

Policy Area: Work Opportunity Tax Credit (WOTC)	
<b>Title:</b> WOTC Procedural Guidance	<b>Number:</b> WOTC-PRG-25-V1
<b>Effective Date:</b> October 01, 2025 <b>Revision Date(s):</b> N/A	<b>Approved by:</b>
<b>Review by Date:</b> October 01, 2026	<b>Approved Date:</b>

## PURPOSE

The purpose of this policy is to disseminate changes in the WorkForce West Virginia (WFWV) Work Opportunity Tax Credit (WOTC) process due to updated procedural guidance from the U.S. Department of Labor Employment and Training Administration (USDOL ETA), as outlined in TEGL 16-20, change 1. **This policy supersedes West Virginia WOTC Policy 02-21, which is officially retired and rendered inactive as of September 30, 2025.**

## BACKGROUND

The Work Opportunity Tax Credit (WOTC) is jointly administered by the U.S. Departments of Labor and Treasury and is set forth under Section 51 of the Internal Revenue Code of 1986, as extended and amended by the Protecting Americans from Tax Hikes (PATH) Act of 2015. WOTC is reauthorized until December 31, 2025, under Section 113 of Division EE of Public Law 116-260 (Taxpayer Certainty and Disaster Relief Act of 2020).

WOTC provides a federal tax credit to employers who hire individuals from certain targeted groups who consistently face significant barriers to employment. WFWV is the State Workforce Agency (SWA) statutorily authorized to administer the WOTC certification process in the State of West Virginia. All SWAs must administer the WOTC in accordance with guidance from the USDOL ETA and the requirements outlined in the WOTC Statement of Work (SOW).

## SCOPE

This policy applies to all WOTC program operations administered by WFWV, including staff responsible for processing certification requests and employer representatives involved in the application process. It is also applicable to all employers in the State of West Virginia seeking WOTC certification for eligible new hires.

## REFERENCES

- [Internal Revenue Code of 1986, Section 51](#) – Defines WOTC eligibility and targeted groups.
- [TEGL 16-20, Change 1](#) – Provides federal guidance on WOTC administration, audits, and verification procedures.
- [IRS Form 8850](#) – Pre-Screening Notice and Certification Request for the Work Opportunity Credit.
- [ETA Forms 9061, 9062, and 9198](#) – Individual Characteristics Form, Conditional Certification, and Employer Representative Authorization.

## POLICY

The WOTC is a federal incentive designed to encourage employers to hire individuals who have historically faced significant barriers to employment. By hiring eligible individuals from specific target groups, employers may qualify for a tax credit ranging from \$2,400 to \$9,600 per qualified employee, depending on the individual's category and employment circumstances. These credits can significantly reduce an employer's federal tax liability while also supporting inclusive hiring practices.

- **APPLICATION PROCESS**

As the SWA is designated to process the WOTC applications for target group certification, WorkForce WV has updated the procedures currently in place to align with the new guidance provided in TEGL 16-20, change 1. The WOTC application process involves three distinct phases: Intake, Verification, and Notification.

- **Intake Phase**

During the intake phase, WFWV will collect all required forms and supporting documentation from employers seeking WOTC certification to verify employee eligibility. **Employers must submit the following forms *together*:**

- **IRS Form 8850** – Pre-Screening Notice and Certification Request for the Work Opportunity Credit
- **ETA Form 9061** – Individual Characteristics Form or ETA Form 9062 – Conditional Certification
  - Supporting documentation for the targeted category (as outlined in Attachment A)
- Once WFWV staff have received all required forms and documentation together, an initial review will be conducted to ensure the certification request is both timely and complete.
- **Timeliness Requirements:**
  - All forms and supporting documentation must be submitted no later than the 28th calendar day after the employee's start date.

- For WOTC applications sent by U.S. Mail, the postmark date is considered the official submission date.
- Requests submitted after this deadline will be denied.
- **Submission Methods:**
  - **Preferred:** Direct entry into WFWV's secure online database
    - Employer access: [here](#)
    - Authorized Representatives (Consultants) access: [here](#)
  - **Alternative:** U.S. Postal Service with original signatures.
- **Form Integrity:**
  - Once signed by the employer and employee, ETA Form 9198 must not be altered by authorized representatives or WFWV staff.
  - If unauthorized alterations are suspected, WFWV will contact the employer and employee to clarify.
  - Unauthorized changes may result in denial of the certification request.
- **Verification Phase**

Once an employer or their authorized representative has submitted a complete and timely certification request, WFWV staff will review the forms and supporting documentation to determine whether the employee meets the eligibility requirements for the target groups specifically identified in the submission. Staff will not make determinations for target groups that were not requested. Only one certification may be issued per employee; if an individual qualifies for multiple submitted target groups, WFWV will certify the employee under the group that provides the greatest tax benefit to the employer.

  - Eligibility determinations are based on the information provided on ETA Form 9198 (if an authorized representative is used), ETA Form 9061 or 9062, and the accompanying documentation. Employers are responsible for ensuring all forms and supporting documentation are complete, legible, and submitted in accordance with federal requirements.
  - If adequate documentation is not provided at the time of submission, employers may indicate that evidence is **“forthcoming”** by checking box 24 on ETA Form 9061. In these cases:
    - Employers will have **365 calendar days from the submission date of ETA Form 9061** to provide the required supporting documentation.
    - WFWV will issue an Employer Needs Letter to identify the specific documentation required.
    - No eligibility determination will be made until either the documentation is received or the 365-day deadline has expired.

- If required documentation is not submitted within the 365-day period, the request will be denied. ***These denials are final and not subject to appeal.***
- If documentation is incomplete, illegible, or untimely (submitted after the 28-day statutory deadline without box 24 marked on ETA Form 9061), WFWV will deny the request. It remains the sole responsibility of the employer or their authorized representative to submit the information necessary to establish eligibility.
- **Notification Phase**

The WFWV WOTC Unit will issue notifications to employers to inform them of the status of their certification requests. Notifications will indicate whether the application has been certified, denied, or denied pending additional information.

  - **Certification**
    - A **Certification Notification** will be issued when WFWV staff determine that the employee meets the eligibility requirements for the targeted group specified on **IRS Form 8850**.
    - This notification serves as official confirmation that the employee has been certified for the Work Opportunity Tax Credit.
  - **Denial**
    - A **Denial Notification** will be issued when it is determined that the employee **does not meet the criteria** for the targeted group indicated on **ETA Form 9198**.
    - Additional grounds for denial include:
      - **Failure to submit a complete ETA Form 9198** with all required supporting documentation.
      - **Failure to submit required forms within the 28-calendar-day timeframe** following the employee's start date.
    - Denials will be issued promptly to ensure employers are aware of the status of their request and can take any appropriate actions if applicable.
  - **Denial Pending More Information**
    - A **Denial Pending More Information Notification** will be issued when additional information or documentation is required to complete a certification request.
    - At a minimum, these notifications (commonly referred to as **Employer Needs Letters**) will:
      - Specify the additional information and/or documentation that must be submitted.

- Include the **28-calendar-day deadline** for the employer's response.
  - **Automatic Denial:** If the employer fails to submit the required documentation within **one year** from the issuance of the Employer Needs Letter, WFWV will automatically deny the request. Such denials are **not eligible for appeal**.
- Communicate that the certification request **will be denied** if the employer does not provide the requested information.
- Common reasons for this type of notification include use of **obsolete forms** or **incomplete supporting documentation**.
- **More information is available at:**  
<https://workforcewv.org/job-seeker/specialized-services/work-opportunity-tax-credit/>

## AUTHORIZED REPRESENTATIVES

An employer may designate an individual or entity to act as their authorized representative for WOTC purposes by submitting **ETA Form 9198 (Employer Representative Authorization Form)** to the State Workforce Agency (SWA).

- **Authorization Requirement:**
  - Only individuals listed on a valid ETA Form 9198 may facilitate certification requests or submit IRS Form 8850 on behalf of the employer.
  - Each consultant or representative may list no more than ten authorized representatives per employer.
  - Employer Authorization on ETA 9198 expires after 5 years unless revoked.
- **Retention and Submission:**
  - The WFWV WOTC Unit will maintain all submitted ETA Form 9198(s) on file. Employers are not required to submit this form with each IRS Form 8850.
  - WFWV **will not conduct** WOTC business with any individual not listed as an authorized representative on the employer's ETA Form 9198.
  - ETA Form 9198 must be submitted via U.S. Postal Service (with original signatures) or the WFWV WOTC online portal; electronic signatures are accepted.
  - Forms signed and dated after a WOTC certification request has been submitted will not be accepted.

- **Scope of Authority:**

An authorized representative may act on behalf of the employer throughout the certification process, including, but not limited to:

- Submission of ETA Form 9198 and the employee forms ETA Form 9061 or ETA Form 9062.
- Submission of missing or supplemental information necessary to complete a certification request.
- Providing updates, clarification, or other communications regarding an employer's certification request.

## NOTICES AND COMMUNICATIONS

WFWV will issue all notices and communications directly to employers and, when applicable, to authorized representatives listed on a valid ETA Form 9198. Communications will be provided to an authorized representative only if:

- The ETA Form 9198 is on file at the time the employer submits the certification request, and
- **Box 2** of the form is checked, granting permission for the representative to receive communications.

For additional information regarding the ETA Form 9198, visit the U.S. Department of Labor WOTC resources page: <https://www.dol.gov/agencies/eta/wotc/resources>.

## APPEALS

An employer may appeal a denial of a certification request within 90 calendar days from the date the WFWV WOTC Unit issues the denial letter for a complete and timely filed certification request.

- Appeals must be submitted in writing to the WFWV WOTC Unit and may be submitted either by U.S. Postal Service or through the online portal. Appeals should clearly:
  - Explain why the employer believes the denial was incorrect;
  - Provide any additional documentation or clarifying information not originally submitted; and/or
  - Describe any potential misinterpretations or errors made during the initial review.
- If an employer remains dissatisfied with the outcome of the appeal, they may escalate the appeal to the regional or national WOTC offices. Instructions for further appeal will be included in all final determination notices issued to employers.
- Employers or authorized representatives may direct questions regarding this policy, appeals, the WFWV WOTC database, or any other WOTC-related matters to:
  - WorkForce West Virginia – WOTC Unit  
 % Director - Workforce Development  
 1900 Kanawha Boulevard, East  
 Building 3, 4th Floor, Suite 400  
 Charleston, WV 25305

Phone: (304) 558-5050  
Email: WOTC@wv.gov

## MONITORING AND AUDITS

To ensure the integrity of the WOTC program and minimize the risk of certifying ineligible individuals, WFWV conducts quarterly audits. These audits serve as a verification mechanism to assess the accuracy and compliance of WFWV's certification process with federal regulations.

- **Quarterly Audit Process:**

- **Sample Review:** WFWV monitoring staff review a sample of all processed WOTC requests—including certifications, denials, and revocations—to ensure determinations comply with policy and federal regulations. The sample size is determined based on the total number of processed requests, as outlined in Table 1.0 below

***Table 1.0: Sample Size for Quarterly Verification***

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

- **Corrective Action:** If monitoring identifies deficiencies, WFWV will require prompt corrective action and provide the necessary staff training to bring activities back into compliance.
- **Quarterly Audit Verification Focus Areas**

Audits will examine the following elements, consistent with ETA guidance:

  - Timely submission of all required forms and supporting documentation.
  - Completeness of forms, including signatures, dates, and required fields.
  - Accuracy of supporting documentation (e.g., Unemployment Insurance Wage Records, public welfare benefit verification letters).
  - Submission of information by the employer or the employer's authorized representative.



- Verification that the applicant is a first-time hire for the employer seeking certification.
  - **First-Time Hire Verification**
    - Consistent with TEGL 16-20, Change 1, verification that an employee is a first-time hire is conducted during quarterly audits.
    - Pursuant to Section 51(i)(2) of the Internal Revenue Code, a nonqualifying rehire—an individual previously employed by the employer before the current hire date—is ineligible for WOTC certification.
    - During the quarterly audit, WFWV staff compare employer-provided information on IRS Form 8850—including EIN, social security number, and hire date—with available state wage and employment records to confirm that:
      - The employee received wages from the employer after the current hire date.
      - The employee did not receive wages from the employer prior to the current hire date.
    - If a certification was issued in error for a nonqualifying rehire, WFWV will take corrective action.

## **INCORRECT DETERMINATIONS**

If a certification is issued in error or an eligible employee is incorrectly denied, WFWV will take corrective action.

- **Incorrect Denials:**
  - If an eligible employee was incorrectly denied, staff will redetermine eligibility and issue a certification if requirements are met.
- **Incorrect Certifications:**
  - If a certification was issued in error, WFWV will revoke the certification in accordance with federal guidance.

## **NOTICE OF REVOCATION (NOR)**

A Notice of Revocation (NOR) will be issued to the employer, any authorized representative (if applicable), and the IRS when a certification is determined to have been issued in error. The NOR will include the reason for revocation, the effective date, and notification that wages paid to the ineligible employee cannot be treated as qualified wages for WOTC purposes.

- WFWV Staff will transmit the NOR to:
  - Internal Revenue Service
  - Small Business/Self-Employed Campus Compliance Services
  - Fax: 1-855-242-6540



The NOR will include:

- The reason the employee is not a member of the targeted group.
- The effective date of revocation.
- Notification that wages paid to the ineligible employee cannot be treated as qualified wages for WOTC purposes.

## RECORD RETENTION

All records must be maintained in electronic format and retained for a minimum of three (3) years, unless a longer period is required due to audit, review, investigation, or legal action. In such cases, records must be retained until all matters are fully resolved and official notice is given that normal retention periods may resume.

## Version Control

Version	Effective Date	Description of Changes	Author/Editor	Approval Date
1.0	October 22, 2025	Revision to align with federal guidance (TEGL 16-20, Change 1); incorporated updated audit procedures, first-time hire verification, notification processes, and appeals. Reformatted sections to comply with new WFWV policy standards, naming conventions, and document structure.	WorkForce Unit	