

April 24, 2023

Office of Workforce Investment
Attn: National WOTC Team, Room C-4510
200 Constitution Avenue NW,
Washington, DC 20210

U.S. Department of Labor
OASAM, Office of the Chief Information Officer
Attn: Departmental Information Compliance
Management Program, Room N1301,
200 Constitution Avenue NW,
Washington, DC 20210

Via Email to: Ask.WOTC@dol.gov and DOL_PRA_PUBLIC@dol.gov

**Re: Work Opportunity Tax Credit, Request for Comments Regarding Proposed
Modifications to Procedural Guidance and Administrative Formula**

To Whom It May Concern:

The undersigned organizations submit this Comment in response to the Department of Labor's Employment and Training Administration notice (88 Federal Register 10540) soliciting "broader comments regarding potential improvements" to the Work Opportunity Tax Credit (WOTC), including policy modifications.

We are organizations and academics with a shared dedication to ensuring that all workers have access to good jobs with livable wages and benefits, safe, healthy, and equitable conditions free from discrimination, harassment and retaliation, and can exercise collective, democratic power at work. We believe that government programs and policies should always promote access to good jobs, and should never be a driver of poor-quality, precarious work and racial inequality. The WOTC, in its current form, subsidizes employers offering poor quality, temporary work, and the program incentivizes their targeting of categories of workers that are predominantly people of color for these bad jobs. Our comments reflect our concerns with the WOTC, and urge further research and ongoing evaluation of the program, as well as modifications to ensure the WOTC supports employment aligned with the Department's Good Jobs Principles.

A. Through the WOTC, billions of public dollars are subsidizing underpaid, temporary jobs.

As the Department knows, the WOTC, designed to incentivize the employment of workers who face barriers to employment through a partial wage subsidy to employers, has grown in popularity and cost since its inception in 1997. In twenty-five years, the program's inflation-adjusted annual price tag has grown more than seven-fold, and program costs are projected at \$8.4 billion over the next

decade.¹ WOTC certifications rose from 126,113 to 2,569,056 between 1997 and 2022.² Despite steady growth in WOTC use, there has been no substantial government evaluation of the program since its earliest days—the DOL and GAO last studied the program in 2001.³ The dearth of information on the program’s impacts makes understanding the full scope of its challenges impossible (and the absence of ongoing evaluation is itself a key shortcoming of the program that is addressed below). Still, we do know that the WOTC is driving racial inequality and subsidizing underpaid and temporary work, especially for workers with felony convictions, at large corporations with a history of labor violations.

The WOTC is subsidizing underpaid work. More than 36 percent of WOTC certifications in the last five years went to jobs with a starting hourly wage under \$10; at full-time hours, that wage translates to an annual salary of just \$20,800, a poverty-level salary for many families. More than 160,000 certifications have been granted for jobs that pay less than the grossly out-of-date federal minimum wage of \$7.25 per hour.⁴

The WOTC is subsidizing a lot of short-term work and failing to improve the long-term employment outcomes of participating workers. The GAO’s 2001 study of the WOTC raised questions regarding whether WOTC was effectively incentivizing long-term employment, finding that fewer than one in five employees remained at their jobs long enough to earn more than \$6,000.⁵ A 2010 analysis of Wisconsin WOTC data found that only one-third of workers passed the 400-hour threshold triggering the maximum credit for employers.⁶ And a recent analysis of WOTC data from nine states found that almost a quarter of WOTC-certifications between 2018 and 2020 went to temporary help and staffing agencies that offer short-term, poor-quality jobs.⁷

The WOTC is perpetuating racial inequality by creating a two-tiered workforce in some jobs. The WOTC provides employers with tax incentives for hiring workers in a number of categories that

¹ See Tax Expenditures for FY 1998 and FY 2024, U.S. Department of the Treasury, available at <https://home.treasury.gov/policy-issues/tax-policy/tax-expenditures>.

² Linda Levine, “The Work Opportunity Tax Credit: A Fact Sheet,” Congressional Research Service, April 2, 1998, available at https://www.everycrsreport.com/files/19980402_96-356E_716164940a1af532f17bbfa0a9865f4080d76195.pdf; Department of Labor WOTC performance data, available at <https://www.dol.gov/agencies/eta/wotc/performance>.

³ General Accounting Office, “Work Opportunity Tax Credit: Employers Do Not Appear to Dismiss Employees to Increase Tax Credits,” March 2001, available at <https://www.gao.gov/assets/gao-01-329.pdf>; Westat and Decision Information Resources, Inc., “Employers’ Use and Assessment of the WOTC and Welfare-to-Work Tax Credits Program,” U.S. Department of Labor, Employment and Training Administration, 2001.

⁴ See Department of Labor WOTC performance data, “Table 2. Total Number of Certifications by Starting Hourly Wage,” available at <https://www.dol.gov/agencies/eta/wotc/performance>.

⁵ See *Id.* at 20, Table 7 (summing first six separation rates on graph).

⁶ See Sarah Hamersma, 2011. “Why Don’t Eligible Firms Claim Hiring Subsidies? The Role Of Job Duration,” *Economic Inquiry*, Western Economic Association International, vol. 49(3), pages 916-934, July.; Elizabeth Lower-Basch, Center for Law and Social Policy (CLASP), *Rethinking Work Opportunity: From Tax Credits to Subsidized Job Placements*, at 4, Fig. 1 (Nov. 2011), <https://www.clasp.org/sites/default/files/public/resources-and-publications/files/Big-Ideas-for-Job-Creation-Rethinking-Work-Opportunity.pdf> (hereinafter *CLASP Report*).

⁷ Emily Corwin, *PROPUBLICA*, *A Tax Credit Was Meant to Help Marginalized Workers Get Permanent Jobs. Instead, It’s Subsidizing Temp Work* (Aug. 23, 2022), available at <https://www.propublica.org/article/work-opportunity-tax-credit-temp-permanent-employment>.

are disproportionately people of color.⁸ To the extent that the program is channeling targeted groups of workers into second-tier employment at temporary help and staffing agencies, as shown above, it perpetuates racial inequality.

The WOTC is driving job churn for workers with felony convictions. The GAO’s 2001 study of the WOTC examined the extent to which employers were terminating WOTC-certified workers soon after they had maximized the value of the credit associated with their employment. The study found that workers belonging to just one target group—workers with felony convictions—were likely to face termination once their employer had maximized the value of the WOTC.⁹ A 2022 analysis of the WOTC in nine states found that, of the top 14 employers with the most WOTC certifications for workers with felony records, 13 were temporary help and staffing agencies.¹⁰

Anti-Black racism in the US criminal legal system is widely-documented and well-recognized. Such racism is compounded by tax incentives that target workers with felony convictions for underpaid and unstable temporary jobs. As currently structured, the WOTC program allows staffing agencies to prey on workers whose freedom from incarceration is conditioned on finding work: “Without labor standards and transparent oversight, the WOTC incentivizes employers and temp agencies to target court-supervised workers with temporary, underpaid jobs.”¹¹

A substantial share of WOTCs are going to large corporations with records of labor violations. In its analysis of WOTC data from nine states, ProPublica found that Amazon, Walmart, and Dollar General were the top recipients of credits between 2018 and 2020. All of these corporations have a record of grave worker abuse, including union-busting, wage theft, and safety violations.¹² The analysis found that the WOTC “has become a financial boon for large low-wage employers with high turnover.” Two staffing agencies, Kelly Services and True Blue, both of which have a history of wage theft and safety violations, have secured over \$278 million in WOTCs in the last decade. And staffing agencies with the highest number of OSHA severe injury reports are among the companies that benefit most from the WOTC.¹³

B. The Department should support research on the WOTC, provide ongoing program evaluation, and improve public reporting on program impacts.

⁸ Dyjuan Tatro, “Felony Disenfranchisement Suppresses the Votes of Black and Latinx Americans,” Vera Institute of Justice, October 26, 2020, available at <https://www.vera.org/news/felony-disenfranchisement-suppresses-the-votes-of-black-and-latinx-americans>; Tracy A. Loveless, “Supplemental Nutrition Assistance Program (SNAP) Receipt for Households: 2018,” American Community Survey Briefs, U.S. Census Bureau, June 2020, available at: <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acsbr20-01.pdf>; Department of Health and Human Services, “TANF Recipients by Race/Ethnicity: FY2020,” available at https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_characteristics_data_final.pdf.

⁹ See Table 5 and footnote 2 on p41 of General Accounting Office, “Work Opportunity Tax Credit: Employers Do Not Appear to Dismiss Employees to Increase Tax Credits,” March 2001, available at <https://www.gao.gov/assets/gao-01-329.pdf>.

¹⁰ Corwin, PROPUBLICA, supra n. 7.

¹¹ Han Lu, Nat’l Empl. L. Proj. *Worker Power in the Carceral State: 10 Policy Proposals Against the Criminalization of Workers* 21 (Aug. 2022), <https://s27147.pcdn.co/wp-content/uploads/Worker-Power-in-the-Carceral-State-Ten-Proposals-1.pdf>.

¹² See Good Jobs First Violation Tracker for Amazon, Walmart, and Dollar General, available at <https://violationtracker.goodjobsfirst.org/>.

¹³ Corwin, PROPUBLICA, supra n. 7.

We urge the Department to support research and ongoing evaluation that can help to ensure that the WOTC provides high-quality, long-term employment for target populations.

In 1994, the DOL Inspector General conducted an in-depth investigation of the Targeted Jobs Tax Credit, a WOTC precursor. That study included field work in nine states and concluded that the program was not incentivizing the hiring of targeted workers, that 92 percent of workers for whom credits were claimed would have been hired anyway, and the program was driving workers into low-paid, part-time, short-term, no-benefit jobs.¹⁴ The TJTC was phased out following that study, and the WOTC soon replaced it.¹⁵ The Department should conduct a similar in-depth investigation of the WOTC to understand the extent to which WOTC-supported jobs are aligned with the Department's Good Jobs Principles.

Questions to assess the extent to which WOTC-supported jobs meet the Department's Good Jobs Principles:

1. **Recruitment and Hiring:** What are the demographics (race, gender, age) of WOTC-certified workers and how do they compare to the demographics of WOTC-eligible workers? How do the starting wages of WOTC-supported jobs vary by demographic characteristics? How are WOTC-eligible workers recruited, and what is the role of third-party consultants?
2. **Benefits:** What benefits (health insurance coverage, workers' compensation coverage, paid sick leave, and paid family and medical leave) are WOTC-subsidized jobs providing to workers? To what extent can WOTC-certified workers avail themselves of those benefits?
3. **Diversity, Equity, Inclusion, and Accessibility (DEIA):** What are the demographics (race, gender, age) of WOTC-certified workers and how do they compare to the demographics of WOTC-eligible workers? How do the starting wages of WOTC-subsidized jobs vary by demographic characteristics? Do WOTC recipients have anti-harassment policies and provide disability and religious accommodations? Do WOTC recipients have a record of hiring and workplace discrimination?
3. **Empowerment and Representation:** Do WOTC recipients have a record of Unfair Labor Practices? Do WOTC recipients require workers to sign forced arbitration agreements? What share of WOTC certifications go to union jobs? What share of WOTC-certified workers work at unionized workplaces?
4. **Job Security and Working Conditions:** What is the extent of job churn after employers have maximized the value of their WOTC credit? To what extent is the WOTC promoting long-term employment? What is the median and breakdown of job tenure (less than 3 months, 3-5 months, 6-11 months, 1-2 years, 3+ years) for WOTC-subsidized jobs? What share of WOTC credits go to temporary help and staffing agency jobs and other jobs that are short-term by design? What share of WOTC recipients are on OSHA's Severe Violators list? What are the safety records of WOTC recipients?
6. **Organizational Culture:** To what extent do workers in WOTC-subsidized jobs feel respected, valued, and like they belong in their workplaces?

¹⁴ U.S. Dep't of Labor Office of the Inspector General, Targeted Jobs Tax Credit (Aug. 18, 1994), *available at* https://www.oig.dol.gov/public/reports/oa/pre_1998/04-94-021-03-320s.htm.

¹⁵ Corwin, *PROPUBLICA*, *supra* n. 7.

7. **Pay:** By WOTC target group and by state, what is the starting wage breakdown (under the federal minimum wage, \$7.25 to \$9.99, \$10 to \$14.99, \$15 to \$17.99, \$18 to \$19.99, \$20 to \$24.99, and \$25 and higher) of WOTC certifications?
8. **Skills and Career Advancement:** Do workers in WOTC-subsidized jobs have access to training and career ladders? Do WOTC recipients require workers to sign non-compete agreements, no-poach agreements, or non-disclosure agreements?

Other key questions:

- How are WOTC certifications and tax credits distributed by size of employer? What is the role of third-party consultants in securing WOTCs, and how does that vary by size of employer?
- What share of WOTC credits are going to companies with federal contracts? Are WOTCs being claimed for federal contract work, and if so, what is the breakdown in certifications and tax credits by federal agency?

To better understand the quality of wages being paid to WOTC-certified workers, the Department should amend its system of reporting on WOTC certifications by starting wage. The top category is currently “\$10 and higher.” Workers across the country are winning minimum wages more aligned with the cost of living. Understanding the share of WOTC starting wages that fall under new wage floors is important. The Department should amend its current wage ranges (under the federal minimum wage, \$7.25 to \$8.25, \$8.26 to \$8.99, \$9.00 to \$9.99, and \$10 and higher) to the following: under the federal minimum wage, \$7.25 to \$9.99, \$10 to \$14.99, \$15 to \$17.99, \$18 to \$19.99, \$20 to \$24.99, and \$25 and higher.

C. The Department should ensure that the WOTC advances its Good Jobs Principles.

We appreciate the Department’s interest in exploring whether and how the WOTC can promote stable jobs with “family-sustaining wages and opportunities for advancement.” As the Department has recognized: “Good jobs are the foundation of an equitable economy that lifts up workers and families and makes businesses more competitive globally.”¹⁶ We urge the Department to consider the program changes outlined below to ensure that WOTC-supported jobs align with the Department’s Good Jobs principles.

1. **Recruitment and Hiring:** State Workforce Agencies (SWAs) should also provide popular education and outreach to targeted populations to increase awareness among job seekers. Additionally, SWAs should partner with worker and community groups to identify employers that provide good jobs to targeted populations and target eligible model employers.
2. **Benefits:** WOTC applicants should be required to demonstrate that the workers for whom they seek credit have, at a minimum, adequate health insurance, workers’ compensation coverage, paid sick leave, and paid caregiving leave. Moreover, the Department should

¹⁶ U.S. Dep’t. of Labor, The Good Jobs Initiative, *available at* <https://www.dol.gov/general/good-jobs/principles>.

ensure that WOTC-certified workers can avail themselves of these benefits and are protected from retaliation for doing so.

3. **Diversity, Equity, Inclusion, and Accessibility (DEIA):** Credits should foster good jobs and support businesses that value and practice diversity, equity, inclusion, and accessibility. The Department should require demographic reporting on both WOTC-certified workers and the business owners receiving the credit, with credits awarded to applicants that practice DEIA. Moreover, the Department and SWAs should promote full transparency by reporting on the DEIA metrics of WOTC recipients and creating searchable database tools.
4. **Empowerment and Representation:** The Department should require proof that businesses seeking credits are not hostile to their employees' concerted efforts to improve working conditions. It should require certification, under penalty of perjury, that businesses seeking credit will be neutral to union organizing, will not require forced arbitration, have not been accused of retaliation, and have no record of engaging in Unfair Labor Practices. The Department should also explore increasing credit amounts for businesses with negotiated union contracts.
5. **Job Security and Working Conditions:** Adherence to this principle will require the Department to prohibit or place significant and meaningful limits on granting WOTC credits to temporary help and staffing agencies which, by definition, fail to offer real job security. Indeed, because workers assigned through a staffing agency often earn less than employees doing the same work, have inferior benefits, endure greater health and safety risks, and face obstacles to organizing or joining a union, staffing agencies generally undermine, rather than advance this principle.¹⁷ Conversely, non-profit workforce development organizations that provide meaningful work experience should be able to access the WOTC. Accordingly, the Department should explore prohibiting temporary staffing agencies from obtaining a WOTC and instead promoting the credit to non-profit employers that demonstrate these principles.

Further, the Department should consider extending the period of employment necessary to receive the credit so that it incentivizes longer-term employment. A longer minimum should be combined with proof that the employer also offers opportunities for permanent employment, advancement, and termination only upon just cause.

WOTC-certified workers should have predictable and flexible schedules, and any electronic monitoring, data, and algorithmic supervision by the employer should be transparent, equitable, and limited.

Finally, the Department should require that WOTC be awarded only to businesses or non-profit organizations that demonstrate good working conditions. It could look to labor protections included in other tax incentive programs, such as the Inflation Reduction Act.¹⁸ It should also ensure that businesses receiving the credit have a clean record with respect to OSHA violations and other employment, wage, or labor violations or judgments, and explore the development of a claw back provision requiring violators to return the credit. Relatedly,

¹⁷ National Employment Law Project, *Lasting Solutions for America's Temporary Workers*, (Aug. 2019), <https://s27147.pcdn.co/wp-content/uploads/Lasting-Solutions-for-Americas-Temporary-Workers-Brief.pdf>.

¹⁸ See, e.g., *Treasury Announces Guidance on Inflation Reduction Act's Strong Labor Protections*, (Nov. 29, 2022) available at <https://home.treasury.gov/news/press-releases/jy1128>.

the Department should ensure that businesses cannot avoid an end-run around WOTC requirements through reinventing themselves under a different name: it should develop protocols to identify employer ownership and successor or related businesses, and to verify WOTC history for any related companies owned or run by the same employer.

7. **Organizational Culture:** This principle will be admittedly difficult to evaluate and demonstrate as part of a tax credit program. However, the Department could nonetheless explore whether or how SWAs might develop brief surveys or online evaluations to track the experience of WOTC-certified workers and ask them to rate the employer on the extent to which workers belong, are valued, and are respected.
9. **Pay:** The Department should explore ways to ensure that WOTC-certified workers are paid a stable and predictable living wage, such as \$18 per hour, before overtime, tips, and commissions. It should consider whether and how some portion of the WOTC could be passed through directly to the targeted worker and/or increased to provide a bonus to workers who remain employed for the maximum credit duration. Likewise, it should consider adopting labor standards similar to those of the Inflation Reduction Act, including a prevailing or living wage.¹⁹ At a minimum, the Department should also ensure that WOTC-certified workers are paid the same wages and access the same benefits as other employees performing the same work by, for instance, requiring WOTC applicants to report the wages and benefits of workers who are similarly situated to those for whom credit is sought. Finally, the Department should prohibit wage deductions for transportation, equipment, or training.
8. **Skills and Career Advancement:** The Department should consider changes to the WOTC to ensure that the program is effective in providing targeted populations with the skills needed to succeed and with meaningful opportunities to advance. As mentioned above, the Department should expand the credit to non-profit employers that practice these Good Jobs principles. It should also require employers to provide WOTC-claimed temporary workers with training for permanent positions. At a minimum, the Department should prohibit subsidies to employers with anti-competitive and anti-worker policies such as non-compete agreements, no-poach agreements, and non-disclosure agreements.²⁰ It should further prohibit allowing credits to employers that charge for required training and skill development. Finally, the Department should place limits on the share of the workforce for which WOTC can be claimed in order to encourage employers to offer a variety of wage and skill levels to promote avenues for advancement and to curb the incentive to churn through WOTC-eligible workers to maximize the credit.

Sincerely,

Action Center on Race and the Economy
Athena
Beyond the Bars
Center for Law and Social Policy

¹⁹ *Id.*

²⁰ As noted *supra*, temporary staffing agencies should not be eligible for the WOTC. If, however, they remain eligible, the Department should ensure that they and any other WOTC recipients offering non-standard work, also offer WOTC recipients a path to permanent, direct-hire employment and a demonstrated history of doing so.

Chicago Jobs Council
Chicago Workers Collaborative
Color Of Change
Governing for Impact
Jobs to Move America
Jobs with Justice
Labor Resource Center at UMASS Boston
Laborers' Local 79
Maine Center for Economic Policy
Make the Road New Jersey
Maryland Center on Economic Policy
Mason Tenders' District Council of Greater New York
MassCOSH
Missouri Worker Center
National Black Worker Center
National Center for Law and Economic Justice
National Council for Occupational Safety and Health (National COSH)
National Employment Law Project
National Immigration Law Center
National Legal Advocacy Network
National Partnership for Women & Families
National Youth Employment Coalition
New Labor
North Carolina Justice Center
Northwest Workers' Justice Project
Philly Black Worker Project
Public Justice
Public Justice Center
Restaurant Opportunities Centers United
Shriver Center on Poverty Law
Tech Equity Collaborative
Temp Worker Justice
Unemployed Workers United
Warehouse Worker Resource Center
Warehouse Workers for Justice
Workplace Justice Lab at Rutgers University
Workplace Justice Project at Loyola Law Clinic, New Orleans
Worksafe
George Gonos, Professor Emeritus, State University of New York at Potsdam
Harris Freeman, Western New England College School of Law