

U.S. Department of Labor  
Employment and Training Administration  
Attention: Carmen Ortiz, Room C-4510  
200 Constitution Avenue NW, Washington, DC 20210

Title: Comment on Work Opportunity Tax Credit ETA Form  
OMB Control Number: 1205-0371  
Form Number: ETA Form 9175 (Long-term Unemployment Recipient Self-Attestation Form)

To the Department of Labor, Employment and Training Administration:

Ernst & Young LLP has been assisting clients in obtaining the necessary approvals to claim the Work Opportunity Tax Credit (WOTC) for nearly 17 years. Based on our extensive experience with the program, we would like to provide comments on Employment and Training Administration (ETA) Form 9175, "Long-Term Unemployment Recipient Self-Attestation Form" as well as observations on the certification process and the determinations made with respect to the Qualified Long-term Unemployment Recipient target group.

Please consider these comments and observations as we believe they would improve the self-attestation form's utility and reduce the burden of the collection of information from respondents.

#### **Comments on ETA Form 9175**

- 1) **Requested Change:** All references to "new hire" should be changed to "applicant or new hire."

**Rationale:** It has been our experience that most employers have individuals complete the self-attestation form as they apply for jobs. Changing "new hire" to "applicant or new hire" would avoid confusion for job applicants. Furthermore, this change would be in accordance with the IRS' definition of the target group as stated in IRS Notice 2016-22: "For purposes of this notice, a qualified long-term unemployment recipient is any individual who on the day before the individual begins work for the employer, or, if earlier, the day the individual completes the IRS Form 8850 as a prescreening notice in accordance with the certification described in § 51(d)(13)(A)(ii), is in a period of unemployment that is (i) not less than 27 consecutive weeks, and (ii) includes a period (which may be less than 27 weeks) in which the individual received unemployment compensation under State or Federal law".

- 2) **Requested Change:** The current instructions to the self-attestation form suggest that the applicant or new hire must complete it alone without the assistance of the employer. The instructions to the self-attestation form should be changed to state, "The applicant or new hire should provide the information required on the Self-Attestation Form (SAF) to an employer. The SAF should be signed, using a paper or electronic signature, and dated by the applicant or new hire only."

**Rationale:** This change would make it more apparent that employers are permitted to populate this form on behalf of the applicant or new hire (it is now commonplace for employers to populate forms using information provided by individuals through a web-based screening method instead of using paper forms).

- 3) **Requested Change:** The jurat statement (i.e., declaration under penalties of perjury), signature line, and date field should be moved to the bottom of the form.

**Rationale:** Applicants and new hires should sign and date the self-attestation form after completing the form and providing their information.

- 4) **Requested Change:** The Date of Birth field should be removed from the self-attestation form.

**Rationale:** The Qualified Long-term Unemployment Recipient target group does not have an age requirement. Employers do not ask job applicants for their date of birth until after the applicant or new hire appears eligible for one of the target groups that have an age requirement. This is due to concerns that asking for date of birth information could subject the employer to potential claims of age discrimination. Moreover, job applicants can be sensitive to providing this type of information where it is not necessary due to cyber risks (e.g., identify theft).

- 5) **Requested Change:** The Federal Employer Federal Identification Number (EIN) field should be removed.

**Rationale:** Many individuals will provide information for the self-attestation form at the point they apply for a job. The job applicant will not necessarily know the applicable EIN at that time.

- 6) **Requested Change:** The start and end dates in association with the statement “I have been in a period of unemployment of not less than 27 consecutive weeks, from \_\_\_\_\_ (Enter start date) to \_\_\_\_\_ (Enter end date)” should be removed from the self-attestation form.

**Rationale:** Many individuals completing the self-attestation form will be doing so at the point of application and before they are hired, and these applicants will not be able to provide an unemployment end date as they will be unemployed as they complete the self-attestation form. Additionally, other WOTC target groups determine eligibility based on the individual’s characteristics on the hire date only. The Qualified Long-term Unemployment Recipient target group’s eligibility can be determined based on two different dates: the date the applicant completes IRS Form 8850 or on the employee’s start date. As such, the dates on the self-attestation form will likely cause unnecessary confusion for State Workforce Agencies, some of which have advised us that they plan to process certification requests looking only at the new employee’s start date and not the date the individual completed IRS Form 8850. We anticipate that this confusion will result in denials of certifications for individuals who would otherwise meet the target group criteria.

- 7) **Requested Change:** The statement “I make this declaration on the day I completed IRS Form 8850 \_\_\_\_\_ (Enter date)” should be removed from the self-attestation form.

**Rationale:** Currently, this statement is included under the first checkbox; however, many individuals will be screened for WOTC target group membership at the time of application but may not provide a signature on the self-attestation form until after their start date. Unlike IRS Form 8850, which must be submitted within 28 days of the employee’s start date, there is no such deadline to submit supporting documentation, including the self-attestation form. So, many employers gather supporting documentation after completing IRS Form 8850. Therefore, asking an employee to provide this date and sign the self-attestation form after they have completed IRS Form 8850 puts employers in the position of requesting that a new employee sign a document containing inaccurate information, under penalties of perjury. Instead of requiring employees to provide this date on the self-attestation form, the State Workforce Agencies can obtain the date the pre-screening was conducted by reviewing the “Gave information” field on Part 2 of IRS Form 8850.

- 8) **Requested Change:** The statement “I declare I have received unemployment compensation/benefits under State or Federal law during a period of unemployment” should be changed to “I declare I have received unemployment compensation/benefits under State or Federal law during a period of unemployment (which may be less than 27 weeks).”

**Rationale:** The addition of “(which may be less than 27 weeks)” provides clarity to the individual completing the self-attestation form that he or she did not have to claim unemployment benefits for the entire period of unemployment.

**Additional observations on the certification process and the determinations made with respect to the Qualified Long-term Unemployment Recipient target group**

1. A self-attestation form that is completed and signed under penalties of perjury and indicates that the individual qualifies for the long-term unemployed target group should be sufficient evidence for a State Workforce Agency to make a determination of eligibility and issue a WOTC certification to an employer for the Qualified Long-term Unemployment Recipient target group. The signed self-attestation form is more reliable than the data the State Workforce Agencies have been using to determine eligibility for this target group for two reasons.
  - a. First, a State Workforce Agency cannot see unemployment compensation claims made in other states – it can only review this data in its own state. Thus, individuals who cross state borders for work may not be able to prove that they claimed unemployment compensation during a period of unemployment without the self-attestation form.
  - b. Second, most state unemployment insurance wage databases only provide information on a quarterly basis and the 27-week period of unemployment does not align with calendar quarters.

In light of the above-stated limitations, it is our understanding that State Workforce Agencies have been instructed to validate the absence of 3 quarters of wages before issuing a certification for the Qualified Long-term Unemployment Recipient target group. If this process is followed, the State Workforce Agencies will be issuing denials for individuals who are otherwise eligible for membership in this target group. Depending on the date the individual completes IRS Form 8850 or begins work for the employer, the 27-week period may fall under three quarters.

For example, if an individual is unemployed from November 1 to June 6, the quarters a State Workforce Agency will review are October-December, January-March, and April-June. Based on the database limitation, it may appear to a State Workforce Agency that the individual only has one quarter (January-March) without wages; however, the individual has truly been unemployed for more than the required 27 weeks.

It is our understanding that the purpose of the self-attestation form for the Qualified Long-term Unemployment Recipient target group was due to these limitations of the State Workforce Agencies. It is rare that a self-attestation form is created for any WOTC category. When a self-attestation form has been used in the past, the decision was made due to State Workforce Agency limitations like the ones we see today with the new unemployed target group.

Individuals who have been unemployed for more than half a year do not have an incentive to misstate, under penalties of perjury, that they have been unemployed for that long when applying for jobs because long-term unemployment is a well-known barrier to being hired. Job seekers also know that accurate information pertaining to their prior work experience is critical as the information they provide to a potential employer regarding their prior work history will most likely be verified through a background search prior to a job offer being made. Thus, a completed self-attestation form should be sufficient for State Workforce Agencies to determine eligibility for the Qualified Long-term Unemployment Recipient target group.

2. State Workforce Agencies should be instructed to accept any version of a self-attestation form that used language consistent with the legislative definition of the Qualified Long-term Unemployment Recipient target group and that was completed and signed under penalties of perjury by employees that started working for the employer on or before the 90<sup>th</sup> day after June 17, 2016, the date the Department of Labor issued Training and Employment Guidance Letter 25-15. This relief allows sufficient time for employers and employer representatives to have made the necessary modifications to their hiring process to include the self-attestation form. It is a burdensome task to seek a signed ETA Form 9175 for individuals hired before employers had their systems ready to collect signatures on the new self-attestation form. Moreover, some of the employees may no longer work for the employer, making it impossible to obtain a signed ETA

Form 9175. Similar relief was provided by TEGL 3-09 Change 2, published on March 5, 2010, which was related to the Disconnected Youth target group.

Ernst & Young LLP believes that the aforementioned changes to the self-attestation form and certification process for the Qualified Long-term Unemployment Recipient target group may increase participation in the hiring of the long-term unemployed and enhance the WOTC program overall. We appreciate the Department of Labor's consideration of these comments.