



WOTC Information for Employers

FREQUENTLY ASKED QUESTIONS (FAQs)

I. Screening Job Applicants and New Hires

As an employer, we do not want to be perceived as discriminating by offering jobs to people based on whether they receive welfare or not. Is it allowable to screen individuals? Some job seekers are concerned about having to answer the personal questions on the Individual Characteristics Form. How can we be assured that we can ask these questions during an interview, and remain EEOC compliant?

The U.S. Equal Employment Opportunity Commission (EEOC) has issued letters from 1996 through 2010 with specific language that explains how all WOTC participating employers have a “Federal laws defense.” This means they are protected from EEOC violations when making the inquiries necessary to hire members of the targeted groups under the WOTC program. However, they may not use the information gained for purposes other than the WOTC application.

The EEOC letters issued have asserted that the WOTC program offers members of the target groups certain benefits – namely, employment opportunity and work experience to develop job skills. Further, the EEOC has determined that the inquiries needed to ascertain each new hire’s individual characteristics do not pertain to any of the protected groups, so employers are not violating equal opportunity standards or laws. For example, employers are asking about vocational rehabilitation services, but not whether applicants have disabilities, when they are obtaining information on the Individual Characteristics Form (ICF).

Additionally, the information is being secured for federally-approved forms for WOTC program use only. The only way an employer can request a certification to qualify for the tax credit to which they are entitled is by using those forms. Therefore, any employer participating in the WOTC program is protected under EEOC regulations and provisions against any discriminatory claims or lawsuits for asking the Congressionally-mandated questions on WOTC screening and application forms. Searchable EEOC Informal Discussion Letters are indexed here: <http://www.eeoc.gov/eeoc/foia/letters/index.cfm>.

Can states mandate that a date of birth be submitted for every new hire in their online application systems? This would mean requiring employers to ask for each new hire's date of birth, and include it on each electronic application submitted.

No, the date of birth (DOB) is only required for those target groups whose statutory definitions mandate a specific age range (age 18 – 39) to meet eligibility. Those target groups are: 1) Summer Youth, 2) Supplemental Nutrition Assistance Program (SNAP) Recipient, and 3) Designated Community Residents (DCRs). Per IRS Announcement 96-116, the DOB field on the IRS Form 8850 is only required to be filled in and submitted to the state workforce agency (SWA) if the new hire is under the age of 40.

The U.S. Equal Employment Opportunity Commission (EEOC) has weighed in to support the IRS Form 8850 being used during the hiring process, due to this limitation of capturing birth dates only when the individual is under age 40, as this age is not a protected group. Collecting the data only when the individual is under age 40 ensures employers remain in EEOC compliance. To determine their age, an employer may first ask, if the new hire is under the age of 40. If eligible for an age-specific category, and if the new hire answers “yes” to the “under 40 question,” then an employer may capture an applicant’s date of birth on the application form. Otherwise, employers should not ask for the DOB, just as they would not inquire about other personal information. For more information, see http://www.eeoc.gov/eeoc/foia/letters/2010/ada-titlevii-adea_work_tax_irs_eta_form.html.

In addition, the Government Paperwork Elimination Act, October 21, 1998, issued by OMB regulates government agency business with automated systems. The OMB directive regarding the implementation of electronic signatures contained in the article entitled, “Implementation of the Government Paperwork Elimination Act,” sets forth that, when submitting a form with an electronic signature, agencies cannot require more information be submitted than is collected on the form. Therefore, states should ensure that their automated application systems are programmed to not require the DOB for any target groups other than the three requiring age verification.

II. Determining Characteristics of Qualifying New Hires

In looking at where our new hires reside, how can we find out which geographic areas fall into an Empowerment Zone? Where are these zones located?

Addresses can be searched to see whether or not they fall within an EZ using the U.S. Department of Housing and Urban Development’s (HUDs) online tool called the EZ/RC Address Locator at <http://egis.hud.gov/ezrclocator/>. If users require assistance in using the EZ/RC Address Locator mapping tool, then they can send requests via email to EGIS@hud.gov. For more information, please refer to the U.S. Housing and Urban Development’s (HUDs) Frequently Asked Questions on the EZ program at http://portal.hud.gov/hudportal/documents/huddoc?id=19170_taxincentivesqa.pdf.

What is the definition of “member of a family receiving assistance” in the TANF program? How do you define “family” for determining a veteran's eligibility as a

member of a family receiving SNAP, or for determining eligibility for a SNAP recipient?

Definitions of “family” and “family members” of food stamp recipients depend on the definitions used in each of these programs. In the Supplemental Nutrition Assistance Program (SNAP), food stamp eligibility is based on the household concept. Benefits are issued to a household, which could be, but is not necessarily the same as, a family unit. States have considerable discretion in definitions used for the Temporary Assistance for Needy Families program. For WOTC purposes, the term “family” is operationalized by state social services agencies as being the same as the “benefit household.”

For clarification of the definitions applicable in your state, please contact the social services agency administering the programs, and rely on their authority for verification assistance. For the current SNAP and TANF categories, that agency can provide data to show which family members are defined as the designated "benefit family." The agency's records will identify the family unit, its members with benefit eligibility, and those receiving benefits. If the new hire is a member of this benefit family, then this suffices for WOTC eligibility.

Can relatives or part owners qualify for WOTC? How do you define “relative” for the purpose of determining a qualifying new hire?

The hiring of certain individuals does not qualify the employer for the WOTC. Among those non-qualifying employees are relatives and majority owners of the business. The Internal Revenue Service (IRS) has strict rules on nepotism. No WOTC tax credit can be claimed for wages paid to relatives employed by a taxpayer-employer.

“Relative” is defined in terms of specifying the nature of the relationship and determining the principle household the relative resided in for the tax year. Per the Internal Revenue Code at 26 U.S. Code §152, a “relative” for tax credit purposes is an individual who bears one of the following types of relationship to the employer:

- A child or a descendant of a child,
- A brother, sister, stepbrother, or stepsister,
- The father or mother, or an ancestor of either,
- A stepfather or stepmother,
- A son or daughter of a brother or sister of the taxpayer,
- A brother or sister of the father or mother of the taxpayer, or
- A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

Also excluded is an employee who is a dependent of the employer, who lives in his/her home, and is a member of the employer's household. So, a qualified relative might also be considered an individual (other than a spouse) who has the same principal place of abode as the taxpayer, and counts as a member of the taxpayer's household.

A new hire's wages are also not qualifying for the tax credit, if the employee bears any of the relationships described above, or is an individual who owns, directly or indirectly, more than 50 percent of the value of the outstanding stock of the corporation employing him or her, or is an individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the business.

Also, in terms of more distant relatives, the intent of the WOTC legislation was to help individuals with significant barriers to employment obtain work. If a distant relative could have been employed through their connections with the employer without the incentive of the tax credit, as the public might perceive, then taking advantage of the tax credit could be viewed as not meeting the intent of the law, and could be perceived as unethical at a minimum.