

February 12, 2024

Megan Lizik
Chief Evaluation Office
Office of the Assistant Secretary of Policy
U.S. Department of Labor
Room S-2312
200 Constitution Avenue NW
Washington, DC 20210

Via Email to: ChiefEvaluationOffice@dol.gov

Dear Ms. Lizik:

The undersigned submit this comment in response to the Department of Labor’s notice (88 FR 86384) soliciting public feedback on its proposed evaluation of the Work Opportunity Tax Credit program.

We are organizations with a shared dedication to ensuring that all workers in the United States have equitable access to good quality, stable employment. We believe that government programs and policies should promote universal access to good jobs. We have concerns about the Work Opportunity Tax Credit (WOTC) program, purportedly designed to incentivize the employment of workers who face barriers to finding jobs. While the program has gone decades without serious government evaluation, existing evidence suggests that it may be producing high windfall costs and subsidizing a great deal of low-quality, temporary employment for categories of workers that are disproportionately people of color.¹

We commend the Department for launching an overdue evaluation of the WOTC program, and we are grateful for the opportunity to provide feedback on the evaluation design proposed by Economic System, Inc. Our comments address the evaluation’s conceptual framework, priority research questions, methodology, interview questionnaires, survey instruments, and participant outreach plan.

A. Conceptual Framework

We suggest changes to the “determinants” and “outcomes” components in the Implementation Evaluation Logic Model, published in 2020, that Economic Systems, Inc. uses to construct its conceptual framework for the WOTC evaluation.²

In the Implementation Evaluation Logic Model, the determinants—factors that can inhibit or facilitate implementation, and that are divided into five “domains” that are comprised of various “constructs”—are drawn in full from the 2009 Consolidated Framework for Implementation

¹ National Employment Law Project, National Legal Advocacy Network, Action Center on Race and the Economy, Beyond the Bars et al. comment in response to 88 Federal Register 10540. April 24, 2023. <https://www.nelp.org/wp-content/uploads/NELP-NLAN-TWJ-ACRE-CLASP-et-al-Comments-in-Response-to-88-FR-10540.pdf>

² Smith, J.D., Li, D.H. & Rafferty, M.R. The Implementation Research Logic Model: a method for planning, executing, reporting, and synthesizing implementation projects. *Implementation Sci* 15, 84 (2020). <https://doi.org/10.1186/s13012-020-01041-8>.

Research;³ however, that framework was substantially updated in 2022.⁴ In light of the updates, we suggest that both the Department and Economic Systems, Inc. revisit the determinants in the logic model, and consider the following:

- Make two changes to the “Intervention Characteristics” domain, which was renamed the “Innovation” domain in the 2022 Consolidated Framework for Implementation Research. First, revisit the “Advantage” construct. In the updated CFIR framework, the “Innovation Relative Advantage” construct is defined as “the degree to which the innovation is better than other available innovations or current practice.”⁵ Adding this construct would ensure that evaluators identify and consider the relative benefits of alternative interventions, such as public funding of targeted union apprenticeship programs and direct job subsidies, for providing employment opportunities for groups targeted by the WOTC.⁶ Second, add the “Innovation Cost” construct, defined as “the degree to which the innovation purchase and operating costs are affordable.”⁷ Adding this construct would prompt evaluators to examine costs associated with the WOTC, including windfall costs—the extent to which WOTC is providing employers with free money for hires they would have made without the program.
- To the “Inner Setting” domain, add the “mission alignment” construct, defined as “the degree to which Implementing and delivering the innovation is in line with the overarching commitment, purpose, or goals in the Inner Setting.”⁸ Adding this construct would prompt evaluators to consider whether implementing the WOTC as it is currently structured is a good use of resources, aligned with the Department’s mission “To foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”⁹
- To the “Outer Setting” domain, add the “societal pressure” sub-construct, defined as “the degree to which mass media campaigns, advocacy groups, or social movements or protests drive implementation and/or delivery of the innovation.”¹⁰ This would ensure that the evaluation investigates the role of industry lobbying and advocacy in shaping legislation and implementation of the WOTC program.
- To the “Process” domain, we suggest adding the “reflecting and evaluating” construct defined as “collect and discuss quantitative and qualitative information about the success of implementation and/or the innovation.”¹¹ This addition should prompt evaluators to examine the extent to which ongoing reporting supports effective program implementation.

³ Damschroder, L.J., Aron, D.C., Keith, R.E. et al. Fostering implementation of health services research findings into practice: a consolidated framework for advancing implementation science. *Implementation Sci* 4, 50 (2009). <https://doi.org/10.1186/1748-5908-4-50>.

⁴ Damschroder, L.J., Reardon, C.M., Widerquist, M.A.O. et al. The updated Consolidated Framework for Implementation Research based on user feedback. *Implementation Sci* 17, 75 (2022). <https://doi.org/10.1186/s13012-022-01245-0>.

⁵ Ibid.

⁶ For a comparison of direct job subsidy programs and the WOTC, see Elizabeth Lower-Basch, Center for Law and Social Policy (CLASP), Rethinking Work Opportunity: From Tax Credits to Subsidized Job Placements, November 2011, <https://www.clasp.org/sites/default/files/public/resources-and-publications/files/Big-Ideas-for-Job-Creation-Rethinking-Work-Opportunity.pdf>.

⁷ Supra note 4.

⁸ Ibid.

⁹ “About Us,” U.S. Department of Labor website, accessed February, 12, 2024, <https://www.dol.gov/general/aboutdol>.

¹⁰ Supra note 4.

¹¹ Ibid.

To the “outcomes” in the Implementation Evaluation Logic Model, we suggest replacing “reach”—the number of target groups certifications and the number of employers participating—with “penetration,” which would prompt evaluators to look at the share of WOTC eligible workers who are certified and at the share of employers receiving WOTCs.

B. Priority Research Questions and Methodology

We are pleased to see the breadth in the priority research questions, and the mixed methods approach to answering them. We would like to see questions that reveal the extent to which temporary help and staffing agencies are using WOTCs to subsidize short-term and sub-standard jobs, more questions to evaluate the extent to which WOTC is enabling workers to find stable work in good jobs aligned with the Administration’s Good Jobs Principles, adequately investigate whether WOTC incentivizes job churn among employers seeking to maximize credits, and questions that measure whether the WOTC program is producing windfalls for employers who would have hired workers without the tax credit.

For the tax credit analysis used to answer the first set of research questions regarding how the WOTC is operating, we suggest requesting IRS data from 2019-2023, rather than 2021-2023, in case the COVID-19 pandemic has had an unusual effect on WOTC claims. To produce an adequately detailed picture of industries benefiting from WOTCs, the analysis of tax credits by industry should use NAICS industry codes at the 4-digit level, at a minimum. To understand the amount and share of WOTCs being claimed by temporary help and staffing agencies, the evaluation should look at NAICS 5613 (Employment Services) or NAICS 56132 (Temporary Help Services).

In its solicitation of public comments on the WOTC in February 2023, the Department expressed an interest in examining the extent to which WOTC-supported jobs align with the Department’s Good Jobs Principles.¹² In response to that request, we submitted comments that laid out research questions that would measure the extent to which WOTC jobs are aligned with those principles. We are pleased to see that our pay and benefits questions are reflected in the draft list of priority questions, and we suggest adding the following questions related to four other principles to the second set of research questions on characteristics of the jobs of WOTC-hires and of WOTC-certified workers:

- 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?
- Empowerment and Representation: Do WOTC recipients have a record of Unfair Labor Practices? Do WOTC recipients require workers to sign forced arbitration agreements? What

¹² U.S. Department of Labor Employment and Training Administration, “Request for Comments Regarding Proposed Modifications to Procedural Guidance and Administrative Formula”, Federal Register Vol. 88, No. 34, Tuesday, February 21, 2023, available at <https://www.govinfo.gov/content/pkg/FR-2023-02-21/pdf/2023-03470.pdf>. “ETA has a strong interest in [WOTC] program improvements that could improve employment outcomes... The Departments of Labor and Commerce recently published Good Jobs Principles, which set forth a shared vision of job quality... ETA expects to continue to use these Principles as the starting point of conversations about job quality... How can the Department increase the likelihood that the WOTC results in greater hiring and retention for eligible workers, as well as the likelihood that these are good jobs?”

share of WOTC certifications go to union jobs? What share of WOTC-certified workers work at unionized workplaces?

- 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?
- Skills and Advancement: Do workers in WOTC-subsidized jobs have access to training and career ladders? Do WOTC recipients require workers to sign non-compete agreements or no-poach agreements that limit job mobility?

We suggest revisiting the methodology for examining job churn after WOTC credits have been maximized by employers. In addition to the proposed methods of measuring job churn,¹³ evaluators should consider replicating the methodology used by the Government Accountability Office in its 2001 churn analysis, which linked state Unemployment Insurance records to WOTC data.¹⁴ That study is now over two decades old and due to be replicated. That study did find evidence of churn among workers with felony convictions, although it noted that the sample of those workers was small relative to those of other WOTC target groups (at over 3,000, it was still sizeable); we suggest oversampling for workers with felony records.

The sixth set of priority research questions on the extent to which pre-screening for WOTC eligibility affects employment outcomes are key. Interviews with employers and third-party consultants will be key to understanding how and whether workers' WOTC certification figures into hiring decisions, and whether WOTC is producing a windfall for employers who would have hired WOTC-certified workers regardless of the tax incentive. We suggest broadening that set of questions to measure the extent of windfall costs associated with the WOTC program. The Department and Economic Systems, Inc. should look closely at the Department's 1994 analysis of the Targeted Jobs Tax Credit, which was structured very similarly to the WOTC.¹⁵

C. Interviews

The Economic Systems, Inc. evaluation proposal lays out a plan for a total of 11 interviews—6 with State Workforce Agency staff, 1 with an American Job Center staff person, 2 with WOTC-certified workers, and 2 with employers who have received WOTCs. We suggest increasing the number of worker interviews to 30-40, with 3-4 interviewees per WOTC target group. To ensure that workers interviewed have ample constructive feedback on the program, we suggest reaching out to worker advocacy groups, and not to industry groups, to identify workers for interviews. We also suggest adding 2 interviews of payroll or business services companies that process WOTCs to understand the role these third parties play in securing the credits and possibly contributing to windfalls. And

¹³ See the methods section of priority question #2 in Appendix A of the WOTC Evaluation proposed by Economic Systems, Inc., p16 of the Evaluation Design Report.

¹⁴ U.S. Government Accountability Office, "Work Opportunity Tax Credit: Employers Do Not Appear to Dismiss Employees to Increase Tax Credits," March 2001, <https://www.gao.gov/assets/gao-01-329.pdf>.

¹⁵ U.S. Department of Labor Office of Inspector General, Audit Report, Targeted Jobs Tax Credit, August 18, 1994, https://www.oig.dol.gov/public/reports/oa/pre_1998/04-94-021-03-320s.htm#:~:text=We%20found%20the%20tax%20credits.regardless%20of%20the%20tax%20subsidy.

we suggest increasing the employer interviews from 2 to 10, with employers of various sizes (under 20, 20-99, 100-499, and 500+ employees) and from a mix of industries represented.

The employer interview questionnaire was missing from Appendix B, so we were unable to provide feedback on it.

We suggest making the following changes to the employee interview questionnaire:

- To section B. on “Pre-WOTC Employment,” add a question on whether the worker had multiple job offers before selecting their current position. Ask whether the American Job Center or another entity (e.g. a reentry organization or a parole officer, for workers with records) assisting them with finding employment steered them toward a particular kind of occupation or employer, and ask whether they had multiple job options.
- In section D. on “Initial WOTC Job and benefits,” question 4 asks “Did you feel that pay and benefits were reasonable for the job? If not, why not?” Instead of the subjective “reasonable” term, we suggest asking whether pay allowed workers to meet basic needs (pay for housing, utilities, food, transportation) and whether health insurance benefits were adequate and whether they were able to avail themselves of paid leave and similar benefits. We suggest asking how their benefits compared with others performing similar work at the same employer.
- To section F. on job experience, we suggest adding questions about (1) whether the job is part-time or full-time, (2) whether they job is seasonal, (3) whether the job is temporary or short-term, (4) whether hours fluctuate from day-to-day, (5) whether the worker has experienced discrimination or harassment at work based on protected characteristics [list them] or their WOTC target group (6) whether they have health and safety concerns at work, and (7) whether their workplace is unionized, and whether they belong to the union.
- In section G. on “Current job,” the meaning of “atmospheric conditions” in question #1 should be clarified.
- In section H. on “Individual/Family Characteristics,”
 - To question #7 (“How many wage earners?”), add “Are you the primary wage earner in your household?”
 - Question #8 asks “Do you live in a house, apartment, somewhere else?” Asking whether the person rents or owns their home, or whether they are unhoused, would provide more meaningful information.
 - To question #9 (“How far do you live from your workplace? Miles?”), add “How long is your commute time?” Consider asking whether they depend on public transportation as well.

D. Surveys

Regarding survey participant recruitment, we have concerns about evaluators partnering with the National Employment Opportunity Network (NEON) to identify employers to be surveyed. NEON has a vested interest in seeing the WOTC grow and expand.¹⁶ To protect the integrity of the survey research, we suggest that evaluators instead work with SWAs to identify employers.

The Economic Systems, Inc. proposal states that the employee survey will be available in a scannable paper form and may be available in an online form. We suggest that the employee survey, like all other proposed surveys, be available in an online form to increase participation rates. And

¹⁶ “About NEON,” National Employment Opportunity Network organizational website, accessed February 12, 2024, <https://wotcmeansjobs.org/neon/>.

the online form should be smartphone-compatible; a large share of people in WOTC target groups are likely to have access to the internet exclusively via their smartphones.

With regard to the questions in the WOTC-certified employee survey instrument, we suggest the following:

- In question #3 and #27, clarify the meaning of “position.”
- Question #4 should be a select-all-that-apply question.
- Consider grouping questions #10 and #4, with question #10 coming first, making question #4 conditional on answering question #10 with any or all of answer choices a-f
- Question #7 should be a select-all-that-apply question.
- After question #9, consider adding a question about whether hours and days worked fluctuate.
- For Question #11, the “b” answer choice of “Temporary or seasonal” should be separated into two distinct answer choices: “b. Temporary” and “c. Seasonal.”
- For Question #13, add a field to estimate the commute time in minutes. In places with high levels of traffic, and for workers who take public transit, miles may not be a relevant or feasible measure of commute burden.
- After question #13, consider adding a question about mode of transportation to work.
- Add a question conditional on answering “yes” to question #15: “How long have you worked for this company?” with the following answer choices: “Less than 2 weeks; 2 weeks to 1 month, more than 1 month but less than 3 months, between 3 months and 6 months, more than 6 months but less than 1 year, 1 year to 23 months; 2 to 4 years; and, 5 years or more.”
- For question # 16, change answer choice “f. 1 year or longer” to “f. 1 year to 23 months,” and add “2 to 4 years” and “5 years or more.”
- For question #20, change the Likert scale to be less ambiguous—“slightly and “somewhat” have similar meanings. Consider changing the answer choices to “a. Very well, b. Somewhat, c. Not at all.”
- Question #22 should be a select-all-that-apply question, and answer choice “e” should be changed to “paid sick leave.”
- In the table under Question #23, add a row on employment tenure.
- Change question #25 to “Why do you no longer work for this company?” with the following answer choices: “a. Fired, b. Company layoffs, c. My position was short-term, d. I chose to leave.”
- If workers answer “d” to question # 25, then ask “What are your reasons for leaving the job? Select all that apply.” Use the following answer choices: “a. Found a better job, b. Job did not match my skillset, c. Job wage or salary did not meet my needs, d. Job hours or schedule did not meet my needs, e. Job did not provide adequate benefits, f. other – specify [add field to specify].”
- Add questions about health and safety trainings and issues at work and experience of job-related injury or illness.
- Add a question asking whether the WOTC-certified employee has experienced discrimination on the basis of a protected characteristic (list them) or their WOTC target group by their WOTC employer, and include a field to describe the discrimination.

With regard to the questions in the WOTC-certified employer survey instrument, we suggest the following:

- Add a question about whether and to what extent WOTC certification and the possibility of a tax credit factors into hiring decisions.
- Change Question #7 to “Does the part of your business for which you hire WOTC-certified workers have a fairly constant workload, or seasonal/peak periods?”

- For question #10, change “d. More than 10 weeks,” to “d. 10 weeks to 6 months, e. more than 6 months and less than 1 year, f. 1 year to 23 months, g. 2 to 4 years, h. 5 years or more.”
- For question #24, add an “other—specify [add field to specify]” answer choice.
- For question #41, clarify what “percent of your company” means.

Thank you for the opportunity to provide feedback on the WOTC evaluation plan. Please contact Maya Pinto at mpinto@nelp.org with any questions.

Sincerely,

Action Center on Race and the Economy
Athena

Beyond the Bars

Center for Economic and Policy Research

Center for Law and Social Policy

Chicago Workers Collaborative

Good Jobs First

Grassroots Law and Organizing for Workers (formerly National Legal Advocacy Network)

Jobs with Justice

National Black Worker Center

National Center for Law and Economic Justice

National Employment Law Project

New Labor

Public Justice

Public Justice Center

Restaurant Opportunities Center United

Shriver Center on Poverty Law

Unemployed Workers United

Worksafe