

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UC – ETA 581 Report Changes
	CORRESPONDENCE SYMBOL OUI /DUI O
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-11

TO: STATE WORKFORCE AGENCIES

FROM: Jane Oates /s/
Assistant Secretary

SUBJECT: Changes to the Employment and Training Administration (ETA) 581
Contribution Operations Report, and related Handbooks

1. **Purpose.** To revise: (a) the ETA 581 Contribution Operations report, (b) Employment and Training (ET) Handbook No. 401, Unemployment Insurance Reports (UIR) Handbook – 4th Edition, and (c) ET Handbook No. 402, UIR User Manual – 5th Edition. The revisions are needed in order to change the following reporting requirements on the ETA 581 Contribution Operations report: (a) delete the items for reporting the number of outstanding contribution reports and estimated contributions for prior quarters; (b) add items for reporting State Unemployment Tax Act (SUTA) dumping detection activities; and (c) include all unreported employees when reporting misclassified employees discovered from audits.

2. **References.**

- Public Law (P.L.) No. 108-295, *The “SUTA Dumping Prevention Act of 2004”*;
- ET Handbook No. 401, 4th Edition, Section II, Chapter 2, *ETA 581 Contribution Operations* ;
- ET Handbook No. 402, 5th Edition, Appendix A, *Report Forms with Data Maps*;
- ET Handbook No. 402, 5th Edition, Appendix B, *ASCII File Format Specifications*;
- ET Handbook No. 402, 5th Edition, Appendix C, *Report Edit Specifications*;
- Unemployment Insurance Program Letter (UIPL) 29-83, Change 3, *Transfers of Experience*;
- UIPL No. 15-84, *Experience Rating – Identification of the Standard Rate and its Application to a Single Schedule of Contribution Rates Applicable to a Single Taxable Wage Base with Respect to a Single Period of Time*;
- UIPL 34-02, *Tax Rate Manipulation – State Unemployment Tax Act (SUTA) Dumping*;
- UIPL No. 30-04 and UIPL No. 30-04, Change 1, *SUTA Dumping – Amendments to Federal Law affecting the Federal – State Unemployment Compensation Program*;
- UIPL No. 33-09, *Measuring State Effectiveness in Implementing State Unemployment Tax Act (SUTA) Dumping Detection and Enforcement Procedures*;
- UIPL No. 30-10, *Proposed Effective Audit Measure for State Unemployment Insurance (UI) Employer Audit Programs*

RESCISSIONS None	EXPIRATION DATE Conti nui ng
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3. **Background.** The ETA 581 Contribution Operations report is a comprehensive summary of each state's unemployment insurance (UI) tax operations and is essential in providing quarterly performance data. ETA 581 Contribution Operations report data are used to monitor and measure program performance and make projections and forecasts in conjunction with the budgetary process. Since recent employer activities with SUTA dumping and worker misclassifications have impacted the UI program, the effect of those activities on state operations needs to be reported on the ETA 581 Contribution Operations report. In addition, an evaluation of state data on outstanding reports and estimated contributions due has made those reporting items expendable. Background information on the report changes follow:
- a. Number of outstanding reports and estimated contributions for prior quarters. States have reported the number of quarters represented by contribution reports outstanding for all quarters prior to the report quarter in item 12, cell c13a on the report. States have also calculated and reported an estimate for the UI tax due on those delinquent quarterly reports in item 13, cell c13b on the report. Since the data collected in the two cells have never been included in the UI Performs Computed Measures, nor have the data been included in any other aggregated reports, the cells will be removed from the ETA 581 Contribution Operations report.
 - b. SUTA dumping activities. The SUTA Dumping Prevention Act of 2004 was enacted to curtail an employer tax avoidance practice known as "SUTA dumping". In SUTA dumping, employers shift workforce/payroll in order to avoid paying contributions at higher tax rates. States have amended their UI laws as required by the Act and implemented procedures for detecting SUTA dumping. Three new cells will be added to the ETA 581 Contribution Operations report so that states can report their SUTA dumping activities.
 - c. Misclassified employees discovered from audits. States have reported the number of employees misclassified as independent contractors that were discovered through audits in item 52, cell c69 on the ETA 581 Contribution Operations report. However, ETA 581 Contribution Operations report instructions have not allowed states to report other unreported (off-the-books) workers discovered in audits if the employers did not classify the workers as independent contractors. Since it is important to discover all unreported workers in audits and not just independent contractors, states will report all unreported workers discovered in audits on the ETA 581 Contribution Operations report.
4. **Office of Management and Budget (OMB) Approval.** The changes to the ETA 581 Contribution Operations report have been approved by OMB according to the Paperwork Reduction Act of 1995, under OMB approval No. 1205-0178, which expires on December 31, 2011. Respondents' obligation to reply to these reporting requirements is required to obtain or retain benefits (SSA 302(a)). Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.
5. **Revisions to Form 581.** The ETA 581 Contribution Operations report for the report quarter ended March 31, 2011, will show the following changes:

- a. Number of outstanding reports and estimated contributions for prior quarters. The following items will be removed from the form:
 - 1) Item 12, cell c13a - Number of Outstanding Quarters Prior to Report Quarter;
 - 2) Item 13, cell c13b – Total Estimated Contributions Due
- b. SUTA dumping activities. Line 503, “SUTA Dumping” will be added and show the following items:
 - 1) Item 59, cell c70 – Number of Mandatory Transfers
 - 2) Item 60, cell c71 – Number of Prohibited Transfers
 - 3) Item 61, cell c72 – Total Net Contributions Due
- c. Misclassified employees discovered from audits. The name for item 52, cell c69, will be changed from “Number of Employees Misclassified as Independent Contractors” to “Number of Employees Misclassified.”

6. Revisions to ET Handbook No. 401, UIR Handbook, 4th Edition. Section II of ET Handbook No. 401 provides instructions for completing the ETA 581 Contribution Operations report. As a result of the changes to the ETA 581 Contribution Operations report, the following changes to Section II of ET Handbook No. 401 have been made:

- a. Number of outstanding reports and estimated contributions for prior quarters. Instructions for items 12 and 13 have been removed from section F, “Item by Item Instructions.”
- b. SUTA dumping activities. Five new definitions have been added to section E, “Definitions” as shown below. The purpose of the definitions is to clarify the instructions concerning the new cells for SUTA dumping.
 - 1) Unemployment Experience: Amounts that are used in the state’s computation of contribution rates for employers in accordance with its system of experience rating (e.g., benefit payments, benefit wages, contributions, taxable wages, total wages).
 - 2) Mandatory Unemployment Experience Transfer: Unemployment experience is transferred between employers as required by the state’s unemployment compensation law.
 - 3) Prohibited Unemployment Experience Transfer: As required by the state’s unemployment compensation law, unemployment experience is not transferred to an employer who acquired a business because the state found that the employer acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

- 4) SUTA Dumping: Employer or advisor actions, or inactions, that manipulate state experience rating systems for the purpose of obtaining a lower contribution rate assignment than the employer's unemployment experience would otherwise allow.
- 5) SUTA Dumping Investigation: This is a further investigation conducted after completion of a regular status determination (e.g., new or successorship) to determine whether unemployment experience must or must not be transferred between employers. The state initiates a SUTA dumping investigation to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business. Most investigations are identified through the use of the state's automated SUTA dumping detection system.

Instructions for the new cell items have been added to section F, "Item by Item Instructions", as follows:

Line 503 - SUTA Dumping Detection Activity. Line 503 shows unemployment experience transfer determinations (mandatory or prohibited) and resulting changes in contributions due that were identified by a state's SUTA dumping investigations. A state investigates employers to ensure that unemployment experience was transferred as required by law, or not transferred when prohibited by law, so that higher rates of contributions are not avoided through the transfer or acquisition of a business. The unemployment experience transfer determinations follow employer attempts to manipulate experience rating systems for the purpose of obtaining a lower rate of contributions, or the state's own failures to apply its law regarding unemployment experience transfers properly.

- 1) Item 59. Number of Mandatory Transfers. Enter the number of mandatory unemployment insurance transfers that were the result of SUTA dumping investigations and were entered on the state's system during the report quarter. Include full and partial mandatory transfers of unemployment experience. Include all mandatory transfers, even if the transfers did not result in changes to previously assigned contribution rates.

Note: If a state inactivated/terminated employer accounts under "continuity of control" provisions in state law as a result of SUTA dumping investigations, include those employers as mandatory transfers, (i.e., count the inactivated/terminated accounts).

Do not include mandatory transfers identified in the normal process of making regular status determinations that resulted in the establishment of new accounts for successor employers, as well as those employers who already had an existing account and acquired all or part of the business of another employer with an existing account. The process of making regular status determinations normally begins with information received from employers and other sources outside of the state unemployment insurance agency.

- 2) Item 60. Number of Prohibited Transfers. Enter the number of prohibited unemployment experience transfers that were the result of SUTA dumping investigations and were entered on the state’s system during the report quarter. Count all employers who were prohibited from inheriting unemployment experience, in whole or in part. Count all prohibited transfers even if previously assigned contribution rates were not changed.
- 3) Item 61. Total Net Contributions Due. Enter the total amount of contributions due, less the amount of contributions overpaid, that were the result of changes to contribution rates during the report quarter due to mandatory and prohibited transfers reported.

Net contributions are the difference between contributions due on taxable wages before rates were changed and contributions due on those taxable wages after the rates were changed. Taxable wages include actual taxable wages reported by employers and estimated taxable wages for legally enforceable contributions due. Compute differences on contributions due on taxable wages, whether or not contributions have been paid.

Do not include net contributions on taxable wages reported or estimated after the report quarter in which rates were changed, even if the contributions due were affected by rate changes due to mandatory or prohibited transfers.

Example: Net Contributions for One Employer.

For the report quarter ending December 31, 2011 – Assumes that annual rates for CY 2010 and CY 2011 are changed in the fourth quarter of 2011. Also assumes that the CY 2010 rate is decreased and the CY 2011 rate is increased from their original rates;

Year/Quarter	Contributions Due at Old Rate	Contributions Due at New Rate	Difference
2010/q1	\$ 8,875	\$ 8,300	(\$575)
2010/q2	\$ 6,300	\$ 6,100	(\$200)
2010/q3	\$ 4,985	\$ 4,860	(\$125)
2010/q4	\$ 3,000	\$ 2,900	(\$100)
Totals for 2010	\$23,160	\$22,160	(\$1,000)
2011/q1	\$15,800	\$19,550	\$3,750
2011/q2	\$13,730	\$15,980	\$2,250
2011/q3	Delinquent when rate changed	Delinquent when rate changed	Not Included
2011/q4	Not due when rate changed	Not due when rate changed	Not Included
Totals for 2011	\$29,530	\$35,530	\$6,000

Summary:

Credits on 2010 quarters:	(\$1,000)
Contributions due on first two quarters of 2011:	<u>\$6,000</u>
Total Net Contributions Due included on ETA 581 Report:	+\$5,000

(Note: Net contributions due on the third and fourth quarters of 2011 are excluded since taxable wages were not reported before December 31, 2011. Assumes employer will pay contributions on each quarter at the new contribution rate without adjustments.)

Example: Net Contributions for All Employers.

For the report quarter ending December 31, 2011 – Rates changed and entered on the state’s system during the fourth quarter of 2011;

Contributions due on all quarters for which rates were changed:	\$500,000
Credits on all quarters for which rates were changed:	<u>(\$100,000)</u>
Net contributions reported on the ETA 581 Report:	+\$400,000

- c. Misclassified employees discovered from audits. The instruction for Item 52 has been revised to: Item 52. Number of Employees Misclassified. Enter the total number of employees discovered through audits in item 47 that were previously misclassified by employers. Include all employees that were discovered through audits, including those reported by employers on IRS form 1099 as well as workers that were unreported (off-the-books). Count only employees discovered in quarters that were actually audited as reported in item 48.
7. **Revisions to ET Handbook No. 402, UIR Handbook, 5th Edition.** ET Handbook No. 402 provides instructions on how states should enter data for the ETA 581 Contribution Operations report to the National UI Report system. ET Handbook No. 402 has been revised to reflect the changes to the ETA 581 Contribution Operations report as follows:
- a. A revised ETA 581 Contribution Operations report (data map) has replaced the previous form in Appendix A.
 - b. The ASCII file format specifications for the new cells have been revised in Appendix B as follows: Item 59 (cell c70) and item 60 (cell c71) will require the integer data type. Item 61 (cell c72) will require the decimal data type. See the beginning of Appendix B for information on data types. The data type specifications for item 12 (cell c13a) and item 13 (cell c13b) have been deleted from the appendix since reporting for the items will be discontinued.
 - c. The edit specifications for the new cells have been added to Appendix C. Entries for item 59 (cell c70) and item 60 (cell c71) can not be negative, nor null. An entry for item 61 (cell c72) can be negative (enter a minus sign (-)); however, an entry can not be null.

8. **Effective Date.** The effective date for implementing the changes to the ETA 581 Contribution Operations report is for the report quarter ending March 31, 2011. A state which experiences problems gathering and reporting data on SUTA dumping activities for the first quarter of 2011 may request an extension from its Regional Office in order to begin reporting data on a subsequent quarterly report. However, all states must begin to report data on SUTA dumping activities for the quarter ending December 31, 2011.
9. **Action Requested.** State administrators are requested to distribute this advisory to appropriate staff for implementation of the reporting changes. In addition, perform the following handbook maintenance:
 - a. ET Handbook No. 401 – Remove and destroy Section II, Chapter 2, pages 11-2-1 to 11-2-23, dated 4/2007, and replace with the attached pages 11-2-1 to 11-2-25, dated 10/2010.
 - b. ET Handbook No. 402 – Replace Appendix A, pages A-31 and A-32 with the attached pages A-31 and A-32. Replace Appendix B, page B-17 with the attached page B-17. Replace Appendix C, page C-19 with the attached page C-19.
10. **Inquiries.** Questions should be addressed to your Regional Office.
11. **Attachments.** Revised Section II, Chapter 2 of ET Handbook No. 401 and the following revised pages from ET Handbook No. 402:
 - a. Appendix A, pages A-31 and A-32
 - b. Appendix B, page B-17
 - c. Appendix C, page C-19