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

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5. See Id. at 20, Table 7 (summing first six separation rates on graph).
are disproportionately people of color. 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. 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.

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.”

**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. 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.

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

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8 Dyjuan Tatro, “Felony Disenfranchisement Suppresses the Votes of Black and Latinx Americans,” Vera
Institute of Justice, October 26, 2020, available at
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:

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

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),

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. The TJTC was phased out following that study, and the WOTC soon replaced it. 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?

4. **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?

5. **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?

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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

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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. 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. 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,

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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. 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. 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

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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  
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