

## Work Opportunity Tax Credit (WOTC) Additional Transition Relief

### **Notice 2016-40**

#### **I. PURPOSE**

This notice provides additional transition relief for employers claiming the Work Opportunity Tax Credit (WOTC) under §§ 51 and 3111(e) of the Internal Revenue Code (Code), as extended and amended by the Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, *div.* Q (the PATH Act). Specifically, this notice expands and extends by three months the transition relief provided in Notice 2016-22 (2016-13 IRB 488) for meeting the 28-day deadline in § 51(d)(13)(A)(ii) of the Code. This notice applies to employers that (1) hire members of targeted groups (other than qualified long-term unemployment recipients) on or after January 1, 2015, and on or before August 31, 2016, or (2) hire members of the new targeted group of qualified long-term unemployment recipients on or after January 1, 2016, and on or before August 31, 2016. This notice does not otherwise modify or add to the guidance provided under Notice 2016-22.

## II. BACKGROUND

Section 51(a) of the Code provides the WOTC to employers based on a percentage of qualified wages paid during the taxable year. Section 51(b) of the Code defines qualified wages as wages paid or incurred by an employer during the taxable year to an individual who is a member of a targeted group. Section 51(d)(1) of the Code lists the targeted groups.

The PATH Act amends § 51(d)(1) of the Code to add qualified long-term unemployment recipients to the list of targeted groups, effective as of January 1, 2016. The PATH Act also extends the WOTC through December 31, 2019 for taxable employers that hire members of a targeted group and for qualified tax-exempt organizations described in § 501(c) of the Code that hire qualified veterans. For more information about the definition of qualified long-term unemployment recipients, and other information concerning the PATH Act extension of the WOTC, see Notice 2016-22.

Pursuant to § 51(d)(13)(A) of the Code, an individual is not treated as a member of a targeted group unless (1) on or before the day the individual begins work, the employer obtains certification from the designated local agency (DLA) that the individual is a member of a targeted group; or (2) the employer completes a pre-screening notice on or before the day the individual is offered employment and submits such notice to the DLA to request certification not later than 28 days after the individual begins work. To request certification from a DLA, an employer submits IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit (IRS Form 8850)*, to the DLA no later than the 28th day after the day an individual who is a member of a

targeted group begins work for the employer. As recognized in Notice 2016-22, the PATH Act amendments and expansion of the targeted groups described in § 51(d)(1) of the Code to include long-term unemployment recipients will require changes to forms for employers to request certification for qualified long-term unemployment recipients hired on or after January 1, 2016.

In recognition of the new forms and instructions, as well as the retroactive nature of the extension of the WOTC to certain targeted groups, Notice 2016-22 grants employers with transition relief for submitting IRS Form 8850 to the DLAs. Depending on the particular target group, that transition relief applied to individuals hired on or before May 31, 2016 and on or after either January 1, 2015 or January 1, 2016.

The IRS Form 8850 has been updated. The new targeted group, qualified long-term unemployment recipients, was added to the list of targeted groups. The updated IRS Form 8850 and instructions were made available for filers in March 2016 and may be found at <https://www.irs.gov/uac/form-8850-pre-screening-notice-and-certification-request-for-the-work-opportunity-credit>.

The Department of Labor, Employment and Training Administration (ETA) requires employers to submit ETA Form 9061 (Individual Characteristics Form) or 9062 (Conditional Certification) to the DLA as part of the employer's certification request. To reduce burdens and the likelihood of processing delays, employers generally are encouraged to submit to DLAs the IRS Form 8850 and ETA Forms 9061 or 9062 together in the same submission. The ETA has informed the IRS that it intends to release the updated ETA forms and processing instructions for the DLAs coincident with the release of this notice.

### III. ADDITIONAL TRANSITION RELIEF

The Treasury Department and the IRS, along with the Department of Labor, have been made aware that due to the timeframe under which the relevant forms and instructions, and processing instructions, have been released, employers need additional time to comply with the certification requirements of § 51(d)(13)(A)(ii) of the Code for employees in the targeted groups. For these reasons, the transition relief provided in Notice 2016-22 to file IRS Form 8850 with the DLAs is extended, so that:

- (1) An employer that hired or hires an individual who is a member of a targeted group described in § 51(d)(1)(A) through (d)(1)(I) of the Code and who began or begins work for that employer on or after January 1, 2015, and on or before **August 31, 2016**, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) of the Code if the employer submits the completed IRS Form 8850 to the DLA to request certification no later than **September 28, 2016**; and
- (2) An employer that hired or hires an individual who is a long-term unemployment recipient, described in § 51(d)(1)(J) of the Code and Notice 2016-22, and who began or begins work for that employer on or after January 1, 2016, and on or before **August 31, 2016**, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) of the Code if the employer submits the completed IRS Form 8850 to the DLA to request certification no later than **September 28, 2016**.

An employer that hires a member of a targeted group described in § 51(d)(1)(A) through (d)(1)(J) of the Code, including a long-term unemployment recipient, who begins work for that employer on or after September 1, 2016, is not eligible for the transition relief described in this notice with respect to any such new hire.

#### **IV. EFFECT ON OTHER DOCUMENTS**

The notice modifies the transition relief provided in section IV.B of Notice 2016-22, only by extending the period of that transition relief as indicated in section III of this notice. In all other respects, this notice does not modify the guidance provided in Notice 2016-22, or provide additional guidance to the guidance provided in Notice 2016-22.

#### **V. DRAFTING INFORMATION**

The principal author of this notice is R. Lisa Mojiri-Azad of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding the WOTC, contact Ms. Mojiri-Azad at (202) 317-5500 (not a toll-free number).