

Kansas Department of Commerce Workforce Services Policy and Procedures Manual

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Originating Office: Workforce Services

Subject: Work Opportunity Tax Credit Program

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Revised: August 13, 2021, January 1, 2023, October 1, 2023, and February 20, 2024.

Programs: Work Opportunity Tax Credit Program

Purpose: To transmit guidelines and procedures for the implementation and operation of the Work Opportunity Tax Credit Program (WOTC).

Reference: ETA Handbook #408, Third Edition 2002 and Addendum dated August 2009, TEGL 16-20, TEGL 22-22, and TEGL 16-20, Change 1.

Background: On May 25, 2007, President Bush signed in law the Small Business and Work Opportunity Tax Act of 2007 (P.L. 110-28), extending the consolidated WOTC program of 2006 for a 44-month period through August 31, 2011. The provisions amended Section 51 of the Internal Revenue Code (IRC) and apply to individuals who begin work for an employer after May 25, 2007, and before September 1, 2011.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1221 of the Recovery Act (P.L. 111-5) amended Section 51 of the Internal Revenue Code (IRC) to add two new target groups for the WOTC Program: Unemployed Veteran and Disconnected Youth who begin work for the employer during 2009 and 2010.

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 that extends the Work Opportunity Tax Credit (WOTC) program until December 31, 2019. The 5-year reauthorization includes retroactively reauthorizing the WOTC program with all its current target groups without changes or new provisions, for a 5-year period, after December 31, 2014, to December 31, 2019.

On December 20, 2019, Congress passed legislation which included Section 143 of HR 1865. The appropriation included this language below: "Sec. 143. Work Opportunity Tax Credit. (a) In general. - Section 51(c)(4) is amended by striking "December 31, 2019" and inserting "December 31, 2020". (b) Effective date. - The amendment made by this section shall apply to individuals who begin work for the employer after December 31, 2019."

The Consolidated Appropriations Act, 2021 (the Act) reauthorizes the Work Opportunity Tax Credit (WOTC) until December 31, 2025. Additionally, the Act extends empowerment zone designations from December 31, 2020, to December 31, 2025.

Action: Distribute to all interested parties.

Contact: Questions should be directed to Work Opportunity Tax Credit Program Manager, (785) 296-7435
e-mail WOTCwebmail@ks.gov

Contents

<i>Program Purpose</i>	1
<i>Program Benefits</i>	1
<i>Target Group Criteria</i>	2
Veterans Target Groups:	2
Long-term Temporary Assistance for Needy Families (TANF) Recipient: (Maximum Tax Credit \$9,000)	2
Short-term TANF Recipient: (Maximum Tax Credit \$2,400)	2
SNAP (food stamp) Recipient: (Maximum Tax Credit \$2,400)	2
Designated Community Resident: (Maximum Tax Credit \$2,400)	2
Vocational Rehabilitation Referral: (Maximum Tax Credit \$2,400)	3
Ex-felon: (Maximum Tax Credit \$2,400)	3
Supplemental Security Income (SSI) Recipient: (Maximum Tax Credit \$2,400)	3
Ticket-to-Work (TW) Recipient: (Maximum Tax Credit \$2,400)	3
Qualified Long-term Unemployment Recipient: (Effective Date 01-01-2016) (Maximum Tax Credit \$2,400) ...	3
<i>Tax Credit Limitations</i>	3
<i>Process and Procedures</i>	4
<i>Employer Qualifications</i>	4
<i>Purpose of the Form</i>	4
<i>Timely Filing Requirements</i>	4
<i>Kansas WOTC CertLink Electronic Submission</i>	5
<i>Employer/Consultant Name or Address Change</i>	6
<i>IRS Form 8850 Signature Requirement</i>	7
<i>IRS Form 8850 & ICF ETA Form 9061 or CC ETA Form 9062 Alter or Change Forms</i>	8
<i>Employer Representative Declaration Requirements</i>	8
<i>90 Calendar Days Appeal Process</i>	9
<i>Disclosure</i>	10

Work Opportunity Tax Credit Program

Program Purpose

The purpose of the Work Opportunity Tax Credit (WOTC) program is to offer employers an incentive, by way of a tax credit, to hire individuals who are members of targeted groups that traditionally face significant barriers to employment.

Program Benefits

The Work Opportunity Tax Credit (WOTC) provides tax relief to employers who hire full-time, part-time, or temporary employees from specifically targeted groups that have employment barriers.

The following list of targeted groups can save employers between the amounts of \$2,400 to \$9,600 per applicant.

Target Group Criteria

Veterans Target Groups:

A new hire qualifies for a veteran target group, if the individual is:

- A veteran who is a member of a family that received SNAP benefits (food stamps) for at least 3-month period during the 15-month period prior to hire date; **(Maximum Tax Credit \$2,400)** OR
- A disabled veteran entitled to compensation for service-connected disability, who has been:
 - Hired within 1 year of discharge or release from active duty, **(Maximum Tax Credit \$4,800)** OR
 - Unemployed for at least 6 months during year prior to hire date; **(Maximum Tax Credit \$9,600)** OR
- A veteran who has been unemployed for:
 - At least 4 weeks during year prior to hire date; **(Maximum Tax Credit \$2,400)** OR
 - At least 6 months during year prior to hire date. **(Maximum Tax Credit \$5,600)**

Please note that to be considered veteran eligible for WOTC; an individual must meet these two standards:

- Have served on active duty (not including training) in the U.S. Armed Forces for more than 180 days or have been discharged or released from active duty for a service-connected disability.
- Not have a period of active duty (not including training) of more than 90 days that ended during the 60-day period ending on the hiring date.

Long-term Temporary Assistance for Needy Families (TANF) Recipient: **(Maximum Tax Credit \$9,000)**

A new hire must be a member of a family that meets one of the following circumstances:

- Has received TANF benefits for at least 18 consecutive months ending on the hiring date; OR
- Has received TANF benefits for at least 18 consecutive or non-consecutive months after August 5, 1997, as long as the last month (18th month) of cash assistance is not more than 2 years from hire date.
- Stopped being eligible for TANF payments during the past 2 years because a Federal or State law limited the maximum time those payments could be made.

Short-term TANF Recipient: **(Maximum Tax Credit \$2,400)**

A member of a family that received TANF benefits for any 9-month period during the 18-month period ending on the hiring date.

SNAP (food stamp) Recipient: **(Maximum Tax Credit \$2,400)**

A new hire qualifies for this target group, if the individual is:

- Age 18 to 39 years old, **AND**
- A member of a family that received Supplemental Nutrition Assistance Program (SNAP) benefits for:
 - The 6 months ending on the hiring date, OR
 - At least 3 of the 5 months ending on the hiring date.

Designated Community Resident: **(Maximum Tax Credit \$2,400)**

A new hire meets the criteria for this target group, if the individual:

- Is age 18-39 years old, **AND**
- Resides within one of the federally designated:
 - Rural Renewal Counties (RRCs), OR
 - Empowerment Zones (EZ) **(Not a Kansas target group)**

Vocational Rehabilitation Referral: (Maximum Tax Credit \$2,400)

An individual with a disability who completed, or is completing, rehabilitative services provided by:

- A state-certified agency, OR
- An Employment Network under the Ticket to Work program, OR
- The U.S. Department of Veteran Affairs.

Ex-felon: (Maximum Tax Credit \$2,400)

A new hire meets the criteria for this target group, if the individual:

- Has been convicted of a felony; **AND**
- Has a hiring date that is not more than 1 year after the conviction or release dates from prison, OR
- Those participating in a Work Release Program are considered eligible for WOTC.

Supplemental Security Income (SSI) Recipient: (Maximum Tax Credit \$2,400)

A recipient of SSI benefits for any month ending during the past 60-day period ending on the hire date.

Ticket-to-Work (TW) Recipient: (Maximum Tax Credit \$2,400)

An individual meets the criteria for this target group, if the individual:

- Is a ticket holder under the Ticket-to-Work program; **AND**
- Has an active individual work plan (IPE) from an Employment Network (EN)

Qualified Long-term Unemployment Recipient: (Effective Date 01-01-2016) (Maximum Tax Credit \$2,400)

A qualified long-term unemployment recipient is any individual who on the day before the individual begins work is in a period of unemployment that is:

- not less than 27 consecutive weeks **AND**
- includes a period in which the individual received unemployment compensation under State or Federal Law within the 27 weeks prior to the hire date.

Tax Credit Limitations

Tax credit is not allowable in the following situations:

- Wages are paid to a rehired employee.
 - Rehires are defined as:
 - Any employee that has worked for an employer for wages or salary no matter how long ago or if only worked for the employer one hour. This includes employers under instances of Common Owner, Successors and Subsidiaries.
- Wages are paid to an on-the-job training (OJT) participant for any employment for which the employer receives federal payments for the OJT;
- Wages are paid to a person who replaces a striking or locked-out worker;
- Wages are paid to a person who is related to the employer or is a dependent living in the employer's household;
- Wages are paid to a self-employed individual;
- Wages are paid to a majority stockholders and shareholders;
- Wages are paid to a member of partnerships;
- Wages are paid if the employer failed to submit a timely request for certification; or
- Wages are paid to non-resident aliens and H-2A workers.

All applications that fall under the above criteria will be denied.

Process and Procedures

Employer Qualifications

Participation in the program is voluntary. A certification request is when an employer sends a Pre-Screening Notice, IRS Form 8850, to the SWA for Certification. In addition to the IRS Form 8850, the employer must submit to the SWA, an ICF ETA Form 9061 or CC ETA 9062 and supporting documentation to support the applicant's eligibility as described on page 3 and 4 of the ICF ETA Form 9061 or CC ETA 9062.

The employer follows the following steps to qualify:

- Completes an IRS Form 8850, **AND**
- Completes either an Individual Characteristics Form (ICF ETA Form 9061) OR Conditional Certification Form (CC ETA Form 9062) provided by the employee, **AND**
- Electronically submits all forms using the Kansas CertLink System at kansaswotc.com **AND**
 - New Employers/Consultants will need to register for a user account through the Kansas CertLink System.
- Submits **ALL** supporting documentation as outlined on the State of Kansas Required Documentation by Target Group and the Authorized Forms of Documentation lists for the eligibility of the target groups selected on the ICF ETA Form 9061 within 28 calendar days of the new hire's start date.
- If Employers need additional time to submit documentation that is not readily available within the 28-day window, employers/consultants have the option to specify that the supporting documentation is 'forthcoming' in Box 22 of ICF ETA Form 9061.
 - When an employer marks that supporting documentation is 'forthcoming' on ETA Form 9061, **and documentation does not need to be provided**. The application cannot be denied until the 365-calendar day deadline has expired.
 - For documentation that is accessible to Kansas, Refer to the Required Documentation by Target Group on the Kansas Department of Commerce website.
- Second method of submission. Please contact the Kansas WOTC office at WOTCwebmail@ks.gov.

It is the responsibility of the employer and/or consultant to monitor the progress of their applications, upload additional documentation requested and print all determination and/or letters through the Kansas CertLink System.

Purpose of the Form

Employers use the ICF ETA Form 9061 or CC ETA Form 9062 together with the IRS Form 8850 to pre-screen and to make a written request to the state workforce agency (SWA) of the state in which their business is located (where the employee works) (if employee works remotely submit application to the state in which the business physical address is located) to certify an individual as a member of a targeted group for purposes of qualifying for the Work Opportunity Tax Credit program.

Timely Filing Requirements

IRS Form 8850 and ICF ETA Form 9061 or CC ETA Form 9062 must be completed with all information requested and must be submitted no later than 28 calendar days from when the applicant starts work.

All untimely applications will be denied.

ALL supporting documentation as outlined in the State of Kansas Required Documentation by Target Group and Authorized Forms of Documentation must be provided as evidence for the eligibility of the target groups selected on the ICF ETA Form 9061. Documentary evidence **MUST** be uploaded with the IRS Form 8850 & ICF ETA Form 9061 within the 28 calendar days of the new hire's start date OR indicated as 'forthcoming' on Box 22 of the ICF ETA Form 9061.

Kansas WOTC CertLink Electronic Submission

Our system is a 100% electronic submission web-based system. All employers and consultants will need to create an online user account.

Our online access feature gives the employers/consultants the ability to submit applications, upload all supporting documentation, monitor, and print all determinations giving employer's and consultant's easy 24/7 access to their account.

It is the responsibility of the employer and/or consultant to monitor the progress of their applications, upload additional documentation requested and print all determination and/or letters through the Kansas CertLink System.

To apply for online access:

Go to <https://kansaswotc.com/> click on "Register".

Step 1: Enter your email address (all email addresses must be valid and verifiable). Our system will verify that the email address is not already registered. Enter your contact information, select your security question, and create your password.

Step 2: You will be sent an email verification link to the email address you provided. Follow the instructions provided in the email. Once your email has been verified. Your user account will be active, and you will be able to login to the Kansas CertLink System.

Step 3: In the left blue banner expand the Accounts dropdown and click on add access. Follow the instructions at the top of the screen to obtain access to your Employer or Consultant account.

NOTE: You will need **both** an access key and the employer's or consultant's FEIN to add access.

Per our security policy: all users must have their own individual user account. If our new security protocols flag an account as being accessed by multiple users, that account will be subject to being locked out.

For consultant user accounts, having a user account does not require that the user be listed on any of the Employer Representative Declaration filed with our state.

Our system will require that at least one person is assigned as the administrator for each employer or consultant record. The administrator will have the authority to issue access keys for both user and manager accounts, remove and edit access, monitor employer representative declarations, and add representatives.

It is the responsibility of the administrator to allow access, monitor and manage all user accounts for their company.

WOTC Staff cannot add access for a new user account once an administrator has been assigned.

Employer/Consultant Name or Address Change

Name and/or address changes are to be submitted to the SWA using the Work Opportunity Tax Credit Name or Address Change Form. All fields on the address change form are required, additional pages may be added for additional location addresses.

The Kansas CertLink System will not update employer or consultants addresses from applications or the Employer Representative Declaration.

The Kansas WOTC Name or Address Change Form can be obtained by contacting WOTCwebmail@ks.gov.

IRS Form 8850 Signature Requirement

The IRS Form 2848 will be valid until May 31, 2024.

On June 1, 2024, and beyond the ETA Form 9198, Employer Representative Declaration (ERD) will replace the use of IRS Form 2848, Power of Attorney and Declaration of Representative, for employers to authorize an individual to represent them for WOTC purposes.

The State of Kansas' business practice in reference to the form IRS Form 8850 defines execute as the act of signing the form and in the case of the online form applying one's electronic signature to the electronic form for submittal to the state. On page 2 of the IRS Form 8850, if a consultant firm is listed as the "Person to Contact, if different from above." Then they MUST list the consulting firms company name, the designated representative's name, phone number and address to which we are to be sending correspondence. That representative indicated is therefore acting on behalf of the employer and MUST be the signatory on the IRS Form 8850.

A consulting firm, submitting an electronic form, is acting on behalf of the employer and attests that the applicant provided the information on this form on or before the day a job was offered to the applicant and that the information on the IRS Form 8850 and the information being submitted to the state is to the best of the consulting firm's knowledge, true, correct and complete, that the signature on the IRS Form 8850 is to be the designated representative as listed on the IRS Form 2848.

The ETA Handbook 408 defines an employer representative as "a person authorized to act on behalf of any employer in the WOTC Certification process." ETA Handbook 408, 3rd Edition at II-17. Any employer representative/consultant MUST be properly designated. For this purpose, a valid IRS Form 2848 - Power of Attorney and Declaration of Representative - to execute IRS Form 8850 or otherwise represent the employer is acceptable." Id. The original Power-of-Attorney (POA) designating an employer representative/consultant must be provided to the appropriate SWA/DLA. Id at VII-35. The representative under IRS Form 2848 cannot delegate his or her signatory authority by substituting or adding another representative without the employer's written permission. As there is no delegation of the authority to add or substitute an additional representative, the representative listed on the IRS Form 2848 is the sole person authorized to exercise the delegated POA. Consequently, delegating authority to additional or substitute representatives requires filing a new IRS Form 2848 with the appropriate SWA/DLA.

Electronic submittal of applications will not change.

The State of Kansas does not allow paper applications and the IRS Form 8850 must be electronically submitted through the Kansas CertLink System.

If applications are submitted to the state without a designated representative's signature and/or a valid POA, the State of Kansas will request a corrected IRS Form 8850 and/or a valid Power of Attorney from the consultant. The corrected IRS Form 8850 is to be received no later than 90 days from the date of request. If we do not receive a corrected IRS Form 8850 within the 90 days, the applications will be denied for non-compliance to the state's request of corrected documentation.

E-Signatures* on IRS 8850 Form: IRS Notice 2012-13 permits the following combination of e-signatures and ink signatures:

- a) Both employer and employee sign electronically.
- b) Employee signs electronically and employer signs in ink.
- c) An ink signature by the employee and an e-signature by the employer is not permitted.

Note: All electronic signatures must have "e-signature" or "electronic signature" or "e-signed" next to the signatory's name.

IRS Form 8850 & ICF ETA Form 9061 or CC ETA Form 9062 Alter or Change Forms

Employer/Consultants may not alter or change the IRS Form 8850, and either ICF ETA Form 9061 or CC ETA Form 9062 after the 28th calendar day (for example, altering a certification request by adding new targeted groups or providing a different federal Employer Identification Number (EIN)).

Authorized representatives should not make changes to the information provided by an employee after both the employee and employer have signed IRS Form 8850 and any ETA Form 9061, 9062 or 9175. If the SWA believes the employee information provided on the IRS Form 8850 or on any ETA Form 9061, 9062 or 9175 has been modified without the consent of the employee/and or the employer, the SWA should follow its procedures to request additional or clarifying information from the employee and/or the employer.

Employer Representative Declaration

An ETA Form 9198, Employer Representative Declaration must be submitted prior to acting on behalf of the employer and submitting the employer's certification request to the SWA. Without being listed on the ETA Form 9198, a representative cannot facilitate the employer's certification requests nor submit Form(s) 8850, 9061, 9062 or 9175 on behalf of the employer.

Employer Representative Declaration must be for an employer registered with the Kansas Department of Labor. Consolidated or Pay Master (common pay) employers must submit an ETA Form 9198 for each EIN separately.

Any applications that are submitted by a consultant without an Employer Representative Declaration on file at the time of submission will be denied.

The State of Kansas WOTC Program has transitioned to online submission of Employer Representative Declaration records for **all employers** to the Kansas CertLink System.

Employer Representative Declaration **MUST** meet all the following criteria. It is the responsibility of the Employer/Consultant to follow all the steps listed below for submitting an ERD. Failure to follow the policy will result in the ERD being denied.

- Per Kansas SWA any Employer Representative Declaration **MUST** be submitted using the ETA Form 9198.
- No other forms will be accepted in lieu of the official ETA Form 9198 for Employer Representative Declaration effective 06/01/2024 and beyond.
- Electronic signatures are accepted on the ETA Form 9198.
- The State of Kansas will be accepting electronic signatures. The Certificate of Completion must be attached to the Employer Representative Declaration for acceptance into the database.
- 'Wet' or handwritten signatures must be notarized.
- The State of Kansas will **ONLY** allow a maximum of 2 (two) representatives per consultant.
- The State of Kansas' business practice states Employer Representative Declaration are only effective for a maximum of 5 (five) years **AND**
- Duration of Employer Representative Declarations -Year(s) or Period(s) (effective dates) **MUST** be formatted as MM/DD/YYYY. Listing only the year(s) is no longer permitted.
- The designation of Year(s) or Period(s) cannot be retroactive from the signature date of the employer declaration. Employers may not specify years or periods that have ended, as of the effective date of the authorization.
- The Representative(s) must sign within 45 calendar days from the date the Employer signed on Line 5.

It is the responsibility of the employer/consultant to monitor the expiration date of all Employer Representative Declaration and submit any new Employer Representative Declaration to the SWA in a timely manner to meet the U.S. Department of Labor guidelines for timeliness submission of applications.

90 Calendar Days Appeal Process

Our state implemented 90 calendar days appeal after the TEGL 16-20, Change 1 was implemented on February 20, 2024.

Please note that there are three different letters that you may see in association to your applications.

1. **Submission Letter/Initial Denial Pending More Information (Needs Letter)** – is automatically generated upon submittal of an application.
 - a. ALL supporting documentation to be considered for the eligibility of the target group(s) selected on the ICF ETA Form 9061 should be uploaded with application in the Kansas CertLink System. Refer to the State of Kansas Required Documentation by Target Group and the Authorized Forms of Documentation for the required and authorized forms of documentation.
2. **Denial Letter** - is generated when it is determined that an applicant does not meet the requirements for a specified target group, or we have not received complete supporting documentation that was requested within the designated time frame.
 - a. Any appeal would need to be submitted per the guidelines outlined below.
3. **Certification Letter** – is generated when it is determined that an applicant does meet the requirements for a specified target group.

An application can only be appealed to the State once by the Employer/Consultant and must be received within 90 calendar days of the original denial letter date, include all the following documents, and meet the following guidelines:

1. Request for an employer appeal must be electronically appealed and uploaded to the application on the Kansas CertLink System within 90 calendar days of the original denial letter date. **AND**
2. Employer/Consultant **must** provide an official letter of appeal on their letter head stating the **specific** reason of appeal.
 - a. Refer to the State of Kansas Required Documentation by Target Group and the Authorized Forms of Documentation found on the Kansas Department of Commerce website for required and authorized forms of documentation. **AND**
3. Employer appeal **must** contain a copy of the original denial letter with “**Appeal**” written or stamped on letter. **AND**
4. Request must have **NEW** and/or additional documentation to support the target group(s) that was/were selected on the original application.
 - a. The documentation that was originally submitted with the original application that supports the certification. **AND**
5. Employer/Consultant **must** select the “Appeal Denial” button for the application to change status from Denial to Appeal Denial. If this step is missed, the application will automatically close on the 91st calendar day from the original denial letter date. **AND**
6. Upload **ALL** of the above required letters and the (original and new) supporting documentation for the target group that is being appealed into **one** pdf file into the Kansas CertLink System.

Note: If Box 22 on ICF ETA Form 9061 was marked ‘forthcoming’ and the application was denied. The denial determination will be final and ineligible for an employer appeal.

Disclosure

Kansas Department of Commerce, WOTC Program reserves the right to change any policy or procedures at any time, with or without notice in accordance with Internal Revenue Service, U.S. Department of Labor, Training and Employment Guidance Letter (TEGL) and/or the State of Kansas business practices.