

# Supporting Statement

## A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

On August 9, 2004, President Bush signed Public Law (P.L.) 108-295, The “SUTA Dumping Prevention Act of 2004.” The Act amended Federal unemployment compensation (UC) law to add section 303(k) to the Social Security Act (SSA), establishing a nationwide minimum standard for curbing a practice known as “SUTA dumping.” SUTA (State Unemployment Tax Act) dumping describes the practices when employers and financial advisors who advise employers, manipulate state unemployment tax experience rating systems to pay lower UC taxes than the employer’s unemployment experience would otherwise allow. Section 303(k) of the SSA, required states to amend their UC laws to change the experience rating provisions of their UC laws to curb SUTA dumping by enacting mandatory and prohibited transfer provisions and to establish procedures to identify the transfer or acquisition of a business for purposes of prohibiting SUTA dumping.

The SUTA Dumping Prevention Act of 2004 further required the Secretary of Labor to conduct a study of state implementation of section 303(k) of the SSA, and to assess the status and appropriateness of state actions to meet the new requirements. The Secretary of Labor is to report back to Congress no later than July 15, 2007, to submit the report that contains the findings of the study and recommendations for any Congressional action the Secretary of Labor considers necessary to improve the effectiveness of section 303(k) of the SSA. The analysis will form the basis of future guidance and best practices for states.

This collection is authorized under section 303(a)(6) of the SSA, which requires state UC agencies to submit reports to the Secretary of Labor from time to time as she may require and section 303(k) of the SSA, which specifically requires:

- (1) STUDY – The Secretary of Labor shall conduct a study of the implementation of the provisions of section 303(k) of the Social Security Act (as added by subsection (a)) to assess the status and appropriateness of State actions to meet the requirements of such provisions.*
- (2) REPORT – Not later than July 15, 2007, the Secretary of Labor shall submit to the Congress a report that contains the findings of the study required by paragraph (1) and recommendations for any Congressional action that the Secretary considers necessary to improve the effectiveness of section 303(k) of the Social Security Act.*

The U.S. Department of Labor (DOL), Employment and Training Administration (ETA)

contracted with Coffey Communications, LLC, in collaboration with its subcontractor, the Urban Institute, to conduct the required study. The study involves the collection of survey information from the state workforce agencies pertaining to the status and effectiveness of section 303(k) of the SSA, in curbing SUTA Dumping.

In response to inquiries from members of the House Ways and Means, Subcommittee on Human Resource, DOL included an examination of Professional Employer Organizations (PEOs) and what impact, if any, the SUTA Dumping Prevention Act might have on PEOs. PEOs are organizations which provide employee leasing services to their client companies. Under a typical employee leasing agreement, a client employer contracts with the PEO that provides the employee leasing services and, in effect, dismisses all or some employees who are immediately hired by the PEO. The PEO then leases the employees back on a long-term basis to the original employer, now called the client company. State unemployment laws vary regarding the recognition of PEOs as the employer and the transfer of experience provisions related to the transfer of workforce from a client to the PEO. The proposed survey has been designed to determine how states currently address this issue and gather data on any associated experience rating concerns that result from client companies moving in and out of PEO agreements.

Therefore, the goals of the study are to:

- identify state legislation, policy and procedures intended to mitigate the practice of SUTA dumping;
- measure the effectiveness of section 303(k) of the SSA, and state procedures to identify and curb SUTA dumping;
- analyze state law transfer of experience provisions regarding the entry of a client into a PEO relationship and the financial impact of such treatment both on the state UI trust funds and on the PEO industry;
- compile resultant data and information necessary to allow the Secretary of Labor to report to Congress no later than July 15, 2007, on the effectiveness of section 303(k) of the SSA.

The proposed survey represents the main instrument for collecting state data and identifying state practices related to implementation of section 303(k) of the SSA. There is currently no other vehicle to obtain the information necessary to meet the legislatively mandated requirements and time frames.

## **2. Indicate how, by whom, and for what purpose the information is to be used.**

Information collected for this project will be used by a contractor (Coffey Communications) of the Department of Labor. The data will be used to assess the status and appropriateness of state actions toward curbing SUTA dumping. The contractor shall gather data regarding state enforcement efforts to curb SUTA dumping, and survey state UC personnel regarding the effectiveness of the Act. The data will be evaluated by comparing the survey responses and data collections to determine the extent of state activity to curb SUTA dumping and to obtain information on the types of SUTA dumping detected. The survey will be compiled by the contractor and the information will be used to help identify factors that may help states better identify the transfer or acquisition of business for purposes of detecting SUTA dumping.

The contractor will prepare a final report which will be submitted to the Secretary of Labor. The Secretary shall review the report to assist in her report to Congress regarding the status and effectiveness of state actions to implement the requirements of section 303(k) of the SSA, and further to determine what recommendations, if any, she might make to Congress to improve the effectiveness of the Act.

Additionally, the proposed survey will provide useful data and information to ETA and state administrators regarding implementation of section 303(k) of the SSA. The knowledge gained regarding state law transfer of experience provisions relating to client companies and PEO companies should prove beneficial to analyzing the financial implications of section 303(k) of the SSA, on state UC agencies and PEOs. Finally, ETA will be able to use this data to determine what future SUTA dumping training, if any, may be provided to personnel within the State Workforce Agencies.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The SUTA Dumping Prevention Act of 2004 added section 303(k)(1)(E) to the SSA, requiring all states to establish procedures to identify the transfer or acquisition of a business for the purposes of SUTA dumping. To assist states with accomplishing this requirement, the Employment and Training Administration, Office of Workforce Security contracted with the State of North Carolina Employment Security Commission to develop an automated system which is now known as the SUTA Dumping Detection System (SDDS). Forty-four states have chosen to implement the SDDS. The other nine states have either developed their own methodology for detecting SUTA dumping, or they have purchased a commercial-off-the-shelf program.

Most of the data required in the survey will be submitted by the states using data obtained from information generated by the SDDS. The SDDS is a PC-based stand-alone system that uses data from a series of extract files that are downloaded from a particular state's automated employer and wage records files. The system searches quarterly employee wage records and annual UI tax account information to detect movement of employees from one employer to another. The system will display the employer account from which employees were moved, the employer account they entered into, the quarter in which they moved, the number of employees involved, the amount of wages, the age of the accounts, and whether or not a documented succession occurred. The display will also show the employer tax rates, taxable wages, taxes paid and, in some states, voluntary contributions that may have been paid (a procedure to achieve a reduced tax rate).

Users can also view tax information for a particular employer account they suspect of SUTA dumping or they can find any number of accounts that meet certain criteria as defined by filter options available in the system. State UC agencies may choose to use the system in different

ways. For example, they may run it once a year or quarterly to produce a list of possible SUTA dumpers for investigation. Moreover, SDDS gives the states the ability to track one employer or run the system to detect all possible SUTA dumping activity.

The SDDS is a powerful tool to help states determine if an employer is involved in a legitimate succession and merger activity that falls within the parameters set by the filters, or if the employer is indeed attempting to SUTA dump. While all the hits may not be SUTA dumping, the information provided by SDDS could still be useful in detecting previously unreported successions.

By using the outputs already generated by the SDDS, states will have access to large amounts of data that can be used for completing the data elements in the proposed survey without further research. In addition, as the survey will be sent to each state electronically, they may submit the completed survey by email or CD.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

No alternative currently exists for obtaining the necessary data and information necessary for the Secretary of Labor to prepare a report to Congress by July 15, 2007, on the effectiveness of section 303(k) of the SSA.

Previous studies have been conducted on the impact of employee leasing (PEOs) on State UI programs, i.e.:

Employee Leasing: Implications for State Unemployment Insurance Programs, August 31, 1996, KRA Corporation;

Impacts of Professional Employer Organizations on State Unemployment Taxes, June 1, 2006, Ernst and Young; and,

Final Audit Report No. 03-98-007-03-315, Effect of Employee Leasing on the State of Georgia Unemployment Trust Fund, US Dept of Labor, Office of Inspector General.

However, the information from these studies is either old/outdated; or, it only pertained to one or two states.

**5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

The collection of information on this survey has no impact on small businesses. Only state workforce agencies will complete the survey.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Congress passed the SUTA Dumping Prevention Act of 2004, which was signed by President

Bush on August 9, 2004. This study, and subsequent report to Congress in July of 2007, is required by law. This is a one-time survey of state UI agencies and will not be repeated. Burden is limited to the state and is not passed on to employers.

7. **Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- **requiring respondents to report information to the agency more often than quarterly;** None – This is a one time survey.
  - **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;** There will be no requirement for completing the survey in less than 30 days.
  - **requiring respondents to submit more than an original and two copies of any document;** None
  - **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;** None
  - **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;** N/A
  - **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;** None
  - **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or -** None
  - **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.** None
8. **If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

A Pre-clearance Notice was published in the Federal Register on December 19, 2006 (Vol.

71, No 243, pages 75985 thru 75986). Following the 60-day comment period, the Department received written comments from two states, one of which had several comments. A summary of the comments received and the Department’s responses are below.

<b>PUBLIC COMMENT SUMMARY</b>	<b>AGENCY RESPONSE</b>
<p>One commenter stated that several areas of the survey seemed interesting and/or probably necessary in order to submit a useful report to Congress.</p>	<p>The SUTA Dumping Prevention Act of 2004 (Act) requires that the Secretary of Labor conduct a study of the implementation of the Act by all 50 states plus the District of Columbia, Puerto Rico and the Virgin Islands. The Act also requires the Secretary to report the outcome of this study to Congress by July 15, 2007. This survey instrument serves as the primary tool for collecting the data to be analyzed to meet the requirements of the Act.</p>
<p>One commenter indicated that the state would not have hard data for several of the questions in Section E [Part E. Data Elements] of the survey. The state can provide hard data in response to some questions and anecdotal estimates for others. Further, current systems were not designed with these data in mind.</p>	<p>The survey was designed to obtain sufficient data and information from each state to provide a meaningful picture of state implementation of section 303(k) of the Social Security Act. Therefore, it is not necessary for a state to have complete data for every question in order to submit a meaningful overall response. In fact, partial responses to certain questions may prove very helpful in determining the status of a state’s implementation activity. The survey recognizes that states will have limited data available and has accommodated the submission of anecdotal information in the survey design.</p>
<p>One commenter elaborated on the way the state utilized its SUTA Dumping Detection System (SDDS). Generally, the state uses the SDDS in a limited fashion to obtain addition information on employers already suspected of SUTA dumping activity. A lack of adequate resources was stated as the reason for this approach, and the commenter indicated that other states may be in the same situation.</p>	<p>The survey questions contained in Part B (Operational Elements) address the methodologies and procedures used by states to detect SUTA dumping activity. The questions in this section of the survey also address the issue of resources and training requirements needed by states to adequately detect, investigate, prosecute, and curtail these tax rate manipulation schemes. The data obtained, on a national scale, will provide valuable knowledge regarding best practices and the resources needed to continue unemployment insurance (UI) integrity programs such as the SUTA dumping initiative.</p>
<p>One commenter stated that the state plans to include a few narrative paragraphs that are necessary for a response to be meaningful and asked if this type of narrative information can be accommodated.</p>	<p>Narrative comments written to help explain or clarify answers provided for any survey question will be accommodated. Each narrative provided will be read and used to help ensure proper understanding and interpretation of the data provided.</p>

PUBLIC COMMENT SUMMARY	AGENCY RESPONSE
<p>One commenter noted that because of differences in state laws, the meaningfulness of Federal provisions will vary by state.</p>	<p>It is likely that certain provisions of the Act will have varying impact on individual states. The legislative review conducted by DOL and Part A (Legal Elements) of this survey will provide valuable information on these differences and the potential effects they may have on enforcement activity within a state.</p>
<p>One commenter asked for a reasonable turnaround time for completion of the survey.</p>	<p>A reasonable timeframe for response is important to ensure the completeness and integrity of the data being provided. As indicated in the instructions for completing the survey, each state will be given thirty (30) days to respond. Based upon information obtained from the pilot test conducted in the State of Texas, this timeframe was considered adequate and reasonable.</p>
<p>One commenter indicated that the state spends considerable time investigating and processing transfers of business [successions], and it could be argued that all such time is related to SUTA dumping. The commenter also asked whether question B.7 in the survey was intended to apply only to time spent following up on leads identified through the SUTA dumping software.</p>	<p>States are in the best position to determine the human resources being devoted to detecting and investigating cases and otherwise implementing state SUTA dumping laws. Question B.7 was designed to provide a barometer of human resource costs associated with the implementation of the SUTA Dumping Prevention Act of 2004. This question was not intended to apply solely to time spent on leads generated by the SUTA dumping software utilized by a state. Instead, it was designed to obtain the FTEs expended for all SUTA dumping activity irrespective of the source of the investigative lead. To clarify the intent, question B7 will be modified as follows: “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?”</p>

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A pilot test of the proposed survey was completed in the State of Texas on August 23-24, 2006. Texas carefully tracked the amount of time it took to complete each question and a discussion was held regarding their understanding of each question. Availability of the

requested data was also discussed with the review team. As a result of this pilot test, changes were made to the proposed survey to help ensure clarity of the questions. Texas was able to complete the survey in approximately two hours. The revised survey that resulted from the pilot test is attached as Appendix C. \_

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

This is a one time survey and will not require continued consultation.

9. **Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.**

No gifts or payments will be provided to the respondents.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality required.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no sensitive questions.

12. **Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

It is anticipated that each of the fifty states plus the District of Columbia, Puerto Rico and



the Virgin Islands will respond to the proposed survey, which will be completed only one time by each state. It is estimated that the proposed survey can be completed in 2 hours per state. The total burden hours equal 106 (53 x 2 hrs = 106). This estimate is based on the pilot test that took place in the State of Texas on August 23 and 24, 2006. Texas carefully tracked the time it took to complete each question on the survey and discussions were held to ensure that Texas understood each question they were being asked and the purpose for it. It is not anticipated that completion of the survey will require a wide variance of time from state to state. The surveyors do not anticipate any state having to generate any new data in order to answer the survey questions. Any data being requested in this survey is available by accessing the states' existing UI tax system.

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

This request covers only one survey instrument.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

The estimated annualized cost per State Workforce Agency is \$70.74. This was computed using the 2007 average hourly rate per state UI tax staff of \$35.37 x 2 hours to complete the survey. Total one-time cost would be \$35.37 x 106 hours = \$3749.22.

Table 1

Total Hours, 53 states	Cost per hour	Total estimated cost, 53 states
53x2=106	\$35.37	106 x \$35.37 = \$3749.22

- 13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

There are no other record keeping costs involved.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The total cost to the Federal government for this collection of information will be \$515,896.22. Of this total, \$499,972.00 is the price of the external contract that has been negotiated for this data collection. These are one time costs and will not reoccur on an annual basis.

Table 2  
Estimated total national cost of doing the survey

Unit	Hours	Hourly Cost	Total Cost
State Agency	106	\$35.37	\$3749.22
ETA -COTR, GS-9	500	\$24.35	\$12,175.00
Coffey Communications – Contractor	Per contract	Per contract	\$499,972.00
Total Cost			\$515,896.22

**15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

The increase in DOL’s inventory burden is a program change due to a new collection.

**16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Results of this survey are not intended for publication. This one time collection of information will be used for Federal oversight and management of state implementation of section 303(k) of the SSA. It is a 12 month project that will end July 15, 2007, upon completion of the Secretary’s required report to Congress.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The OMB expiration date for OMB approval will be displayed on the questionnaire.

**18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submission,” of OMB 83-I.**

There is no exception to the certification statement in item 19 of OMB 83-I.