICF that causes it to contain state-specific information. Any supplementation of the ICF may provide information only. Supplemental information may not have the effect of adding new data elements to the information collection called for in the ICF. Examples of appropriate supplemental information include the address to be used to file the ICF, information that denotes Empowerment Zones, Enterprise and/or Renewal Communities in a state, and a person that may be contacted, or a "help number" that may be called, to have questions answered about the state's WOTC program or the WtWTC.

Supplemental information may also include material that expresses, in easy to understand terms, the characteristics that establish eligibility under the various WOTC target groups and/or the WtWTC group, or describes the supporting documentation that will be accepted as proof of eligibility under a WOTC category or the WtWTC Long-Term Family Assistance Recipient.

7. WOTC/WtWTC Worksheet.

This is a state developed form for use in the certification process. The form provides spaces for the eligibility reviewer and the "48-hour" reviewer to sign, date and indicate their determinations.

B. Supporting Documentation.

In specifying the supporting documentation that will be accepted as proof of eligibility under a WOTC/WtWTC category, SWAs/DLAs must accept the type of documentation indicated in this handbook and may not require additional documentation from employers (employers' representatives) that sets a higher standard of proof of eligibility.

Note. It is the responsibility of the SWAs/DLAs to take reasonable steps to assure that the documentation needed to make a Certification decision is available to them. While SWAs/DLAs may accept documentation provided by an employer/representative, it may not rely solely on an employer's or his/her representative's efforts to secure documentation that establishes eligibility. The SWAs/DLAs are strongly encouraged to obtain adequate documentation from participating agencies (PAs), e.g., through a Memorandum of Understanding. If the SWA's/DLA's efforts fail to secure the needed documentation from the PAs after a reasonable effort conducted over a reasonable period of time, the SWA/DLA must deny Certification and inform the employer of the reasons for the Denial.

Employers may list, on the ICF, sources of information, i.e., parole officer's name or a welfare case number to aid the SWA/DLA in establishing eligibility in a timely manner. Employers also may obtain a letter from the agency that administers the relevant program indicating that the employee or a member of his or her household meets one of the eligibility requirements. For example, an employer may obtain the name of a caseworker. Employers may secure copies of the following documentation: birth certificates, driver's licenses, school I.D. cards, work permits, pay stubs, military discharge papers, and utility bills.

Note. The employer should not request, obtain or provide the actual documentation for the remaining categories (i.e., for those receiving welfare and/or food stamp benefits). For example, it would not be appropriate for an employer to request the employee's food stamp benefit history.

Section 2020, Administration (8), Cumulative Supplement in 7 United State Code Service (USCS), Agriculture, issued May 1977, regarding the Food Stamp (FS) Act and 7 USC 2020(6)(8) prohibits state agencies from disclosing participants/recipients' information to employers or the SWAs/DLAs. However, the provisions in P.L. 104-188, which authorize the WOTC program, also require that the Secretary of Treasury and the Secretary of Agriculture enter into an agreement to provide FS recipients' information to the SWAs/DLAs. Under these circumstances, the SWAs/DLAs or participating agencies cannot require employers to obtain FSP information or deny certifications if the employers fail to furnish the subject documentation. The SWA/DLA must take the necessary steps to obtain this documentation and process all employers' timely filed requests for certification.

SWAs/DLAs should advise employers and employer representatives regarding when supporting documentation should be received. ***Within 90 days of filing the PSN/CR and ICF is a suggested time standard.*** The objective of this standard is to expedite the SWA's/DLA's certification decision. However, SWAs/DLAs cannot cite failure to submit supporting documentation within 90 days of filing a PSN/CR and ICF as the reason for Denial of certification.

C. Certification Process

1. General Provisions.

The SWA/DLA will require and collect paper documentation that demonstrates WOTC and/or WtWTC eligibility. SWAs/DLAs must use the full documentation method to administer the WOTC program and the WtWTC.

2. Participating Local Agency.

A "participating agency" is a federal, state, county, or local government agency or a grantee of these agencies. A participating agency may include, but is not limited to, State Workforce Agencies, One-Stop Career Centers, WIA grantees, School-to-Work Transition grantees, Vocational Rehabilitation agencies, city and county welfare offices, Veterans' Affairs offices, and other veterans'-service organizations.

3. Conditional Certification.

This process may be triggered when the jobseeker comes to a local employment office or to a participating agency to perform a job search or in response to a positive recruitment.

- a.) Process. To determine if a job-ready applicant is eligible and to issue a Conditional Certification for the WOTC program or the WtWTC group, the SWA/DLA or Participating Agency should:

- (1.) Enter the Initiating Agency Code.
This is a pre-determined code assigned to each agency that has a Memorandum of Understanding with the SWA/DLA granting them permission to issue Conditional Certifications.
- (2.) Enter the Control Number. It may be a Social Security No., Case No. or some other appropriate designation which permits easy filing, identification and retrieval of forms.
- (3.) Under "Type of Conditional Certification Determination", distinguish between "Original," if the applicant is being processed for the first time; or "Revalidation", if the eligibility process was performed within the previous 12-month period. Otherwise, the Conditional Certification is counted as original.
- (4.) Enter the date (month, day and year) in which the eligibility determination is completed.
- (5.) Enter the name and address of the State Workforce Agency (if known) that will issue the final Certification.
- (6.) Sign and date the ETA Form 9062, Conditional Certification.
- (7.) Enter the area code and telephone number of the agency issuing the Conditional Certification.

- (8.) Enter the applicant's full name (last name, first name and middle initial).
- (9.) Enter the applicant's Social Security number.
- (10.) Enter the applicant's home address, including, apartment number, and zip code.
- (11.) Enter the Target Group code.
- (12.) Have the applicant sign the Conditional Certification Form.
- (13.) Collect all information and supporting documentation required for Conditional Certification to indicate the applicant's eligibility.
- (14.) Complete section 13 indicating the expiration date of this Conditional Certification (e.g., 45-days).
- (15.) Make a copy of the Conditional Certification, attach all supporting documentation, or note location of electronic file and retain. The participating agency may be required to produce this information, e.g., during an audit.
- (16.) Provide the original Conditional Certification to the applicant to use in the job search. The participating agency may include a copy of the IRS Form 8850 and may assist in completion of the applicant section.

- (17.) Upon the applicant's employment, the employer completes items 14, 15, 16, and 17 on the Conditional Certification. The employer must also complete and submit an IRS Form 8850 in a timely manner.
- b.) Review and Certification. The issuance of a Certification begins with a review of the Conditional Certification, ETA Form 9062, by the SWA/DLA. This review begins the verification process of eligibility pre-determinations issued. The Conditional Certification should be submitted for final Certification in conjunction with an IRS Form 8850. During the review, these forms are screened for completeness, timeliness, and target group designation. This review should occur within 60-days of receipt of the forms. Since the supporting documents used to establish eligibility have been retained in the applicant's Conditional Certification file, no further documentation is necessary.
- c.) Issuance of Certifications and Denials. Upon completion of the review, the SWA/DLA will issue Certifications to employers, as appropriate.

For Denials, the SWA/DLA will send a letter to the employer denying the Certification and stating the reason(s) for the Denial. In addition, retain copies of the Denial and/or ineligible ruling, along with all forms and documentation, as appropriate, for the specified retention period (see pp. VIII-3 and 4).

d.) Quality Assurance.

During the required Audit Process for WOTC/WTWTC, certifications issued based on a Conditional Certification will be selected for verification. At this point, the SWA/DLA will be required to obtain all supporting documentation from the participating local agency used to establish the applicant's eligibility during the Conditional Certification process. Should any participating local agency be found to have an unusually high rate of error in their issuance of Conditional Certifications, they may be subject to corrective action plans at the state's discretion. This may include a "no-play" policy whereby the participating local agency in question may have its right to issue Conditional Certifications revoked.

4. Pre-Screening Notice and Certification Requests.

This process of certification is triggered when an employer sends a Pre-Screening Notice, IRS Form 8850, to the SWA/DLA for Certification. In addition to the IRS Form 8850, the employer must submit to the SWA/DLA, an ICF and supporting documentation to support the applicant's eligibility. The certification process for those applicants who have been pre-determined as eligible (i.e., a Conditional Certification has been issued) is detailed in the preceding section.

a.) Employer process. Employers should follow the process outlined below:

- ❖ Carefully interview prospective employees to determine WOTC and/or WtWTC eligibility before making

any offers to hire. A job applicant and employer have until the 21st calendar day after the applicant begins work to sign and date the IRS Form 8850. The employer has until the 21st calendar day AFTER the applicant begins work to mail a completed IRS Form 8850 to the appropriate SWA/DLA (see pp. VII-27-30).

- ❖ Complete an ICF, or the bottom part of a Conditional Certification, as required.
- ❖ If completing the ICF, collect available documentation to demonstrate WOTC and/or WtWTC eligibility.
- ❖ Completely prepare and sign the Pre-Screening Notice, IRS Form 8850.
- ❖ Transmit the forms with copies of any supporting documentation to the SWA/DLA for processing.

b.) State Workforce Agency/DLA Process. To determine eligibility and issue a Certification for the WOTC program and or the WtWTC, the SWA/DLA should:

- (1.) Receive a properly completed Pre-Screening Notice, IRS Form 8850 from the hiring employer or his/her representative. This document must be signed and postmarked not later than the 21st calendar day following the individual's employment-start date. If the IRS Form 8850 is not received with an ICF and supporting documentation, or the

completed bottom part of a Conditional Certification form, it should be filed pending the receipt of these items. **Note.** A "Needs Letter" should be sent to the corresponding employer or representative listing the missing information items and requesting them within a reasonable period of time set by the SWA/DLA.

- (2.) Collect additional information and supporting documentation as required to determine and substantiate eligibility.
 - (3.) Record the date that the Pre-Screening Notice was postmarked
 - (4.) Carefully verify timeliness, target group eligibility and all supporting documentation. If all aspects are in order and indicate eligibility, a certification must be issued. States should initiate a procedure for quality reviews.
 - (5.) Retain all original forms and documentation for files.
 - (6.) Review of PSN/CR should occur within 60-days of receipt in the SWA/DLA.
- c.) Issuance of Denials. The steps for issuing Denials are basically the same as those outlined above. The exception is that the reason for the ineligible ruling should be notated. Keep copies of the ineligibility ruling, along with all forms and documentation, for the specified retention period, i.e., 1 year (see p. VII-14).

5. Verification and Audits.

a.) Procedures

- (1.) Documentation of Eligibility. To ensure the integrity of the program and provide a solid basis for subsequent verification activities, the materials and/or collateral contacts used to establish an applicant's eligibility must be documented using the "Agency Declaration of Verification Results, Work Opportunity and Welfare-to-Work Tax Credits," ETA Form 9065, or an equivalent form at the time the eligibility determination is performed.

The application must contain the information upon which WOTC and/or WtWTC eligibility is determined and is used to document/support verification in the audit process. While all items on the application should be examined for correctness and consistency, the documentary and collateral contact sources that are verified during an audit, are to be attached or annotated on the application.

Some applicants may not be able to provide complete documentary evidence or collateral contacts. In such cases, state-wage records, welfare and social service records, etc., should be used, where feasible, to verify the statements made by the applicant. This is discussed further in *Audit Methodology* later in this chapter.

The completed application serves as a record of the type/source of information or documentation upon which the Conditional Certification was issued. It must become part of the record/file for each Conditional Certification issued. If a Certification is issued and later chosen for audit, the information identified or attached to the application will be used to identify the type/source of documentation or collateral contact needed for the audit.

Whenever possible, the SWAs/DLAs should obtain photocopies of materials presented by the applicant; e.g., driver's license, military discharge papers, etc., and retain as part of the applicant's file to expedite a subsequent audit (see Audit Methodology later in this chapter).

b.) Quality Reviews

- (1.) Frequency. A "quality review" is performed on each applicant's record file at certain "key points" in the eligibility determination and/or Certification process. A different individual than the one performing the initial screening must conduct this review.

Documentation of the 48-hour review should be recorded. Either the central or local office of the SWA/DLA must check all forms for

completeness, accuracy and consistency. Key review points in the eligibility determination and/or Certification process include a "48-hour review" within:

- ❖ Completion of eligibility determination; and
- ❖ Receipt by the SWA/DLA of copies of Pre-Screening Notices, IRS Form 8850s and supporting documents which were issued by participating agencies; and
- ❖ Receipt of completed PSNs from employers; and,
- ❖ Issuance of Certifications and/or Denials.

c.) Procedures. The SWA/DLA will review each form as soon as practicable, upon receipt, to determine that:

- (1.) It is complete and internally consistent;
- (2.) The information related to eligibility complies with the criteria for the target group;
- (3.) The participating agency or local office is contacted immediately to obtain appropriate information when forms are incomplete or do not support the eligibility determination; and,
- (4.) The file copy of the "PSNs, IRS Form 8850" is annotated regarding any contact with the certifying agency or local office.

d.) When information received from the certifying agency is incomplete or does not support the eligibility determination, the certifying agency must, when notified:

- (1.) Send revised forms providing missing or corrected items to support the determination as soon as practicable to the SWA/DLA; or
- (2.) Invalidate the Conditional Certification or Certification (in the case of an audit) when the required information cannot be obtained;
- (3.) Provide written notification of invalidation of the Conditional Certification or Certification to the applicant and the Participating Agency; and,
- (4.) Notify any employer to whom the applicant was referred to that the Conditional Certification or Certification is invalid because of missing or incorrect items and that without such information no Certification can be issued or that the Certification is being revoked (in the case of an audit).

Completed Conditional Certifications returned by employers should be checked upon receipt to ensure that the "Employer Declaration" section was properly completed. If incomplete, the Conditional Certification should be returned to the employer with a request to supply the missing information.

The completed Certification and supporting documentation should be given a final review for completeness and consistency before the Certification is mailed to the employer. It must include the name, social security number, employment start date, job title, and wage of the eligible, newly hired employee.

At such time as all requested information is returned and completed correctly, a certification or Denial should be issued by the SWA/DLA within 14 days.

6. Audit Methodology

- a.) General. Preferably during, or immediately following the end of each quarter, the SWA/DLA will draw, for the purposes of auditing, a 10 percent sample of all Certifications issued during the quarter, including those for qualified summer youth employees. This audit will be conducted to establish the credibility and reliability of the eligibility determination and Certification process. A SWA/DLA staff person other than the originator must examine the certifications in the sample. Unless results call for a wider-scope examination of Certifications, the audit sample will suffice as the "test" of WOTC, WtWTC or dual Certifications as required.

The SWAs/DLAs are encouraged to use UI and/or other available wage records or files to review all Certifications issued. Quality control is important

and computerized runs of Certifications against UI wage records reduce the chances of erroneously certifying ineligible persons for the tax credits. However, the SWAs/DLAs may find that the availability of UI wage records may delay the audit sample.

Note. It is not the responsibility of the SWAs/DLAs to verify that a certified targeted employee has worked the required numbers of hours for the employer. SWAs/DLAs are only responsible for verifying and certifying an applicant's eligibility in a specific WOTC and/or WtWTC target group. The responsibility for verifying the required number of hours a certified targeted group member employee works, rests with the IRS, the only enforcement agency.

- b.) Sample Size. The sample size must be based upon the total number of Certifications issued; i.e., universe size, in the state during the preceding quarter, including, if applicable, those issued for the Qualified Summer Youth target group. The table, which follow, serves as a guide for selecting the required sample size.

SAMPLE SIZES FOR QUARTERLY VERIFICATION	
<u>Universe Size</u>	<u>Sample Size</u>
Below - 1,200	10% Sample
1,200 - 1,300	129
1,301 - 1,400	130
1,401 - 1,500	131
1,501 - 1,700	132
1,701 - 1,900	133
1,901 - 2,100	134
2,101 - 2,300	135
2,301 - and above	142

Examination of Certifications and Conditional Certifications.

Verification of entries on the application for the purpose of an audit requires re-examining photocopied documentation; e.g., copy of driver's license or veteran's discharge, attached to the application, or re-contacting the collateral source(s) listed in the application; e.g., local welfare agency, vocational rehabilitation agency.

It should also include checking state-wage records or the records of welfare agencies, etc., to confirm the statements of the applicant. If the applicant provided a "no income" affidavit, this may also be verified by checking state-wage records. Unless a problem is evident, there is no need to verify the documentation or collateral sources by contacting the individual.

If, however, any material contained in the file is contradictory or does not support the individual's eligibility, the individual may be contacted to verify his/her eligibility. In

contacting the individual for verification audit purposes, the SWA/DLA has three options:

- (1.) It can ask the individual to resubmit copies of documentation, or
- (2.) It can ask individuals to submit further documentation, or
- (3.) It can interview the applicant again. To secure maximum cooperation, individuals should be informed of the reason for the request; i.e., normal auditing procedures and be reminded that the penalty for fraudulent statements, documentation, or collateral contacts applies as it did for the original eligibility interview.

Employers may assist in locating individuals to obtain their cooperation for audits. When contacting employers for this purpose, SWAs/DLAs should stress that the auditing process ensures the integrity of the WOTC program.

It is understood that despite good faith efforts to obtain copies of income documentation or sources of collateral contact and to locate employees when necessary, some audits will result in a finding of "not able to establish that the certified individual is eligible." However, too large a proportion of such findings may call audit results into question. A substantial effort should be made to avoid such a finding.

For those found to be ineligible, the SWAs/DLAs must notify the employer, and the IRS of this finding as soon as possible, by certified mail. This notification must be made within 5 days of a determination of ineligibility. Employer eligibility for the tax credits does not cease until the date that the employer is notified that the Certification(s) has been invalidated.

- c.) Second Audit Sample. If the number ineligible in the original quarterly audit sample is 5% or more, a second sample of equal size must be drawn. If the second sample confirms an error rate of 5% or more, a corrective action plan is required.

Corrective Action Plan. Corrective action plans must be developed and carried out by the SWAs/DLAs. Such plans should be sufficiently detailed and prescribed to ensure that necessary corrective actions are taken and should result in adequate improvements.

Corrective action plans, when indicated by audit results, must be described in the "Comments" section of ETA Form 9059, "Verification Results."

- d.) Qualified Summer Youth Employees. Certifications issued for members of the qualified summer youth target group will be included in the total universe from which the audit sample is drawn for the subject quarter.

By definition, most Certifications for this group will be issued during the months of June, July and August and sampled during the following quarter. Under no circumstances must this target

group be excluded from regular audit procedures.

- e.) Reporting Verification Results. After all Certifications selected in the quarterly audit samples are reviewed, the results of the review must be reported quarterly to the National Office via the Regions, on ETA Form 9059, "Verification Results, WOTC and WtWTCs - Report No. 3." This report is due at the Regional Office by the 20th day of the 5th month following the closing date of each quarter.

Federal Role. The Department of Labor/ETA is responsible for reporting annually to the Congress on the WOTC program and WtWTC, including verification results, oversight, and other functions necessary to properly administer the program. Regarding quality control audits of WOTC/WtWTC Certifications, the DOL will fulfill its oversight and guidance responsibilities by participating in a representative number of quarterly audits and compliance reviews at the state level each year.

D. Mailed WOTC and WtWTC Documents.

1. Evidence of Mailing.

- a.) The IRS has interpreted evidence of mailing to require either:

- ❖ a U.S. Postmark;
- ❖ the original of a U.S. Postal Service (USPS) "Certificate of Mailing" (PS Form 3817); or
- ❖ other equivalent U.S. Postal Service approved authorized evidence of the mailing date.

Since the purpose of the Certificate of Mailing is to furnish evidence of timely submittal, when properly accepted and postmarked at an accepting Post Office, printed Certificates of Mailing forms, will supersede an incorrect postmark.

- b.) The SWA/DLA date stamp, if used as a record of receipt in lieu of postmarking, must indicate a date which is not later than the day the person started work; e.g., if the employer request is date stamped and annotated by the SWA/DLA on May 6, the target group individual could begin work no sooner than May 6.

Use of other formats in lieu of USPS Certifications of Mailing (PS Form 3817) at the mailer's expense or of Firm Mailing Book form, must comply with guidelines in Section 931.22 of the U.S. Postal Manual. The new format must identify the:

- (1.) prospective employee(s);
- (2.) employer on whose behalf the Certificate is sought; and,
- (3.) date the individual is scheduled to begin work.

2. Recording by the Designated Local Agency.

- a.) As appropriate, the date of the postmark or the Certificate of Mailing must be recorded on the PSN/CR. The IRS 8850 Form should be retained as a file copy, along with all other supporting documentation used to make and/or substantiate an eligibility determination. Employers may, in the same envelope, include more than one

PSN/CR, but must identify each worker listed on the Certificate of Mailing.

- b.) Where the SWA/DLA receives a PSN/CR, or multiple PSN/CRs submitted in one envelope or wrapper, and based on the postmark on the envelope the submission is determined to be timely, the SWA/DLA may date stamp the PSN/CRs and need not retain the original envelope or wrapper.

Exception: In the case where the submission date is in question or under dispute, the SWA/DLA must, for audit and appeal purposes, retain the original envelope or wrapper bearing the postmark. In this circumstance, but where multiple submissions are received in a single envelope or wrapper, the SWA/DLA may either (1) attach a copy of the original envelope or wrapper to each relevant application or (2) record the file location of the original envelope or wrapper on each application or file copy received in that packet.

3. Timely Mailing Treated As Timely Filing.

- a.) USPS regulations require that a document must be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed.

Thus, if the cover containing such document bears a timely postmark, the document will be considered filed timely, although it is received after the last date, or the last day of the period, prescribed for filing.

Note: In cases where there are multiple USPS postmarks, the earliest postmark is used to determine the filing date, e.g., mail that is forwarded from the receiving office to the certifying office.

For WOTC/WtWTC purposes a "document" means the PSN/CR, IRS Form 8850 filed by the employer to request Certification. This document is required to be filed/received by the SWA/DLA, not later than the 21st calendar day following the individual's start date. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the USPS.

4. Mailing Requirements.

The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid.

5. Acceptability of Postmarks

- a.) If the USPS makes the postmark on the envelope or wrapper, such postmark must bear a date that falls not later than the 21st calendar day following the individual's employment start date. If the postmark bears a date later than the 21st calendar day after the individual's start date, the document will be considered not timely filed.

Note: When a SWA/DLA date-stamps a Form 8850 upon receipt, the date-stamp is not later than the 21st calendar day after the job applicant began work, and the SWA/DLA has no reason to suspect that there is any problem with the dates on page 2 of the 8850, there is no need for a [USPS] postmark.

- b.) If the postmark on the envelope is not legible, and the SWA/DLA has no evidence of receipt within reasonable mail delivery time, beginning with the 21st calendar day following the employment start date, the employer or the employer representative who is required to file the document has the burden of proving the time when the postmark was made. If the cover containing a document bearing a timely postmark made by the USPS is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed. To establish that proof, the employer or his/her representative must show:
- (1.) that it was actually deposited in the mail before the last collection of the mail from the place of deposit not later than the 21st day following the start date of the employee;
 - (2.) that the delay in receiving the document was due to a delay in the transmission of the mail; and,
 - (3.) the cause of such delay.
- c.) If the envelope has a postmark made by the USPS in addition to another postmark, the postmark, which was not made by the USPS, must be disregarded, and whether the envelope was mailed in accordance with this subdivision must be determined solely by applying the rule in D.4., above.

- d.) If the document is sent by U.S. Registered mail, the date of registration of the document must be treated as the postmark date.
- e.) If the document is sent by U.S. Certified mail and the postal employee to whom such document is presented postmarks the sender's receipt, the date of the U.S. postmark on such receipt must be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked in the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.
- f.) A timely postmark or equivalent from a private delivery service serves as sufficient evidence of timely filing if the SWA/DLA receives IRS Form 8850 after the deadline. For a list of acceptable private delivery services for purposes of submitting IRS Form 8850 to the SWAs/DLAs, see Notice 2001-62, Internal Revenue Bulletin No. 2001-40, dated October 1, 2001.

E. Examples of Documentary Evidence.

The following list of documentation is not all-inclusive. SWAs/DLAS may use other document sources that they deem appropriate to verify and establish target group eligibility. **Note.** The Form I-9 is no longer an acceptable piece of documentary evidence. An ETA/USES directive, dated March 1998, officially rescinded authority to use this form as proof of age and residence.

<u>AGE/BIRTHDATE</u> <i>(required for High Risk, Summer Youth & Food Stamp)</i> - Birth Certificate - Driver's License - School I.D. Card/School Records - Work Permit - Federal/State/Local Government I.D. ¹ - Hospital Record of Birth	<u>FOOD STAMP RECIPIENT</u> - Food Stamp Benefit History - Signed statement from authorized individual with specific description of months benefits were received. - Case Number/Identifier	<u>VETERAN STATUS</u> - DD-214 - Reserve Unit Contacts - Discharge Papers	<u>EMPOWERMENT ZONE/ENTERPRISE/RENEWAL COMMUNITIES</u> - Driver's License - Work Permit - Utility Bills - Lease Documents - Voter Registration Card - Computer Printout From Other Government Agencies - Food stamp Award Letter - Housing Authority Verification - Landlord's Statement - Letter From Social Service Agency or School - Library Card ² - Medicaid/Medicare Card - Property Tax Record - Postmarked Envelope Addressed to Applicant - Public Assistance Records - Rent Receipt - School I.D. Card - Selective Service Registration Card - W-4
<u>FAMILY INCOME</u> <i>(required for Ex-felon)</i> - Pay Stubs - Employer Contacts - W-2 Forms - UI Documents - Public Assistance Records - Family Members' Statements - Parole Officer Statements	<u>SSI RECIPIENT</u> - SSI Record or Authorization - SSI Contact - Evidence of SSI Issuance	<u>VOCATIONAL REHABILITATION REFERRAL</u> - Voc. Rehab. Agency Contact - Social Services Agency - Veteran's Administration Contact	
<u>EX-FELON STATUS</u> - Parole Officer's Name/Statement - Correction Institution Records - Court Record, Extract, Contact	<u>NUMBER IN FAMILY</u> <i>(required for Ex-felon)</i> - Public Assistance - Social Service Agencies - Family Members' Statements - Parole Officer's Statements	<u>AFDC/TANF & Long-Term Assistance Recipient</u> - AFDC Benefit History - Signed statement from authorized individual with specific description of months benefits were received. - Case Number/Identifier	

¹ Where any item of documentation such as a Federal I.D. Card does not contain age or birth date, the SESA/SWA must obtain another documentary source to verify the individual's age.

² Where any item of documentary evidence, such as a Library Card does not contain the holder's address, the SESA/SWA must obtain other documentary evidence issued in the jurisdiction where the EZ/EC or RC is located showing the holder's address.

F. Special Rules for Conditional Certifications1. Validity Period of Conditional Certifications

- a.) Because of the specific language in the IRC, the validity period for Conditional Certifications requiring an economic determination is generally 45 days. This applies to the qualified Ex-Felon target group. Conditional Certifications that do not require an economic determination have no predetermined validity period; i.e., Vocational Rehabilitation Referrals and Recipients of AFDC/TANF payments, but are required to meet the specific requirements for their target group at the time of their hire and/or start date.
- b.) The applicant may continue to search for employment even after the validity period expires. However, revalidation is required if an employer wants to hire the applicant and take advantage of the tax credit.
- c.) Since an Ex-Felon's Conditional Certification (CC) requires an economic determination, it is valid for only 45 days. The eligibility of a hired person with an expired CC of this type must be redetermined before the Certification can be issued again. Redetermination of eligibility involves recalculating and annualizing family income for the 6-month period immediately preceding the month in which the employee starts work.
- d.) The annualized income rate must be 70 percent or less of the current LLSIL. The participating agency or the SWA/DLA

must also determine that the individual still meets the rest of the Ex-Felon's target group requirements.

- e.) This information is recorded on a new Conditional Certification and marked "Revalidation." Updated applicant characteristics also must be entered as part of the revalidation process.
- f.) Photocopies of applicant-provided documentary evidence and/or collateral sources for establishing eligibility must be those used to establish the person's eligibility for the "revalidation," which may or may not be the same as those used to issue the original Conditional Certification.
- g.) If a person with a revalidated Conditional Certification is selected as part of the verification sample, information used to complete the revalidated Conditional Certification as recorded on the new application should be verified, rather than that used for the original determination.

G. Special Rules for Timeliness.

- 1. When the last day of the 21-calendar day period ends on a Saturday, Sunday or legal holiday, the next succeeding business day, which is not a Saturday, Sunday or legal holiday will be treated as the last day of the period. PSN/CRs, which are postmarked according to this rule, will be considered timely.
- 2. By mailing the documents to the SWA/DLA in a timely manner, the employer has fulfilled the "timely request" requirement, even if the ETA documents are incomplete.

H. Employer Representatives.

An employer may use an intermediary; e.g., a management services firm, to serve as an authorized representative/consultant for all or some WOTC and WtWTC program activities. The following general guidelines apply:

Power of Attorney -

The IRS has recognized that any employer representative/consultant must be properly designated. Therefore, the original Power-of-Attorney (POA), or a notarized copy of a duly authorized POA, designating an employer representative/consultant must be provided to the appropriate SWA/DLA.

Note. IRS Form 2848, "Power-of-Attorney and Declaration of Employer Representative" may be used for this purpose. An equivalent document acceptable by the SWA/DLA may also be used.

Note. There is no requirement to notarize the signature on an original IRS Form 2848, "Power of Attorney and Declaration of Representatives." Any equivalent document, however, that the SWAs/DLAs accept must have the signature notarized (i.e., signature, date and seal).

When the SWAs/DLAs require a "notarized copy" of an IRS Form 2848, "notarized copy" means the notary has seen the original IRS Form 2848 and is attesting that the copy is a true and exact copy of the original IRS Form 2848.

Photocopies of the original Power-of-Attorney should also be on file at appropriate SWA/DLA local offices. States should not impose additional requirements for documenting Powers-of-Attorney.

When the Power-of-Attorney is properly filed, the SWA/DLA is obligated to honor it and conduct WOTC and/or WtWTC business with the representative as though she/he were the employer. It is the responsibility of the SWA/DLA and not of the IRS to track Powers of Attorney, whether or not the IRS Form 2848 is used, and make sure they are updated upon expiration. The SWA/DLA should make all efforts to have valid and active POAs on file. A SWA/DLA should not conduct any WOTC/WtWTC business with employer representatives/consultants whose POAs have expired.

VIII. ADMINISTRATION AND REPORTING REQUIREMENTS

- A. Cooperative Agreements at State and Local Levels.
The role of "participating agencies" is recognized in WOTC law. In recognizing participating agencies (PAs), SWAs/DLAs are required to negotiate formal cooperative agreements, also known as Memoranda of Understanding, with state or local agencies, which may then participate in the administration of the program.

State and local agreements need not follow a prescribed pattern. Specific elements of such agreements should be the result of negotiations between the SWA/DLA and participating agencies. Agreements should be mutually reviewed at least annually and should include the following:

1. Procedures that minimize the number of contacts and processing stages for applicants and employers or their representatives;
2. Procedures to establish a system for the orderly management of WOTC/WtWTC job orders, applicant referrals, verification activities and records;
3. Procedures for establishing an eligibility determination process consistent with procedures outlined in Chapter V;
4. Procedures for providing training, review and verification by the SWA/DLA of eligibility pre-determinations conducted by the participating agency;
5. Procedures for minimizing paperwork requirements; and,
6. Procedures, mutually developed, to allow the SWA/DLA to meet its monitoring

responsibilities of WOTC and WtW Tax Credit activities.

B. WOTC Funding

1. Authorization.

ETA distributes funds to the SWAs/DLAs, through the Regional Offices (ROs), using a formula based on Civilian Labor Force, WOTC/WtWTC workload and welfare population.

2. Accounting Costs.

The SWAs/DLAs will account for costs associated with administering the WOTC program and the WtWTC. Costs for verification activities will be reported separately from all other costs. The SWAs/DLAs must report both quality review and auditing costs under verification activities.

C. Identifying WOTC and WtWTC Job Orders.

When a job order is received from an employer who requests only individuals pre-certified under WOTC/WtWTC or expresses a preference for individuals pre-certified under WOTC and/or WtWTC, state agency records must show the request and this data should be reported in accordance with the SWA's/DLA's instructions.

D. Liability.

The Department of Labor cannot immunize the SWAs/DLAs and/or the participating local agencies from a possible judicial finding of liability based on circumstances of a given case. To minimize potential liability and/or damages, the ETA and the IRS have established standard criteria for determining and verifying eligibility.

These criteria permit employers to claim the tax credit on qualified wages paid until the employer or the employer's representative receives an invalidation notice from the SWA/DLA. This notice

is based on the discovery of error and/or fraud in the eligibility determination process. As long as a SWA/DLA or participating agency establishes a system in compliance with applicable regulations, directives and agreements, the potential for liability is further minimized.

When applicants, employers and employer representatives make and/or accept documentation in which no fraud was willfully intended, a determination of liability must be made on a case-by-case basis. An applicant, employer or employer's representative is responsible for his/her own actions.

Recovery procedures will be instituted against an applicant who fraudulently attested to facts on his/her eligibility as shown on the application. Falsifying or concealing information requested is a crime violating 18 U.S.C. 1001 and is punishable by a fine or imprisonment of not more than five years or both. Action to recover from a WOTC participant any credit granted (based on the participant's fraudulent documentation) is solely within the discretion of the IRS, based on the SWAs'/DLAs' revocations of Certifications (i.e., invalidations).

E. Records' Retention

1. Designated Local Agencies

- a.) Eligibles. The SWAs/DLAs are required to keep WOTC and WtWTC records (applications, supporting documentation, etc.), including all records for withdrawn Certifications, for a period of four (4) years from the date of Certification, or from the date of issuance of the determinations which do not result in Certification. This time period conforms to the IRS "record retention requirements" for employment taxes, which specifies that records be

kept for four (4) years after employment taxes are due.

In spite of the WOTC/WtWTC carryover provisions, the four-year record retention period still applies. **Note.** However, prior to the expiration of the four-year retention period, should any litigation or audit be initiated or should any claim be instituted involving the records, the records must be kept beyond the four-year period until the litigation, claim or audit findings are finally resolved.

- b.) Ineligibles. The SWA/DLA must keep applications for ineligibles or invalidated applications, including pertinent documentation and supporting forms, for at least one year, but longer if further action or an appeal is pending and the SWA/DLA has been notified in writing.

2. Participating Agencies

- a.) Responsibility of the SWA/DLA for Record Retention. As part of the MOU between a participating agency and a SWA/DLA, the SWA/DLA may retain, if mutually agreeable, the responsibility for record retention of the complete file. This includes documentary evidence used by the participating agency to determine eligibility.
- b.) Record Retention by the Participating Agency will be the same as for the SWA/DLA.

- F. Policy Clarification/Appeals Resolution.
It is expected that questions, especially those pertaining to eligibility determinations, procedural issues, Certifications and/or Denials will be resolved at the SWA/DLA level. Those policy issues that cannot be resolved at the SWA/DLA level should be submitted in writing to the ETA Regional Office for response.

To maintain uniformity in resolving policy issues, questions and questioned determinations that cannot be resolved at the Regional level, and policy matters, appeals and waiver requests involving IRS issues must be submitted in writing to the National Office, ETA, by the ETA Regional Office, Attn: National Coordinator via the Office of Workforce Investment. A suggested format is in the appendices of this handbook. The USES/ALMIS National Office staff will respond to Regions on ETA policy issues and will refer to the IRS National Office, matters that fall within its jurisdiction.

The ETA National Office will report ETA and IRS joint responses to appropriate ROs for transmittal to the SWAs/DLAs. Further, joint ETA and IRS policy direction that reflects national concerns will be issued in directives, revisions or supplements to this handbook to ensure program consistency. In instances where a final resolution to a policy issue may be delayed, the National Office will provide an interim acknowledgment or status report.

- G. WOTC/WtWTCs' Appeals' Guidelines.
In cases where a SWA/DLA has issued a Denial on a certification request, the employer or the representative/consultant may appeal this decision. This appeal should be based on sources other than those used in issuing the original Denial, unless it can be established that the original Denial was issued in error because of a misinterpretation of information. Where an

employer or the representative/consultant supplies the "Appeal Documentation" listed below and the information supports eligibility, such documentation should supersede the original Denial notice and a Certification will be issued.

H. Documentation That Can Be Used for Employers' Appeals.

Category A. AFDC/TANF Recipient.

Caseworker's signed statement with the applicant's name, social security number, hire date indicating the number of months that the new hire was on welfare before the employment start date. The caseworker's telephone number and address should also be included.

Category B. Veteran.

If no DD-214 is available, a verification letter from the Veteran's Administration with the applicant's name, social security number, branch of service, and active duty dates. Each statement should be signed by a Veteran's Administration representative, and be on a Veterans Administration Form. These forms could possibly include but are not limited to, a Reply to National Personnel Record Center form, a Summary of Military Service form, a Certificate of Military Service form, or a Freedom of Information Act (FOIA) Release statement.

Category C. Ex-Felon.

Parole Officer's signed statement verifying the new hire was convicted and/or released from prison for a felony within the past year or on work release from a felony or conviction. The statement should include the applicant's name, Social Security Number, hire date, the conviction and release dates, and the Parole Officer's name and telephone number. Also needed would be a statement from the applicant or the Parole Officer indicating the 6 months income for the household is below the Lower Living Standard Income Levels (LLSILs) --for the appropriate county if income amount is in question.

Category D. Empowerment Zone/Enterprise/Renewal Communities.

Signed statement from an official of the empowerment zones and/or urban or rural enterprise or renewal communities in which the applicant's address is located that verifies that the address is in the EZ/EC or RC.

Category E. Vocational Rehabilitation.

A signed statement from the Vocational Rehabilitation counselor with the applicant's name and social security number and the agency name from which the assistance was received.

Category F. Summer Youth.

Signed statement from a representative of the county in which the address is located that states the address is in an EZ/EC or RC. If no other proof of age is available, a signed statement from a parent or guardian attesting to the new hire's date of birth is acceptable.

Category G. Food Stamps.

A signed caseworker statement with the applicant's name, social security number, start date, indicating number of months on food stamps and verification of age. Statements must include caseworker's name, telephone number and address.

Category H. Supplemental Security Income.

Printout from SSI or signed statement from caseworker with applicant's name, social security number, hire date indicating the individual received SSI benefits any time in the 60 days ending on the hire date. Statements should include caseworker's telephone number and address.

Category I. Welfare-to-Work Long Term Assistance Recipient.

Caseworker's signed statement with the applicant's name, social security number, hire date and a statement that the new hire was on welfare for the required number of months before the employment start date. Also included must be the caseworker's telephone number and address.

Employer Information is Incomplete.

When the employer submits an IRS Form 8850 with complete applicant information, but with some of the employer information in question, (e.g., a transposed FEIN number), the SESA may request the corrected information and consider the IRS Form 8850 as received in a "timely" basis.

IRS Form 8850, Denied for Failure to Submit in a Timely Manner.

In cases where a miscount of days due to weekend or holidays, the employer may submit a letter addressing the fact and requesting review of that record. In the case of a lost IRS Form 8850, an employer may submit a copy of the IRS Form 8850 with proof of the mailing date (e.g., the original of a U.S. Postal Service (USPS) "Certificate of Mailing" (PS Form 3817)).

I. Program Reporting Requirements.

In order to effectively meet its management responsibilities and to have adequate data with which to evaluate the Work Opportunity and Welfare-to-Work Tax Credits, ETA must impose minimum reporting requirements upon the SWAs/DLAs:

1. On a quarterly basis, SWAs/DLAs must extract data either from Conditional Certifications, ICFs, or from Certifications. The data sources will depend upon each state's processing procedures. This information is reported to the USES/ALMIS Division, Office of Workforce Investment (OWI), on a quarterly basis. **Note.** Effective November 2002, the EIMS, Tax Credit Reporting System (TCRS) replaces the paper reporting process. (For instructions on how to use this electronic reporting system, please consult the TCRS User's Guide)
2. Data will be forwarded to the USES/ALMIS-OWI, National Office, through the appropriate Department of Labor (DOL) Regional Office in three separate reports, consisting of the following sets of data:
 - a.) The number of eligibility determinations (Conditional Certifications) issued, by participating agency and by target group. **Note.** Because some individuals may be eligible for both tax credits, thereby receiving dual certifications, all data must be reported by dual certification, as well as by WOTC and WtWTC (See newly revised "Quarterly Report No. 2," and its Instructions, Appendix III);
 - b.) The certification workload and characteristics of certified individuals by target group, hourly wage

and occupation reported by dual certification, as well as by WOTC and WtWTC; and

- c.) Results of agency quarterly verification (quarterly audits of Certifications made) activities, including universe size, sample size, and the number and percentage of ineligible Certifications identified.

J. Reporting Procedures.

All SWA/DLA, WOTC/WtWTC Coordinators must prepare quarterly reports during the calendar year. The reports must include information collected from throughout the state. Data will be reported beginning with a zero balance for each reporting quarter. This change from the accumulation of data throughout the fiscal year was necessary because of additional requirements to respond to various inquiries using quarterly data in various annualized configurations.

1. Submitting the Reports

Effective November 2002, all quarterly reports' data must be entered in the newly designed electronic Tax Credit Reporting System or TCRS. The new system allows the transfer of the WOTC and WtWTC quarterly reports to ETA's Enterprise Information Management System (EIMS) via the Internet. The TCRS allows the states to meet their reporting responsibilities in a more efficient manner while reducing the reporting burden on the state, regional, and national office levels. Through this system, states will enter the required quarterly program data for Report 1, ETA Form 9057, "Conditional Certifications Issued, Work Opportunity and Welfare-to-Work Tax Credits;" Report 2, ETA Form 9058, "Certification Workload and Characteristics of Certified Individuals, Work Opportunity and Welfare-to-Work Tax Credits;" and Report

2, Addendum, 2002, "New O*NET Job Families;" and Report 3, ETA Form 9059, "Verification Results, Work Opportunity and Welfare-to-Work Tax Credits." Reports 1 and 2 are to be certified 45 days following the closing date of each reporting period.

- a.) ETA Form 9059, (Report #3) must be certified by the 45th calendar day of the 6th month following the closing date of the report period. The Regional Coordinators must accept/deny the reports of the states within their regions by the 55th calendar day of the 6th month following the closing date of the report period.

States must select a statistically random sample and initiate verification activities on a quarterly basis, but not later than the month immediately following the report period. The delay in reporting the results allows for the lag-time in obtaining UI wage records commonly used in verifying certain employer and employee information. The delay will afford the States ample time to review documents, verify information sources, and, if necessary, verify a second sample of data.

- 2. Completing the Forms.
Complete the items common to all three reports uniformly and ensure that all information is legible and accurate on all forms:
 - a.) State. Enter the name of the State.
 - b.) Period Ending. This is the last day covered by the report; e.g., September 30, 2001.

- c.) Name and Title of Responsible Official. The name and title of the person authorized to sign the report.
- d.) Signature. Responsible official's signature.
- e.) Date Signed. The date the report is signed by the responsible official.
- f.) General Approach. Prepare reports based on data from processing forms; e.g., PSN/CRs, ICFs, Conditional Certifications and Certifications. Include the number of individuals served in each target group, data on tax credits authorized, starting wages and occupations in which individuals were hired.
- g.) ETA Form 9057, Report #1. This report is designed to collect the number of Conditional Certifications (ETA Form 9062s) issued during each reporting quarter by the SWAs/DLAs and participating agencies and by target group. The report should be prepared using data collected from ETA Form 9062.

This report also reflects the changes introduced by P.L. 105-34. In addition to reauthorizing the WOTC and expanding WOTC target groups to include certain SSI recipients, P.L. 105-34 also established a second tax credit, the Welfare-to-Work Tax Credit, for certain Long-Term TANF recipients. Therefore, this report collects quarterly data on conditional certifications by each tax credit. Further, because some individuals may be eligible for both tax credits, and because such individuals must be issued dual

certifications, all data collected on conditional certifications must be reported by dual certification, as well as by WOTC and WtWTC. **Note.** This report has been updated to reflect the introduction of Renewal Communities per the *Community Renewal Tax Relief Act of 2000, P.L. 106-554, December 31, 2001* for the WOTC High-Risk and Summer Youth target groups.

The report is divided into two sections. The first section, entitled "I. By Issuing Agency," reports the number of WOTC conditional certifications (CCs), the number of WtWTC CCs, and the number of dual (WOTC/WtWTC) CCs issued by SWAs and all participating agencies (boxes 1-11).

Where no CCs have been issued, please enter "0."

The second section, entitled "II. By WOTC Target or Long-term IV-Recipient Group," reports the same information -- the number of WOTC CCs, the number of WtWTC CCs, and the number of dual (WOTC/WtWTC) CCs, by WOTC target group and by Long-Term TANF Recipient (boxes 12-22).

Where no CCs have been issued, please enter "0."

The quarterly and year-to-date (cumulative) totals in Sections I (boxes 10-11, respectively) should equal the quarterly and year-to-date (cumulative) totals in Section II (boxes 21-22, respectively).

Note. This form no longer reports conditional certifications by type,

i.e., by whether they are original or revalidated (box 3 of ETA 9062). Therefore, counts of CCs in boxes 1-9 and 12-19 should not distinguish between original and revalidated CCs. For example, if in the first quarter of fiscal year 2001, an agency issued 70 original and 30 revalidated CCs, that agency issued 100 CCs.

Note also that this form no longer reports conditional certification invalidations.

- h.) ETA Form 9058 - Report # 2. PART I of this report has been redesigned to clarify and simplify data reported on certifications and to indicate SWA/DLA/SESA workload during each reporting quarter. Part II continues to collect data on selected characteristics of individuals with tax credit certifications.

Background. The purpose of ETA Form 9058 (Rev. June 2001) is to provide SWAs/DLAs with a standardized reporting format that accurately reflects the Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Tax Credit (WtWTC) program activity levels and outcomes. It is important for SWAs/DLAs to maintain programmatic reporting procedures that account for each tax request (IRS Form 8850) received and its subsequent outcome (issuance of a tax certification or of a Denial notification). A properly completed ETA Form 9058 (Rev. June 2001) accurately reflects program use at the employer level, program outcome activity at the SWA/DLA level, and the level of any programmatic backlog that may exist. To ensure that the

WOTC/WtWTC program can be accurately evaluated at the national level, it is critical that all SWAs/DLAs report in a standardized manner.

The revisions made to ETA Form 9058 (Rev. June 2001), build on the framework established by the existing ETA Form 9058 (Rev. March 1998). The form itself remains largely the same. However, technical changes have been made to Part I, to ensure consistent and accurate reporting of all WOTC/WtWTC activities during the reporting quarter. Part II reflects adjustments, which are necessary to ensure conformity with changes in federal minimum wage requirements.

SWAs/DLAs should be aware that transition to the revised June 2001, ETA Form 9058, may artificially inflate the number of "New Requests" reported in Part I, Item (C) for the initial report period since it will capture those requests (IRS 8850s) which may have been received by a SWA/DLA prior to the reporting quarter, but for some reason were not entered into the SWA's/DLA's WOTC/WtWTC system.

INSTRUCTIONS FOR COMPLETING THIS FORM.

State. Enter the name of the state submitting ETA Form 9058.

Quarter Ending Period. Enter ending date of the quarter represented by ETA Form 9058.

Part I. "Certification Workload."

SWAs/DLAs must identify from Part I, Item F on the previous reporting quarter's ETA Form 9058 (Rev. 03/98),

the number of requests (IRS Form 8850s) determined to be Incomplete or Needing Action, as defined below:

(A) Number of Requests Incomplete.

Enter the total number of requests (IRS Form 8850s) received by the SWA/DLA prior to the beginning of the current report period, but for which no applicant eligibility determination action (excluding the 48-hour review) has been taken. This total is to be entered into Part I, Item (A) of ETA Form 9058 (Rev. June 2001).

(B) Number of Requests Needing Action

Enter the total number of requests (IRS Form 8850s) received by the SWA/DLA prior to the beginning of the current report, but for which no review and or action was taken to determine applicant eligibility. This total is to be entered into Part I, Item (B) of recently revised ETA Form 9058.

(C) New Requests. Enter the total number of requests (IRS Form 8850s) received by the SWA/DLA during the current reporting quarter. **Note.** Some states may have received requests (IRS Form 8850s) that were not previously recorded and/or reported on any prior quarterly report ETA 9058 for various reasons. It is important for the SWA/DLA to report all requests (IRS Form 8850s) received. Therefore, any request received outside of the current reporting quarter, which has not previously been reported, should be included with the number of requests received during the current reporting period. That total should be entered as the number of "New Requests". This

total is to be entered into Part I, Item (C) of ETA Form 9058.

(D) Total Requests to be Processed

Enter the sum of Items A, B & C. This total represents the number of requests (IRS Form 8850s) received by the SWA/DLA that are available to be processed. This total is to be entered under Part I, Item (D) of ETA Form 9058.

(E) Requests Certified. Enter the total number of WOTC certifications issued during the current report period, plus the number of WtWTC certifications issued during the current report period that are not the product of a dual certification, (WtWTC ONLY).

(F) Requests Denied. Enter the total number of requests (IRS Form 8850s) denied by the SWA/DLA during the current report period.

Note. A Denial is a request (IRS Form 8850) determined by the SWA/DLA to be ineligible for both tax credits.

(G) Number of Requests Incomplete.

Enter the total number of requests (IRS Form 8850s) received and reviewed by the SWA/DLA, but for which the SWA/DLA could neither approve nor deny due to such things as, but not limited to, the need for additional eligibility documentation for which the SWA/DLA has made a formal request to the employer, authorized tax consultant, or other third party entity, ETA Form 9061 not submitted, etc. **Note.** This number will also be entered in Part I, Item A,

of the subsequent quarterly report ETA Form 9058.

(H) Number of Requests Needing Action.

Enter the number of requests (IRS Form 8850s) received by the SWA/DLA, but for which no review and or action was taken to determine applicant eligibility.

Note. This value will also be entered in Part I, Item B, of the subsequent quarterly report ETA Form 9058.

Part I, Item H is the sum of Item D, minus Item E, minus Item F, minus Item G.

Part I Completion Formula:

Items (A + B + C) = (D - E - F - G) = H

Part II. "Characteristics of Certified Individuals by Tax Credit." This part is divided into three sections (Section I, Section J, and Section K).

Section I, reflects the number of requests (IRS Form 8850s) certified by the SWA/DLA during the current report period by WOTC/WtWTC target groups. Section J, reflects the number of requests (IRS Form 8850s) certified by the SWA/DLA during the current report period by starting hourly wage. Section K, reflects the number of requests (IRS Form 8850s) certified by the SWA/DLA during the current report by occupation.

Section I

Section I, Column (a) Enter the total number of certifications, by target group, issued by the SWA/DLA during the current report period, which resulted from the issuance of a conditional certification.

Section I, Column (b) Enter the total number of WOTC certifications (including dual certifications) issued by the SWA/DLA during the current report period, by target group.

Section I, Column (c) Enter the total number of WtWTC (**ONLY**) certifications issued by the SWA/DLA during the current report period.

Section I, Column (d) Enter the total number of WOTC certifications issued by the SWA/DLA during the current report period, by target group, which **are** the product of a dual certification.

Section I, Line #10 Enter the sums of columns (a), (b), (c) & (d). **Note**. The total of Section I, Line #10, columns (b) & (c) should equal the total entered in Part I, Item E, Requests Certified.

Section I, Line #11 Enter the cumulative federal program year-to-date totals of columns (a), (b), (c) & (d). **Note**. The first quarterly report of the federal program year (October 01/December 31), the totals of Section I, Line #10 and Line #11 should be the same.

Section J

Section J, Column (a) Enter the total number of WOTC certifications issued by the SWA/DLA during the current report period, by starting hourly wage. **Note**. The total for Section J, Column (a), Line #18 is the sum of the column and must equal the total for Section I, Column (b), Line #10.

Section J, Column (b) Enter the total number of WtWTC certifications (including duals) issued by the SWA/DLA during the current report period, by starting hourly wage. **Note**. The total for Section J, Column (b), Line #18 is the sum of the column and must equal the totals for Section I, Column (c) & (d), Line #10.

Convert as follow:

<u>Unit of Time</u>	<u>Calculated Hourly Wage</u>
Day	Amount divided by 8
Week	Amount divided by 40
Month	Amount divided by 172

Section K

Section K, Column (a) Enter the total number of WOTC certifications issued by the SWA/DLA during the current report period, by occupation. **Note**. The total for Section K, Column (a), Line #28 is the sum of the column and must equal the total for Section I, Column (b), Line #10.

Section K, Column (b) Enter the total number of WtWTC certifications (including duals) issued by the SWA/DLA

during the current report period, by occupation. **Note.** The total for Section K, Column (b), Line #28 is the sum of the column and must equal the totals for Section I, Column (c) & (d), Line #10.

The occupational data reported in boxes 19-26 are derived from the job titles reported on ETA Forms 9061 or 9062. To prepare this report, SWAs/DLAs may use, either, the job titles for certified individuals assigned the one-digit DOL Dictionary of Occupational Titles (DOT) or the new O*NET, Families of Occupations (See Addendum, Report 2, ETA Form 9058, "New O*NET Families of Occupations"). Either system can be reported through December 31, 2003. The following labels are the DOT codes:

DICTIONARY OF OCCUPATIONAL TITLES		
LABEL		CODE
▪ Professional, Technical, Managerial		0/1
▪ Clerical and sales		2
▪ Service		3
▪ Farm, Forestry, Fishery		4
▪ Processing		5
▪ Machine Trades		6
▪ Bench Work		7
▪ Structural		8
▪ Miscellaneous		9

The entry for each line will be a count of the certifications with the corresponding category.

All SWAs/DLAs should transition to the O*NET classifications as soon as possible to keep pace with the rest of the workforce development system. **Note.** Effective the date of any future tax credits' reauthorizing legislation i.e., after December 31, 2003, only the O*NET families of occupations and their two-digit corresponding codes (as

illustrated in the following table) should be reported. The Addendum to ETA

O*NET SOC JOB FAMILIES			
Name	Code	Name	Code
Management Occupations	11	Food Preparation & Serving Related	35
Business & Financial Operations	13	Bldg. & Grounds Cleaning & Maintenance	37
Computer & Mathematical Occupations	15	Personal Care & Service	39
Architecture & Engineering	17	Sales & Related Occupations	41
Life, Physical & Social Sciences	19	Office & Administrative Support	43
Community & Social Services	21	Farming, Fishing, & Forestry	45
Legal Occupations	23	Construction & Extraction	47
Education, Training, & Library	25	Installation, Maintenance & Repair	49
Arts, Design, Entertainment, Sports and Media Occupations	27	Production Occupations	51
Healthcare Practitioner & Technical	29	Transportation & Material Moving	53
Healthcare Support Occupations	31	Military Specific Occupations	55
Protective Service Occupations	33		

Form 9058, Report No. 2, should be used to report the new O*NET two-digit codes. (See Appendix III for this form).

Name and Title of Responsible Official

Enter the name and title of the authorized signatory official.

Signature Enter the signature of the authorized signatory official.

Date Enter the date of the authorized signatory official's signature.

- i.) ETA Form 9059-Report #3. After all Certifications selected for the audit/verification sample are reviewed, the results of the review must be reported on ETA Form 9059.

ETA Form 9059 was designed to report the results of the quarterly audit of a

randomly chosen sample (See Table - Sample Sizes, p. VII-23 in the Handbook) of all the certifications issued for that quarter. Pursuant to P.L. 105-34, as of October 1, 1997, the universe of certifications to be audited includes all Welfare-to-Work and dual (WOTC/WtWTC) certifications as well as all individual WOTC certifications issued for the reporting quarter.

- (1.) Line 1 - Universe Size. Enter the total number of certifications issued during the reporting period. This number should be the same as the total number of certifications reported in Part I., Certification Actions (System Outputs), Column D of ETA Form 9058 (Report No. 2) for the same quarter.
- (2.) Line 2 - Sample Size. Enter the total number of certifications in the audit sample for which verification data was acquired for the audits. This number must equal or exceed the appropriate number shown in the table (p. VII-76) on sample size in the Handbook.
- (3.) Line 3 - Number Invalid. Enter the number of certifications in the sample that, after verification, were determined to be invalid.
- (4.) Line 4 - Percent Invalid. Calculate and enter the percentage of the sample

- (5.) determined to be invalid using the following formula:

$$\frac{\text{Number of Invalidations}}{\text{Sample Size}} \times 100$$

Note: If this percentage is less than 5 percent do not complete lines 5 and 6. If the percentage of Line 4 is 5 percent or more, a second sample equal in size to the first must be drawn and verified in the same manner. The Number Invalid and Percent Invalid from the second sample must be entered in Lines 5 and 6. If the Percent Invalid in the second sample is 5 percent or more, corrective action must be initiated according to instructions in Chapter VII of the Handbook.

- (6.) Lines 7-12 must be completed to perform a separate quarterly verification for economic determinations. (Ex-Felon only)
- (7.) Line 7 - Universe Size. Enter the total number of certifications issued for the Ex-Felon target group during the reporting period. This number should be the same as the total number of certifications reported in Part II., Sec. (1), Line 3 of ETA Form 9058 (Report No. 2) for the same quarter.
- (8.) Line 8 - Sample Size. Enter the total number of certifications in the audit sample for which verification data was acquired for the audits. This number must equal

or exceed the appropriate number shown in the table (p. VII-63) on sample size in the Handbook.

(9.) Line 9 - Number Invalid. Enter the number of certifications in the sample, which after verification, were determined to be invalid.

(10.) Line 10 - Percent Invalid. Calculate and enter the percentage of the sample determined to be invalid using the following formula noted above. If this percentage is less than 5 percent, do not complete lines 11 and 12. If the percentage of Line 10 is 5 percent or more, a second sample, equal in size to the first must be drawn and verified in the same manner.

Note: If the Percent Invalid in the second sample is 5 percent or more, corrective action must be initiated according to instructions in Chapter V of the Handbook.

(11.) Lines 11 & 12 - Percent Invalid & Number Invalid. Enter corresponding number from the second sample.

(12.) Line 13 - Name and Title of Responsible Official; Signature and Date Signed. Print or type complete name of official reporting the verification results; Signature, sign your name, legibly and enter the date (month, day, year) in which report was completed and signed.

K. Paperwork Management1. Forms.

The following WOTC Forms must be used without modification:

- ❖ IRS Form 8850, "The Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Pre-Screening Notice and Certification Request."
- ❖ ETA Form 9061, "The Individual Characteristics, Work Opportunity and Welfare-to-Work Tax Credits."

Note. See Chapter VII, Section A, item 1 for exceptions related to use of this form.

- ❖ ETA Form 9062, "Conditional Certification, Work Opportunity and Welfare-to-Work Tax Credits."
- ❖ ETA Form 9057, "Conditional Certifications by Target Group and Participating Agency, Work Opportunity and Welfare-to-Work Tax Credits - Report #1 (per TCRS User's Guide)."
- ❖ ETA Form 9058, "Certification Workload and Characteristics of Certified Individuals, Work Opportunity and Welfare-to-Work Tax Credits - Report #2." (per TCRS User's Guide) and,
- ❖ ETA Form 9059, "Verification Results, Work Opportunity and Welfare-to-Work Tax Credits - Report #3 (per TCRS User's Guide)."

States have the option of using or modifying the following forms:

- ❖ ETA Form 9063, Employer Certification, Work Opportunity and Welfare-to-Work Tax Credits; and,
- ❖ ETA Form 9065, Agency Declaration of Verification Results, Work Opportunity and Welfare-to-Work Tax Credits.

The appendices of this handbook provide a suggested format designed to simplify the Conditional Certification and Certification processes. States may use the suggested form layout and design or may use one of their own, provided that the chosen form includes ALL the required information and satisfies the requirements of documentation as required.

2. Reporting.

The reporting and data collection requirements in this Third Edition of the WOTC and WtWTCs' Handbook have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act of 1995. The OMB approval number (OMB No. 1205-0371) is effective through December 31, 2004.

APPENDIX I - Current Legislation

1. Job Creation and Worker Assistance Act of 2002 ([P.L. 107-147](#)), Title VI., Secs. 604, "Work Opportunity Tax Credit," 605, "Welfare-to-Work Tax Credit," and [1400L](#), "New York Business Employee."
2. Community Renewal Tax Relief Act of 2000, ([P.L. 106-554](#)), December 31, 2001.
3. Tax and Trade Relief Extension Act of 1998, part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, [P.L. 105-277](#), Sec.1002, "Work Opportunity Tax Credit" and Sec. 1003 Welfare-to-Work Tax Credit."
4. [Conference Report to H.R. 4328](#), Making Omnibus Consolidated and Emergency Appropriations for Fiscal Year 1999.
5. Taxpayer Relief Act of 1997, [P.L. 105-34](#), Title VI. Extensions, Sec. 603. "Work Opportunity Tax Credit" and Title VIII, Sec. 801. "Incentives for Employing Long-Term Family Assistance Recipients."
6. Small Business Job Protection Act of 1996, [P.L. 104-188](#), Subtitle B -- Extension of Certain Expiring Provisions, Sec. 1201. "Work Opportunity Tax Credit."
7. Internal Revenue Code of 1986, [Secs. 39\(a\)](#), [51](#), [51A](#), [52](#) & [1400L](#), Subsection (a) only, as amended, 26 USC ' 51 and 51A.
8. United States Code Service, (Lawyers' Edition) Cumulative Supplement, [7 USCS, Agriculture, Secs. 1551-2200](#), May 1997.

APPENDIX II - WOTC/WtWTC Administrative/Processing Forms

1. [ETA Form 9061](#) - Individual Characteristics Form (ICF), Work Opportunity and Welfare-to-Work Tax Credits.
2. [ETA Form 9062](#) - Conditional Certification (CC), Work Opportunity and Welfare-to-Work Tax Credits.
3. [ETA Form 9063](#) - Employer Certification (EC), Work Opportunity and Welfare-to-Work Tax Credits.
4. [ETA Form 9065](#) - Agency Declaration of Verification Results (ADVR), Work Opportunity and Welfare-to-Work Tax Credits.

APPENDIX III - WOTC/WtWTC Report Forms

1. [ETA Form 9057](#) - Report #1: "Conditional Certifications Issued," Work Opportunity & Welfare-to-Work Tax Credits;
2. [ETA Form 9058](#) - Report #2: "Certification Workload and Characteristics of Certified Individuals," Work Opportunity and Welfare-to-Work Tax Credits;
3. [Revised Instructions for Quarterly Report No. 2, ETA Form 9058](#);
4. [Addendum to ETA Form 9058](#), Report No. 2: "Certification Workload and Characteristics of Certified Individuals," Work Opportunity and Welfare-to-Work Tax Credits, "New O'NET Job Families."
5. [ETA Form 9059](#) - Report #3: "Agency Declaration of Verification Results," Work Opportunity and Welfare-to-Work Tax Credits.

APPENDIX IV - IRS Forms/Publications

1. IRS Form [8850](#), "A Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits" and [Instructions](#).
2. [IRS Form 2848](#) and [Instructions](#), "Power of Attorney and Declaration of Representative."
3. [Announcement 2002-44](#), "Electronic Submission of Form 8850," [2002-17 I.R.B. 809], April 29, 2002.
4. Internal Revenue Service, "Revenue Procedure," [2002-3; 2002-1](#), IRB 117, January 7, 2002.
5. Internal Revenue Service, "Revenue Procedure," [Section 15, Item 9](#): "Tax Credit Issues," page 34.
6. "21-Day Requirement for Submitting Form 8850 and Disaster Relief" [IRS Memorandum](#), November 13, 2001.
7. IRS News Release, No. [IR-2001-105](#), "IRS Expands Tax Relief for Those Affected by the Sept. 11th Attack," November 2, 2001.
8. IRS Bulletin No. [2001-40](#), October 1, 2001.
9. [Notice 2001-61](#); [2001-47, Part III](#), IRB, "Disaster Relief for Taxpayers Affected by the September 11, 2001 Terrorist Attack," October 1, 2001.
10. [Notice 2001-63](#): "Additional Relief for Taxpayers on Account of the September 11, 2001, Terrorist Attack," October 1, 2001.

11. [Publication 954](#), "Tax Incentives for Empowerment Zones and other Distressed Communities," June 2001.
12. [Notice 99-51](#), "Work Opportunity and Welfare-to-Work Tax Credits," [1999-40 I.R.B. 447], October 4, 1999.
13. [IRS Bulletin - No. 1996-46](#), "Date of Birth, IRS Form 8850," November 12, 1996, Announcement 96-116, page 12.

APPENDIX V - Miscellaneous

1. [Lower Living Standard Income Levels \(LLSILs\), 2003](#).
2. [Memoranda to SWA/DLA Coordinators](#) with Instructions for use of the Spanish Versions of IRS Form 8850 and ETA Form 9061.
3. Spanish Version of [IRS Form 8850](#).
4. Spanish Version of [ETA Form 9061](#).
5. [Sample Letter](#) To Be Sent to Employer (Notice of Invalidation (NOI) of Certification Work Opportunity and/or Welfare-to-Work Tax Credit(s).
6. [Policy Resolution/Appeals Submission Suggested Format](#).

APPENDIX VI - Tools/Resources

1. [TA and Compliance Review Guide](#), OMB No. 1205-1301.

(Sample Letter To Be Sent To Employer - Return Receipt Requested)

**NOTICE OF INVALIDATION OF CERTIFICATION
WORK OPPORTUNITY AND/OR WELFARE-TO-WORK TAX CREDITS**

Re: Employer's Name
IRS Identification No.:
Address:

Dear (Employer's Name):

The individual identified above was certified as meeting the eligibility criteria of the Work Opportunity Tax Credit Program, and/or the Welfare-to-Work Tax Credit, Section 51 and 51A respectively of the Internal Revenue Code 1986, as amended) on (date of certification). Subsequent review, however, reveals that this employee, (name of employee) is ineligible for purposes of the WOTC or the WTWTC____ tax credit. Accordingly, you are, hereby, notified that the Certification for the above named employee has been invalidated, effective upon receipt of this notice. A copy of this notice has also been forwarded to the Internal Revenue Service in your state. for their records and action.

(Authorized SWA Official's Signature)

cc: Internal Revenue Service
Participating Agency
SWA

File

(Policy Resolution/Appeals Submission - Suggested Format)

WORK OPPORTUNITY AND WELFARE-TO-WORK TAX CREDITS' INQUIRY

REGION: _____ STATE: _____ DATE: _____

CONTACT PERSON: _____

TELEPHONE #: _____

REFERENCES:

(You may cite as many as are necessary. For example: Handbook, Legislation, IRS Rules/Notices/Publications, etc.)

ISSUE:

RESOLUTION/COMMENTS:

I N D E X

(P.L. 107-147),, I-2
 9058, VIII-10, VIII-14, VIII-15, VIII-16, VIII-17, VIII-18, VIII-23, VIII-24, VIII-26, ii
 90-day (summer) period, II-10
 able-bodied adult without dependents, II-12
 Accounting Costs, VIII-2
 Agency Declaration of Verification Results (ETA 9065), II-16
 Agricultural and Railroad Employees, III-3
 appeal, I-3, VII-29, VIII-4, VIII-5
 APPENDIX I, i
 APPENDIX II, i
 APPENDIX III, ii
 APPENDIX IV, ii
 APPENDIX V, iii
 Audit, II-16, VII-14, VII-18, VII-19, VII-22, VII-25
 Breaks in Employment, III-13
 Carryback and Carryover of Unused Credits, III-9
 Certificate of Mailing" (PS Form 3817), VII-27, VIII-8
 Certification (ETA 9063), II-16
 Certification Process, V-3, VII-11
 Certifications and Denials, VII-14
 Completing the Forms, VIII-11
 Conditional Certification (ETA 9062), II-16
 Cooperative Agreements at State and Local Levels, VIII-1
 Coordination of the WOTC and the Welfare-to-Work Tax Credit, V-4
 Corrective Action Plan, VII-26
 Deferred Adjudication, II-17
 Department of Treasury, VI-1, VI-3
 Departments of Treasury and Labor, I-3
 Designated Local Agencies (DLAs), I-3
 Designated Local Agency Role, VI-5
 Dictionary of Occupational Titles, VIII-21
 Dishonorably Discharged, II-3
 Documentation of Eligibility, VII-17
 Documentation That Can Be Used for Employers' Appeals, VIII-6
 dual certifications, VII-7, VIII-9, VIII-13, VIII-19
 economically disadvantaged family., II-5
 Eligibility of Resident Aliens and Non-Citizens, III-2
 Eligibles, VIII-3
 Employer process, VII-15
 Employer Representative, II-17, VII-36

Employer Representatives, VII-36
Employment and Training Administration (ETA), I-3, VI-1, VII-2
Employment Start Date, II-17
empowerment zone (EZ), II-7
Empowerment Zone/Enterprise/Renewal Community, II-17
enterprise community (EC), II-7
ETA Form 9057, VII-12, VIII-10, VIII-12, VIII-26, ii
ETA Form 9059, VII-26, VIII-10, VIII-11, VIII-22, VIII-26, ii
ETA Form 9062, VII-5, VII-14, VIII-12, VIII-26, i
ETA Form 9063, VI-8, VII-7, VIII-27, i
ETA Form 9065, II-16, VII-4, VII-18, VIII-27, i
ETA Forms 9057, VIII-10
ETA Regional Offices, VI-4
Evidence of Mailing, VII-27
Examples of Documentary Evidence, VII-33
Excludable” Income, II-22
Extended Active Duty, II-18
EZ, EC or RC, II-7
EZ/EC/RC High-Risk Youth (D), I-2
EZ/EC/RC Qualified Summer Youth Employee (F), I-2
family, II-2, II-3, II-5, II-12, II-18, II-20, II-21, V-2, V-3, VI-6, VII-8, VII-34
Family Income, II-21
Family Size, II-21
Family/Member of a Family, II-18
Farm Labor Contractors, III-4
Federal Level, VI-1
Food Stamp Act, II-3, II-12, II-13, VII-5, i
Food Stamp Program, II-3, II-12, II-18, VI-9
Frequency, VII-19
Funding, VIII-2
HHH’s Method for Counting Months, II-2
High-Risk Youth, I-2, II-7
Hiring Date, II-19
Includable” Income, II-21
Individual Characteristics Form, II-19, i
individualized written plan of employment, II-8
individualized written plan of employment (IWPE), II-8
Ineligibles, VIII-4
Internal Revenue Service (IRS), I-3, VI-1
IRS Form 2848, VII-36, VII-37, ii
IRS Form 8850, II-10, II-16, II-19, II-20, V-4, VI-6, VII-1, VII-2, VII-4, VII-13, VII-14, VII-15, VII-16, VII-29, VIII-8, VIII-14, VIII-17, VIII-26, ii, iii
Issuance of Denials, VII-17

IV-A Successor Program, II-18
 Job Corps, VI-9, VII-11
 Job Creation and Worker Assistance Act of 2002, vi, I-1, I-2, i
 Legislative Authority WOTC/WtW., I-2
 Legislative Intent, I-3
 Liability, III-9, VIII-2
 Limitation on Unused Credit in a Carryback or Carryover Year, III-9
 Local Participating Agencies, VI-8
 Long-Term Family Assistance Recipient, V-2, V-3, VII-7
 Lower Living Standard Income Levels, II-5, VIII-7, iii
 Member of a Target Group, II-19
 member of an economically disadvantaged family, II-5
 Minimum Employment Period, II-19, V-3
 Miscellaneous State Addendum, VII-8
 Nepotism, III-11
 New York Liberty Zone, I-1, I-2
 New York Liberty Zone Business Employee, I-2
 New York Liberty Zone Business Employee (NYLZBE), I-1
 nine (9) target group designations, I-2
 Non-Certified Individual, II-19
 Non-Eligibility of H-2A Workers, III-4
 Non-qualifying Rehires, III-12
 Note. A IV-A Recipient, II-2
 O*NET, VIII-21, VIII-22
 On-the-Job Training Payments, III-5
 Other State Agencies, VI-8
 Participating Local Agency, II-19, VII-11
 Percent Invalid, VIII-23, VIII-24, VIII-25
 Policy Clarification/Appeals Resolution, VIII-5
 postmarks, VII-32
 Power of Attorney, II-17, VII-36, ii
 Pre-Screening Notice & Certification Request (PSN/CR), II-20
 principal place of abode, II-7, II-10
 Principal Place of Abode, II-20
 Qualified Ex-Felon, II-5, II-20
 Qualified Ex-felon (C), I-2
 qualified first-year wages, II-2, II-4, II-6, II-7, II-9, II-13, II-14, III-1
 Qualified Food Stamp Recipient, I-2, II-12
 Qualified Food Stamp Recipient (G), I-2
 Qualified IV-A Recipient, I-2, II-2
 Qualified IV-A Recipient (A), I-2
 Qualified Summer Youth Employee, I-2, II-10
 Qualified Summer Youth Employees, VII-26

Qualified Supplemental Security Income (SSI), II-14
 Qualified Supplemental Security Income Recipient (H), I-2
 Qualified Veteran, I-2, II-3, II-24
 Qualified Veteran (B), I-2
 qualified wages, II-7, II-10, II-11, II-16, III-1, III-2, III-5, III-6, III-7, III-8, VIII-2
 Quality Assurance, VII-14
 Quality Review, II-24
 Quality Reviews, II-25, VII-19
 Railroad Employees, III-4
 Record Retention by the Participating Agency, VIII-4
 Records' Retention, VIII-3
 Rehabilitation Act of 1973, II-8
 renewal community (RC), II-7, II-10
 Reporting Requirements, VIII-9
 Retention Period, I-2, II-24
 Sample Size, VII-23, VIII-23, VIII-24
 SESA, vi, I-3, II-12, II-17, V-4, VI-5, VII-30, VII-33, VIII-8, VIII-14
 Social Security Disability Income (SSDI) Recipient, II-14
 Special Rule for Continued Employment, II-10
 Special Rules - Tier 2, III-7
 Special Rules for Timeliness, VII-35
 State Level, VI-5
 State Workforce Agencies (SWAs), vi, I-3, VIII-14
 State Workforce Agency/DLA Process, VII-16
 Submitting the Reports, VIII-10
 Successor Employers, III-13
 Supporting Documentation, VII-8
 SWA, vi, I-3, II-19, II-21, VI-8, VII-2, VII-4, VII-5, VII-6, VII-7, VII-9, VII-10, VII-11, VII-14, VII-15, VII-16, VII-17, VII-19, VII-20, VII-21, VII-22, VII-24, VII-27, VII-28, VII-29, VII-30, VII-31, VII-33, VII-34, VII-35, VII-36, VII-37, VIII-1, VIII-2, VIII-4, VIII-5, VIII-11, VIII-14, VIII-15, VIII-16, VIII-17, VIII-18, VIII-19, VIII-20, iv
 TANF, II-2, II-18, V-2, VII-33, VII-34, VIII-6
 tax credit, I-1, I-2, II-2, II-4, II-6, II-7, II-9, II-11, II-13, II-14, II-16, II-24, III-3, III-4, III-5, III-9, III-11, III-12, III-13, IV-1, VI-1, VI-4, VI-5, VI-8, VII-3, VII-7, VII-34, VIII-2, VIII-9, VIII-12, VIII-14, iv
 Tax Liability Limitation, III-9
 Taxpayer Relief Act of 1997, I-1, III-9, IV-1, i
 Tier 1, I-2, II-24, III-7
 U.S. Postmark, VII-27
 Universe Size, VII-23, VIII-23, VIII-24
 USDOL ETA Form 9061, VII-2
 Validity Period of Conditional Certifications, VII-34

Verification, II-16, II-25, VII-4, VII-17, VII-18, VII-24, VII-26, VII-33, VIII-10, VIII-26, VIII-27, i, ii
vocational rehabilitation program, II-8
Vocational Rehabilitation Referral, I-2, II-8
Vocational Rehabilitation Referral (E), I-2
Wages, III-1, III-3, III-4, III-6, V-3
Work Release, II-25
Work Supplementation Payments, III-6
WOTC, vi, I-1, I-2, I-3, I-4, II-1, II-2, II-5, II-16, II-17, II-19, II-20, II-24, III-1, III-3, III-4, III-5, III-7, III-8, III-9, III-11, III-12, III-13, V-3, V-4, VI-1, VI-2, VI-3, VI-4, VI-5, VI-6, VI-7, VI-8, VII-1, VII-2, VII-5, VII-6, VII-7, VII-8, VII-10, VII-11, VII-14, VII-15, VII-16, VII-18, VII-22, VII-25, VII-26, VII-27, VII-29, VII-36, VII-37, VIII-1, VIII-2, VIII-3, VIII-4, VIII-5, VIII-9, VIII-10, VIII-12, VIII-13, VIII-14, VIII-15, VIII-17, VIII-18, VIII-19, VIII-20, VIII-23, VIII-26, VIII-27, i, ii, iv
WtWTC, vi, I-1, I-2, I-4, II-19, VII-1, VII-11, VII-15, VII-18, VII-22, VII-27, VII-36, VIII-2, VIII-4, VIII-10, VIII-15, VIII-17, VIII-18, VIII-19, VIII-20