

OMB No. 1205-XXXX
ETA-9137
Expiration Date: XX/XX/XXXX

Appendix C

Evaluation of State Implementation of Section 303(k),
Social Security Act

SUTA Dumping Implementation Survey

State of _____

SUTA DUMPING IMPLEMENTATION SURVEY

Background and Purpose of the Survey:

The SUTA Dumping Prevention Act of 2004 stipulates that State Unemployment Insurance (UI) programs monitor and penalize employers that engage in the practice of SUTA dumping. Section 303(k) of the Social Security Act addresses SUTA dumping and requires the U.S. Department of Labor to conduct a study of state implementation of this law and to provide Congress with a report that summarizes the findings of the study, no later than July 15, 2007.

To comply with the reporting requirements of this law, the U.S. Department of Labor, Employment and Training Administration, contracted with Coffey Communications, LLC, in collaboration with its subcontractor, the Urban Institute, to conduct the required study. This survey was designed to collect the data and other necessary information to allow the Secretary of Labor to fulfill her responsibilities under the law.

Instructions for Completion:

The attached survey is being sent to the Agency Administrators in each state. After completing the survey we request that it be signed and returned to Coffey Communications at the address provided on the cover page of this survey. In addition, responses may be returned by email (lcoffey@coffeycom.com) or by returning the CD to the Coffey Communications address.

Four types of answers to survey questions are expected:

- Questions followed with *hollow circle bullets* have multiple choice answers. For these, you may simply check the correct choice(s).
- Questions with *solid bullets* list various aspects or categories that require responses.
- Tables with empty cells are to be filled in.
- Underlined spaces have been included for you to provide additional answers, comments, explanations, citations of related documents, etc. There is no space limit for these items. Should it be necessary, you may attach related documents or cut and paste the related sections.

Some research will be required in order to answer certain questions, and it is expected that you will need to consult with staff and colleagues in developing some answers. We request that you answer all questions. When you are not sure about your answer, please explain your uncertainty. If you would like clarification regarding a particular question, please contact Mr. Rett Hensley at rhensley@coffeycom.com, or by telephone at (941) 755-9304.

Due date for survey responses: Thirty days after receipt of the survey.

**EVALUATION OF THE IMPLEMENTATION OF SECTION 303(k) OF THE
SOCIAL SECURITY ACT
SUTA DUMPING IMPLEMENTATION SURVEY**

Part A. Legal Elements

A.1 Please provide the citation (“cite”) and effective date of any Rule, policy, directive or procedure that has been issued as a result of the SUTA Dumping Prevention Act of 2004. Please attach a copy or provide an explanation of each.

- Rule: _____
- Policy, Directive or Procedure: _____

A.2 Did your state legislature enact any other law or regulations that you believe enhances your ability to prevent SUTA dumping, other than those required by Section 303(k), SSA.

- Yes, please provide cite: _____
- No

Part B. Operational Elements

B.1 The Employment and Training Administration (ETA) contracted with the State of North Carolina to develop the SUTA Dumping Detection System (SDDS). Is your state utilizing this system for the detection of SUTA dumping?

- Yes, date it became operational _____
- No, describe the system being used and the date it became operational

B.2 State UI programs may use a variety of methods to detect SUTA dumping. Please identify all methods used by your state:

- State-developed automated SDDS system
- North Carolina developed automated SDDS system
- Agency Employee; i.e.: field auditor, examiner, etc.
- Complaints from other employers
- Other State UI Agencies
- Other State Agencies; i.e., Revenue; Secretary of State
- Other sources (specify) _____

B.3 Which of the preceding methods in question B.2 are most effective in your state?

- State-developed automated SDDS system
- North Carolina developed automated SDDS system
- Agency Employee; i.e.: field auditor, examiner, etc.
- Complaints from other employers
- Other State UI Agencies
- Other State Agencies; i.e., Revenue; Secretary of State
- Other sources (specify) _____

Comments: _____

B.4 Which of the methods identified in question B.3 are most effective in detecting previously unreported successions or partial successions?

- State-developed automated SDDS system
- North Carolina developed automated SDDS system
- Agency Employee; i.e.; field auditor, examiner, etc.
- Complaints from other employers
- Other State UI Agencies
- Other State Agencies; i.e., Revenue; Secretary of State
- Other sources (specify) _____

Comments: _____

B.5 Is your state SDDS system effective in detecting other types of tax rate manipulation activities that are not specifically addressed in Section 303(k), SSA?

- Yes
- No

Explain: _____

B.6 What changes could be made to improve the detection system currently in use?

B.7 How many estimated state Full Time Equivalent (FTE) positions are currently being used in all activities related to the detection, investigation and prevention of SUTA dumping? Please complete the following Table B.1

Table B.1

<i>Unit</i>	<i>Number of FTEs</i>
Liability and Registration	
Investigation & Audit	
Enforcement/Collection	
Legal	
Information Tech	
Integrity Unit	
Other (Specify)	

What was the net addition to staff (FTE's) devoted to these activities? _____

B.8 Will your state have ongoing costs for the detection and prevention of SUTA dumping beyond those described above in B.7 (FTEs)? If so, please indicate the estimated amount.

- Software support _____
- Hardware support _____
- Training _____
- Other _____

B.9 Has your state participated in any training for staff on SUTA dumping law, regulations, policies and procedures during 2005-2006?

- Yes
 No

If yes, which of the following units were trained and for how many hours? Please complete the following Table B.2

Table B.2

<i>Unit</i>	<i>Trained Yes/No</i>	<i>Number of Hours</i>	<i>Number of Staff</i>
Liability			
Audit			
Collection			
Legal			
Appeals			
UI Integrity			
Other (Specify)			

B.10 Is additional training needed?

- Yes
- No

If yes:

- Please identify the topics and personnel to be trained.

Topics: _____

Personnel: _____

- Any additional training needed should be conducted by:

- State personnel
- USDOL Regional office personnel
- USDOL National office personnel
- Web Based

Part C: Congressional Elements

C.1 How effective are the mandatory and prohibited transfer provisions of Section 303(k), SSA, in assuring employers do not engage in UI tax manipulation schemes?

- Very effective
- Somewhat effective
- Not effective

Please identify any specific tax manipulation schemes not addressed by the Federal legislation:

C.2 How effective are the provisions of your state SUTA dumping law in assuring employers do not engage in UI tax manipulation schemes?

- Very effective
- Somewhat effective
- Not effective

Please identify any specific tax manipulation schemes not addressed by your state's legislation:

C.3 Do you believe additional Federal legislation should be enacted in order to further assist your state and others in preventing SUTA Dumping and similar schemes?

- Yes
- No

If yes, please identify the additional actions you think Congress should take to prevent SUTA dumping: _____

C.4 What barriers to enforcing your state SUTA dumping law have you encountered? Check all that apply.

- Financial/Staffing
- Legal
- Procedural
- Access to IT
- Interest Group Opposition
- Other (specify) _____

Explain _____

C.5 Which of those in question C.4 has been the greatest barrier?

- Financial/Staffing
- Legal
- Procedural
- Access to IT
- Interest Group Opposition
- Other (specify) _____

C.6 Which stakeholders has your state taken special efforts to inform about SUTA dumping legislation and enforcement activity? Check all that apply:

- All Employers
- State Legislature
- State UI Advisory Council
- Business organizations
- Labor organizations
- Taxpayer foundations
- Accounting professionals
- Bar Associations
- UI Advisory Companies

- Third Party Payroll Services
- Professional Employer Organizations (PEO) Associations
- Construction Industry
- Accommodation and Food Services
- Other (specify)

Comments: _____

C.7 Overall, has the passage and initial implementation of your new SUTA dumping law had any unexpected/unintended consequences for your state UI operation?

- No, explain: _____
- Yes, explain: _____

C.8 Is the environment for detection, investigation and prevention of SUTA dumping (tax manipulation activities) different today versus the situation prior to the enactment of the Federal SUTA Dumping Prevention Act of 2004?

- Yes, explain: _____
- No, explain: _____

C.9 Do you believe SUTA Dumping detection and enforcement has been a productive and worthwhile investment of resources for your state?

- Yes, explain: _____
- No, explain: _____

Part D. Elements Related to Professional Employer Organizations (PEOs)/Employee Leasing

D.1 One function of PEOs is to provide labor services to employers through an employee leasing arrangement wherein they hire all or some of the existing employees of a firm and then lease the employees back to the firm, now a client firm of the PEO. In addition to registering for an unemployment account number, are PEOs required to register elsewhere (the Department of Revenue or some other agency of state government) as a condition of doing business in the state?

- Yes
- No

If yes:

- What is the name of the other Agency: _____

- Please list the regulatory requirements of the other Agency: _____

D.2 How many Employee Leasing/PEO companies are currently active employers in your state? _____

D.3 Which industries in your state commonly use the services of Employee Leasing/PEO firms in your state? Please list only the top five in size in the following table D.1.

Table D.1

<i>Industrial Sector</i>	<i>Number of Client Companies</i>	<i>Total Employees Leased</i>
Health Care and Social Assistance		
Construction		
Real Estate		
Accommodation and Food Services		
Manufacturing		
Others (Specify)		

D.4 Does your state recognize by law, regulation, or policy, the PEO as the “employer” of record for experience rating purposes and require the “PEO” to pay UI taxes based on its own experience under its own account number?

- Yes
- No

If yes, please provide cite or explain policy: _____

D.5 If the answer to question D.4 is yes, does your state close the “client company” account when the PEO and the client company enter into a contractual relationship and all employees of the client are moved to the PEO?

- Yes
- No

D.6 Does your state recognize by law, regulation, or policy, the “client company” as the employer and require the “client” to pay UI taxes based on its own experience under its own account number?

- Yes
- No

If yes, please provide the cite or explain the policy: _____

D.7 Does your state consider the client company and the PEO to be “jointly liable”?

- Yes
- No

Explain the state position on joint liability: _____

D.8 Does your state require by law, regulation, or policy, the transfer of experience from a client firm to the PEO when clients enter into a contractual relationship with the PEO?

- Yes
- No

Explain the state’s policy on this and how it is accomplished: _____

D.9 Does your state require experience attributable to the client to be transferred from the PEO to the client when the contract ends?

- Yes
- No

- If yes, please explain the state’s policy on this and how it is accomplished: _____

- If no, please explain how the client is rated after the contract ends (i.e., new employer rate, reversions of previously assigned rate): _____

Part E. Data Elements

E.1 What is the total number of potential SUTA dumping cases that have been identified in your state and are being investigated since the passage of your SUTA dumping legislation? Please complete Table E.1

Table E.1

<i>Time Period</i>	<i>Number Identified</i>	<i>Number Investigated</i>
July to September 2005		
October to December 2005		
January to March 2006		
April to June 2006		
July to September 2006		

E.2 How many of the investigated cases have been determined to have violated the “mandatory” transfer of experience provisions of state law in the following industry sectors? (The mandatory transfer provision refers to instances where employers transfer either all, or a portion of their business to another employer and both employers, at the time of transfer, were under substantially (or any) common ownership, management, or control.) Please complete Table E.2.

Table E.2

<i>Industrial Sector</i>	<i>Number of Cases</i>
Construction (NAICS Codes 236, 237, 238)	
Employee Leasing (NAICS Code 56133)	
Hospitality (NAICS Code 721)	
Other (NAICS Code _____)	

E.3 How many of the investigated cases have been determined to have violated the “prohibited” transfer of experience provisions of state law in the following industry sectors? (The prohibited transfer provision refers to instances when a person who is not an employer acquires a business solely or primarily for the purpose of obtaining a lower rate of contributions.) Please complete Table E.3

Table E.3

<i>Industrial Sector</i>	<i>Number of Cases</i>
Construction (NAICS Codes 236, 237, 238)	
Employee Leasing (NAICS Code 56133)	
Hospitality (NAICS Code 721)	
Other (NAICS Code _____)	

E.4 What is the total amount of additional contributions due from all cases of SUTA dumping detected in your state since your state law changed, broken down by type of penalty with respect to “mandatory” and “prohibited” transfer cases? Please complete Table E.4.

Table E.4

<i>Type of Penalty</i>	<i>Mandatory Transfers</i>	<i>Prohibited Transfers</i>	<i>Quarter/year owed</i>
Additional Taxes Due			
Fines			
Other Penalties			
Interest Payment			

Of the above amounts, how much has been recovered? Please complete Table E.5

Table E.5

<i>Type of Penalty</i>	<i>Mandatory Transfers</i>	<i>Prohibited Transfers</i>	<i>Quarter/year collected</i>
Additional Taxes Due			
Fines			
Other Penalties			
Interest Payment			

E.5 Has your state discovered that an “advisor” was involved in helping to create the SUTA dumping arrangement? (An advisor, as used here, is a person who knowingly advises another person to violate provisions of state law that relate to SUTA dumping.)

- Yes How many instances? _____
What is the total amount of penalties invoked? _____
- No

E.6 In which quarter of the year have SUTA dumping activities been the most prevalent in your state?

- First Quarter (January, February and March)
- Second Quarter (April, May and June)
- Third Quarter (July, August and September)
- Fourth Quarter (October, November and December)

E.7 What has been the state’s initial experience of appellate bodies upholding the state UC agency determination that entities have engaged in SUTA dumping? Please complete Table E.6

Table E.6

<i>Category</i>	<i>Number of Cases</i>	<i>Cases Upheld</i>	<i>Cases Reversed</i>
Lower Level Appeals			
Higher Level Appeals			
Appeals to Court			
Other			

***** Thank You for completing this survey. *****

Please provide the name, phone number and email address of the person(s) completing the survey:

<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submitted and Approved by:

Signature: _____ Date: _____

Name (please print): _____ Title: _____

Phone Number: _____ Email Address: _____

Address: _____

Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. Respondent's obligation to reply to these requirements is mandatory under P.L. 104-188. Public reporting burden for this collection of information is estimated to average 120 minutes per response, including the time for reading instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, Room N-5641, Washington, D.C. 20210 (Paperwork Reduction Project 1205-XXXX).