

National Employment Opportunity Network (NEON)

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The National Employment Opportunity Network (NEON) is pleased to submit the following comments with respect to the draft proposed ETA Form 9198, "Employer Representative Declaration for the Work Opportunity Tax Credit (WOTC)" and other pending matters related to WOTC. NEON is a not-for-profit 501 C organization which supports government incentives to encourage employers to hire individuals who, as a result of structural unemployment, have great difficulties transitioning to the workforce.

Form 9198.

Representatives of employers participating in the WOTC program have until now been required to submit to the SWA's the IRS Power of Attorney Form (2848) which is designed to elicit information that is required to practice before the IRS, but not the DOL or the SWA's. NEON commends DOL for moving away from the IRS Form in favor of a form that is designed specifically for the WOTC program.

The draft Form 9198 is an improvement over the IRS Form in that: (1) it is issued by the employer and not the "taxpayer"; (2) it does not require the representative to provide IRS practitioner specific information; (3) the acts authorized for the representative are specific and related to WOTC/DOL forms and matters; and (4) the representative is not required to specify how and where it is licensed to practice before the IRS.

We suggest the draft form and its instructions/procedures could be further improved as follows:

1) The form should be modified to accommodate controlled groups of employers consisting of multiple entities with multiple EIN's. This change would be consistent with the WOTC aggregation rules under section 52(a) of the Internal Revenue Code that provide that "all employees of all corporations which are members of the same controlled group or corporations shall be treated as employed by a single employer." This modification would allow a common representative for the controlled group to file a single authorization form by listing all of the EINs in the controlled group that are commonly represented either on a dedicated space on the form for this purpose or on an addendum.

2) To be consistent with current technologies and industry practices, we would recommend that the methods of filing allowed under the draft General Instructions, How to File (US mail, FAX, or the SWA's online portal) also include email to an appropriate email address registered to the SWA. It has become increasingly common for official forms (including IRS forms) to also be submitted via email, and adding email to the list would facilitate the ability of employers to file the new Form 9198 and for SWAs to receive those forms. We are certain

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that the SWA's can easily add email as a form of receipt. A significant number of the SWAs currently accept powers of attorney via email, the removal of this option from the 9198 instructions would defeat the purpose of the form to make improvements to the current practice.

Email should also be indicated as an approved submission method under General Instructions Revocation of Authorization / Withdrawal of Representative.

3) DOL should allow representatives to sign Form 9198 by electronic means using any acceptable electronic signature method permitted in the draft instructions under General Instructions Electronic Signatures no matter how the Form is filed with the SWA. The draft instructions would limit the use of electronic signatures to instances in which the Form is submitted through the online electronic portal.

We submit that there is no reason to limit the use of electronic signatures based on the method used by the representative to submit the Form. Under current technologies and common practice with many Federal and state agencies, an electronic signature can easily be affixed to a document which is submitted by email, FAX, online, or US mail and accepted in that manner. In reality the issue of using an electronic signature relates to the sender, not the receiver. And for that matter, any SWA can easily put an email address in place to allow email submissions with electronic signatures. This modification to the instructions will significantly improve the ability of representatives to file Form 9198 efficiently and promptly. In making this suggestion we are not suggesting that DOL only allow electronic signatures, but instead, that it allow them to be used for all allowable filing methods.

To this end, under Specific Instructions Line 5, we suggest striking the words, "You must handwrite your signature on Form 9198 if you file it on paper or by fax." Under Specific Instructions Line 6, we suggest striking the words, "He or she must handwrite their signature on Form 9198 if the employer will file it on paper or by fax."

4) Under current practice, using the IRS Form 2848, DOL has allowed some states to require the Form to be notarized, while most states do not impose such a requirement. In this respect, we note that Congress in the Consolidated Spending Act of 2023 included funding for "(...assisting States in adopting or modernizing information technology for use in the processing of certification requests), and the provision of technical assistance...." and provided as well that "consistent with the efforts to modernize information technology for processing, the agreement supports compatible rules across States."

We respectfully submit this is one area in which uniform rules are needed by making explicit in the instructions that notarization is not required for Form 9198. WOTC is a national program which operates most efficiently when employers are able to rely on uniform rules to participate. IRS and most Federal agencies do not require the notarization of powers of attorney and similar forms, and the inconsistent requirement for WOTC imposes an undue burden on employers. Congress has clarified that DOL has the authority to require uniform rules, and this is one area where the exercise of that authority is in the public interest.

5) We request that you remove from the instructions for Line 1 (employer information) under the paragraph headed "individuals" the language that states after "Note" that the SWA may "establish an employer-employee relationship, where wages are paid (and federal taxes deducted) in the state." Our concern is that this language suggests that the SWA could delay certification based on a determination of how much or whether the employer pays in wages

over time. The SWA's role is to make the initial determination that an employee is WOTC eligible. The determination of whether sufficient wages have been paid for the employer to claim the credit (and how much credit may be claimed) is an IRS function. The language we suggest be stricken could lead to some SWAs delaying certification based on criteria that is not in their jurisdiction.

6) We suggest dropping the word "original" from the instructions under "How To File" given that there are a variety of ways to file (including as we are suggesting by email) and it is unclear what is meant by an "original" form (the word could suggest a paper copy of an ink signed form).

Remote Workers.

The COVID pandemic accelerated trends in the workforce under which an increasing number of employees work in different states than where their employer is located, often at home, necessitating changes in the way procedural aspects of employment matters are viewed.

Although the assumption has been since WOTC was enacted that all related filings should be made in the state in which employer's business is located, the statutory authority for WOTC is not so limited. Specifically, IRC section 51d (13) (II) simply states that WOTC certification forms be submitted to the, "designated local agency..." and goes on to define Designated Local Agency as "The Term 'designated local agency' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29U.S.C. 49-49n)."

Additional language in the above cited Consolidated Spending Act of 2023 reflects these changes in the workplace relative to WOTC by providing that "...further, the agreement recognizes that processing requests from remote workers may best be accomplished in the State where the workers reside and not where the employer is located."

We urge DOL to consider changes to the procedures for filing WOTC forms, including the draft Forms 9061, 9062, 9175, 9198 and IRS Form 8850, to take these new workplace realities into account.

Long Term Unemployed Category

Certification for the Long-Term Unemployed target group requires someone to be unemployed for not less than 27 consecutive weeks. Because SWAs generally lack access to precise data to determine if individuals were unemployed for 27 consecutive weeks, DOL has instructed the SWAs to use a proxy – quarterly wage data. This results in a significant number of individuals who met the eligibility criteria not being certified. Generally, individuals are not terminated or hired on the first day of a calendar quarter. Because wage data available to SWAs are reported on a quarterly and not weekly basis, a person whose previous employment terminated in the middle of a quarter will not qualify unless they had no wages for two full quarters above and beyond the quarter in which they became unemployed – up to 39 consecutive weeks instead of the statutory requirement of 27 consecutive weeks. For example, if someone is hired on September 1, which is two months after the third quarter begins, under the statute, they would qualify if they became and continued to be unemployed as of February 24 – 27 weeks prior to their hire date. However, because the SWAs use quarterly wage data, that individual would not qualify if they had income during the first few weeks of the first quarter of the year.

Recognizing this issue, at the urging of the Ways and Means Committee, IRS and DOL developed a Long-Term Unemployment Recipient Self-Attestation Form for WOTC (Form 9175). However, DOL's self-attestation instructions on page 4 of [TEGL 25-15-Change2.pdf \(dol.gov\)](#) instruct the SWAs to rely upon the self-attestation Form 9175, "When there is an absence of UI wage records (in other words, if the UI data is not available to determine whether the individual has had zero UI wages and has received unemployment compensation), SWAs may use the ETA Form 9175, Long-Term Unemployment Recipient Self-Attestation Form (SAF) provided by the new hire to make final determinations (certification denials)." Since there is UI quarterly wage data available, the self-attestation form is generally not being used which effectively renders the form meaningless.

In cases where the period of unemployment is closer to 27 weeks, SWA must examine three calendar quarters of wage data: (1) the quarter the individual was terminated from previous employment; (2) a middle quarter; and (3) the quarter in which the individual is hired by the employer seeking certification. We would urge that IRS and DOL clarify that the self-attestation form may be used when the individual hired has no income in the middle quarter. The SWA would then accept the self-attestation as to when the individual first became unemployed and the 27-week period began.

In the absence of verifiable methodology to precisely determine when an individual first became unemployed for at least 27 consecutive weeks, this approach would come much closer to what Congress intended. Absent such a remedy, employers will have less of an incentive to hire the long-term unemployed – defeating the rationale for its enactment which is to help the long-term unemployed re-enter the workforce – something desperately needed.

We would also urge that IRS and DOL clarify that the self-attestation form may be used when the employer is seeking certification for an individual being hired in a different state than the state where unemployment benefits were paid, and SWA of the state where unemployment was claimed is unable to furnish data to the SWA where the certificate is being requested in a timely manner.

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