

# Kansas Department of Commerce Workforce Services Policy and Procedures Manual

**Policy Number:** 6-06-00

**Originating Office:** Workforce Services

**Subject:** Work Opportunity Tax Credit Program

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**Revised:** August 13, 2021

**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.

**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](mailto:WOTCwebmail@ks.gov)

# Work Opportunity Tax Credit Program

## Table of 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>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>IRS Form 8850 &amp; ICF ETA 9061 Altered Forms</i> .....	6
<i>IRS Form 8850 Signature Requirement</i> .....	6
<i>Power of Attorney Requirements</i> .....	7
<i>Tax Credit Limitations</i> .....	7
<i>Consultant Change Procedure</i> .....	8
<i>Procedure to Change the FEIN</i> .....	9
<i>One Year Appeal Process</i> .....	10
<i>Conditional Certifications</i> .....	11
<i>Links to Forms</i> .....	11

# **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 groups, 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 (18<sup>th</sup> 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.

## **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 and supporting documentation to support the applicant's eligibility as described on page 3 and 4 of the ICF ETA Form 9061.

The employer follows the following steps to qualify:

- Complete IRS Form 8850;
- Complete either an Individual Characteristics Form (ICF ETA Form 9061) OR Conditional Certification Form (ICF ETA Form 9062) provided by the employee, AND
- Electronically submit all applications through [KansasWOTC.com](http://KansasWOTC.com)
  - New Employers/Consultants will need to register for a user account through the Kansas WOTC CertLink system.
- ALL supporting documentation as outlined on the State of Kansas Required Documents by Target Group and the Authorized Forms of Documentation for eligibility of the target groups selected should be uploaded with the application in the Kansas WOTC CertLink system within 90 days of submission.

**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 WOTC CertLink NextGen System.**

### **Purpose of the Form**

Employers use 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 ICF 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.

## **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 account.

Our online access feature gives the employers/consultants the ability to enter and submit applications, giving 24/7 access to their account.

Employers and Consultants can easily check on the status of their applications, upload documents and print all determinations at their convenience.

**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 WOTC CertLink NextGen 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 NextGen 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 Power of Attorney’s filed with our state.

Our system will require that we assign one person to contact that can authorize new user accounts. We will authorize that person in our database as the administrator and they will have the ability to issue access keys for new users to have access to your company’s applications or firm’s clients. This person will also be responsible for maintaining all authorized users accounts and will have the ability to inactivate, locked out any user account that is no longer employed by your company or firm.

If you would like additional assistance or have accessibility concerns, please contact [ajla.accessibility@ks.gov](mailto:ajla.accessibility@ks.gov).

## **IRS Form 8850 & ICF ETA 9061 Altered Forms**

Any form that is altered after either the applicant and/or employer has signed the forms must be signed by the authorized representative that is submitting the forms. (see IRS Form 8850 Signature Requirement Policy).

### **IRS Form 8850 Signature Requirement**

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 signator on the IRS Form 8850.

Since a consulting firm, whether submitting a paper or 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.

The State of Kansas will accept all paper applications and will give the consultant firm the opportunity to correct the IRS Form 8850's in relation to the signator on page 2 and/or request a valid POA to be submitted to the SWA/DLA. The State of Kansas will accept paper applications that have **BOTH** signatures of the designated representative and any employer staff member (hiring manager, training coordinator, manager, etc.) on page 2 of the IRS Form 8850 and will process those applications as being represented by the consulting firm. Electronic submittal of applications will not change.

If paper 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 the 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 signator name.

## **Power of Attorney Requirements**

Per TEGL 16-20 - An IRS Form 2848, Power of Attorney and Declaration of Representation 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 IRS Form 2848, a representative cannot facilitate the employer's certification requests nor submit Form(s) 8850 on behalf of the employer.

**Any applications that are submitted by a consultant without a Power of Attorney on file at the time of submission will be denied.**

At this time consultants cannot enter POA's into our system directly but must be submitted to us for processing.

- Per Kansas SWA any Power of Attorney and Declaration of Representation **MUST** be submitted using the IRS Form 2848.
- No other forms will be accepted in lieu of the official IRS Form 2848 for Power of Attorney's effective 10/01/2016 and beyond.
- Original Power of Attorney's do not have to be notarized but must be mailed.
- Copies of the original Power of Attorney must be notarized copies of the original and can be either mailed or emailed to [WOTCWebmail@ks.gov](mailto:WOTCWebmail@ks.gov).
- All power of attorneys are only effective for a maximum of three years **AND**
- Must have been signed by **BOTH** the employer and the authorized representatives within 6 months prior to the effective date of the power of attorney and submitted to the SWA within a timely manner. (example: effective dates listed on IRS Form 2848, PART I, 3. Year(s) or Period(s) 01/01/2021 – 12/31/2023; signature date of both the employer and authorized must be signed between 07/01/2020 and 12/31/2020.)

**It is the responsibility of the employer/consultant to monitor the expiration date of all Power of Attorneys and submit any new Power of Attorneys to the SWA in a timely manner.**

## **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.

## **Consultant Change Procedure**

The State of Kansas, SWA's policy for Revoking any or all previously submitted POA's is listed below for pending applications. As for historical applications that have already been approved or denied it is up to the employer to obtain those determinations from the previous consultants. There will be no online access to those applications once the POA has been revoked.

The information that we would need for this would be:

1. A valid POA for a consultant for the employer listing all FEIN's.
2. A letter from the employer stating one of the below options for their preference as to how they would like the current pending applications to be handled.
  - a. Revoke the current POA on file with a specific end date. Allow those applications that were submitted by the previous consulting firms by which the POA is being revoked and are currently pending with that consultant to receive all correspondence (Needs Letters, Certifications & Denial Letters) for those applications.
  - b. Revoke the current POA on file, no correspondence to be sent to the previous consulting firms by which the POA is being revoked and changing all future correspondence to the new consultant effective the date on which we receive the change.

**NOTE:** We will be requesting that the new consultant submit corrected IRS Form 8850, page 2's listing the new consultant's information for **ALL** pending applications. The original submission date/post mark date will be still used for determining timeliness of the application.

1. Once we receive the appropriate documents to change the consultant and stop correspondence to the old consultant.
  - a. We will notify all determination officers to hold processing on the employer.
  - b. We will send you a list of all the pending applications for that employer.
  - c. You will need to complete a corrected IRS Form 8850 page 2 for each application; on each correction we will need the employee name and reference number on the top of the IRS Form 8850 page 2 so that we may match it to the current application on file.
  - d. Once we receive the corrected IRS Form 8850 in our office, our staff will then change each record to the new consultant and the applications would be released back into the queue to be processed.
    - i. Until this process is completed the new consultant will not have access to any of the pending applications that were submitted under the old consultant online.

## **Procedure to Change the FEIN**

Per TEGL 16-20 SWAs must not allow employers to change the IRS Form 8850 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)).

Application submitted electronically and it is within the 28-day deadline the process should be completed as follows: **NOTE:** This can only be done on applications that have **NOT** had a determination completed.

1. IF the error has occurred prior to the 28<sup>th</sup> day from the start date and the employer/consultant is still able to submitted electronically they are to resubmit the application under the correct employer FEIN **AND** submit a request to [WOTCwebmail@ks.gov](mailto:WOTCwebmail@ks.gov) to deny the incorrectly submitted application per their request stating that the application was submitted in error under the wrong employer FEIN. The email is to include the following information:
  - a. (Statement) The application submitted for (**company name**) (**FEIN**) was submitted in error for the following application:  
RE: Employer Denial Request  
Reference No: **2019-01-00157**  
Name: **Hernandez, Janetta**  
SSN: **XXX-XX-1313**  
Employer: **MedData Inc (Revenue Cycle Management)**

Please deny the above referenced application per our request.

Any requests for the FEIN to be changed after a determination has been made by the State of Kansas or any other state due to the application being submitted with an invalid/wrong FEIN on the paper application or being submitted in error electronically is to be submitted to the IRS for consideration.

## **One Year Appeal Process**

Our state implemented the one-year appeal after the National Office Conference call in February 2017 directing states to the new policy.

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

1. Submission Letter/Initial Denial Pending More Information – is automatically generated upon submittal of an application.
  - a. ALL supporting documentation as outlined on the State of Kansas Required Documents by Target Group and the Authorized Forms of Documentation for eligibility of the target groups selected should be uploaded with the application in the Kansas WOTC CertLink system within 90 days of submission.
2. Needs Letter - is generated by a Determination Officer for additional documentation.
  - a. The deadlines for documentation for Needs Letter is 90 days from the date of the letter.
    - i. If the documentation is not provided at the end of 90 days, the application will be denied. You would need to submit an appeal per the guidelines outlined below.
3. 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 additional documentation that was requested in the Submission Letter/Initial Denial Pending More Information and/or Needs Letter within the designated time frame.
  - a. Any appeal would need to be submitted per the guidelines outlined below.
4. Certification Letter – is generated when it is determined that an applicant does meet the requirements for a specified target group.

**Employer appeal of a denial must be received within one year of the original denial date, include all the following documents and meet the following guidelines:**

1. Employer/Consultant must provide an official letter of appeal on their letter head stating the specific reason of appeal. **AND**
  - a. Example reason of appeal: Employer is requesting that the application for the attached documentation be re-evaluated for the (**specific**) target group. We have provided the following supporting documentation in support of the appeal: (refer to the State of Kansas Required Documents by Target Group and the Authorized Forms of Documentation found on the Kansas Department of Kansas WOTC website.
2. Employer appeal must contain a copy of the original denial letter with “Appeal” written or stamped on letter. **AND**
3. Request(s) for an employer appeal must be electronically submitted to the application on the CertLink NextGen website within one year of the original denial date. **AND**
4. Request(s) must have **NEW** and/or additional documentation to support the target group(s) that was/were selected on the original application **AND** the documentation was not originally submitted with the original application that supports the certification.

## **Conditional Certifications**

Local agencies serving targeted group populations as part of their regular functions may participate in the eligibility pre-determination (issuing Conditional Certifications form ICF ETA Form 9061), referral and/or publicity related functions of the WOTC program. Formal agreements are required in order to issue conditional certifications. Participating agencies/organizations may include, but are not limited to:

- Parole and Probation

## **Links to Forms**

- Pre-Screening Notice and Certification Request Form, [IRS 8850 Form](#) is available at the U.S. Government Forms Website or through the Kansas Department of Commerce website at [www.KansasCommerce.gov](http://www.KansasCommerce.gov)
- Individual Characteristics Form, [ICF ETA 9061](#) is available through the U.S. Department of Labor website or the Kansas Department of Commerce website at [www.KansasCommerce.gov](http://www.KansasCommerce.gov)

## **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.