

## Implementing the New WOTC Provisions

### Background

In enacting WOTC in 1996, the goal was to aid persons who were receiving public assistance. The largest target group became welfare recipients, and eligibility of disadvantaged youth was narrowed to households receiving food stamps and empowerment zone residents. With these recent changes 3.4 million relatively low skill “disconnected youth” ages 16 through 24 will be eligible for the jobs credit. Most “disconnected youth” will be best suited for entry-level jobs.

For veterans discharged within 5 years of the hiring date, there is no longer an income test. The only tests are being unemployed at the time of hire and having received unemployment compensation for at least 4 weeks during the one year period ending on the hiring date.

While employment of the disabled wasn’t mentioned in the stimulus, last year, Congress expanded the number of disabled workers eligible for WOTC by authorizing referrals from Employment Networks in addition to Vocational Rehabilitation Agencies.

Employers would be well-advised to make contact with community organizations that can refer WOTC-eligible veterans, seniors, disabled workers, disconnected youth, and public assistance recipients for their job vacancies. Employers could also adopt the practice of submitting job orders to State Workforce Agencies with the notation, “WOTC-eligible veterans, seniors, disabled workers, disconnected youth, or other WOTC preferred.”

WOTC workers are tax-advantaged for good reason—they have the highest unemployment rates. In these times, the tax advantage should give eligible workers a good crack at the available jobs openings. The number of workers placed in jobs using WOTC—currently around 550,000 a year—could reach 800,000 by the end of 2010, resulting in nearly \$1 billion a year of additional employer tax credits from the stimulus add-ons.

The Coalition is in touch with the Department of Labor concerning issuance of regulations implementing the new WOTC provisions. Coordination with Treasury (IRS) and OMB takes time so there is considerable lead time before formal regulations hit the field. DOL and Treasury are just now publishing regulations in the Federal Register implementing WOTC changes enacted last year.

### **WOTC provisions of the stimulus bill (Section 1221 of H. R. 1).**

We cannot expect any official guidance from DOL to the regions and states until mid-March at the earliest. Nonetheless, the new WOTC provisions are in effect now for new hires after December 31st, 2008, so for the foreseeable future Human Resource managers must rely on the statutory language of H. R. 1, which is now Public Law 111-5.

The coalition recommends that employers commence screening for newly eligible workers now, noting prominently on paperwork submitted to state workforce agencies that the individual is considered eligible under p. l. 111-5 (a)(14)(b)(i) for veterans, or under P.L. 111-5(a)(14)(b)(ii) for disconnected youth. Employers should keep, or submit as required, proof that the individual meets eligibility criteria specified in the statute.

Concerning the issue of proof, we believe that in cases where it is impractical to obtain direct proof of compliance with an eligibility criterion, a sworn statement of the job applicant may be appropriate. The biggest problem is with the criterion for disconnected youth which calls for a determination that the individual is “not readily employable by reason of lacking a sufficient number of basic skills”. DOL is wrestling with the question of “which basic skills” and “what number”, but until they are heard from it appears our only course is to do our best to document circumstantial proof, such as attestation by a government official or community organization making a referral, school records showing limited education, job records showing limited work experience, test scores and evaluations from various sources, and in the case of walk-in applicants, administering basic skill tests and evaluating the individual based on information obtained from interview.

Education level would appear to be significant in making a judgment of employability for a disconnected youth, and proof of education level is not difficult to obtain (although proof that a person has not gone beyond that level runs into the difficulty of trying to prove a negative). There is a good case that most high school dropouts should be eligible under the law, and all college graduates and those with two, three, or four years of college should be ineligible. It may be difficult to consider someone with a year of post-secondary education or training to be eligible, unless combined with factors such as poor grades, poverty, drug use, or involvement in the criminal justice system. High school graduates might be eligible upon a showing of poor grades, and tests and interviews can identify the functionally illiterate with high school diplomas.

In sum, employers may want to organize in advance a method of gathering information from the referring person and/or applicant and other sources to support a determination that the applicant lacks a sufficient number of basic skills. Presumably applicants will answer truthfully about their job history and highest education level, so this could be a starting point.

Grades on one or more tests administered by employers could be an important basis of proving eligibility of disconnected youth. Most human resources departments employ such tests, and test scores might be an efficient way to establish a presumption that the worker is not readily employable. When test results are combined with education, work history, and possibly other factors readily ascertainable, the sum would make the case even stronger and the file would be available in event of audit.

Our purpose with this memo is to present everything we know to help you launch. There are workers who need jobs, and the government wants to start getting them into jobs without delay. With so many competent Human Resources departments in the Coalition, we are confident everyone can put in place a sound approach that will stand up under IRS audit.

Regrettably, we will have to adjust when DOL issues guidance, but that could take many months since OMB is involved and the question of standards of proof can be difficult. In any event, we cannot delay—the situation demands that we move now using the tools at hand.

A true copy of the statutory language of P. L. 111-5 relating to WOTC is below. For now, it is your Bible.

PAUL E. SUPLIZIO  
President, WOTC Coalition

**EXCERPT FROM PUBLIC LAW 111-5, SECTION 1221  
AMERICAN RECOVERY AND REINVESTMENT ACT  
SIGNED INTO LAW FEBRUARY 17, 2009**

**Sec. 1221. Incentives to Hire Unemployed Veterans and Disconnected Youth**

**(a) In General.**—Subsection (d) of section 51 is amended by adding at the end the following new paragraph:

**“(14) CREDIT ALLOWED FOR UNEMPLOYED VETERANS  
AND DISCONNECTED YOUTH HIRED IN 2009 OR 2010.—**

**“(A) In General.**—Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

**“(B) Definitions.**—For purposes of this paragraph—

**“(i) Unemployed veteran.**—The term ‘unemployed veteran’ means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

**“(I) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date, and**

**“(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.**

**“(ii) Disconnected youth.**—The term ‘disconnected youth’ means any individual who is certified by the designated local agency—

**“(I) as having attained age 16 but not age 25 on the hiring date,**

**“(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,**

**“(III) as not regularly employed during such 6-month period, and**

**“(IV) as not readily employable by reason of lacking a sufficient number of basic skills”.**

**(b) Effective Date.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2008.**