SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

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.

Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) authorize the Secretary of Labor and the Secretary of Treasury to grant a conditional or unconditional exemption of any fiduciary, disqualified person or class of fiduciaries, or orders of disqualified persons or transactions, from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and from the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. Under section 102 of Reorganization Plan No. 4 of 1978 (Reorganization Plan No. 4), the Secretary of Labor was given the authority to grant such exemptions.

This class exemption, which was granted on January 16, 1981, exempts from the prohibited transaction restrictions the investment of plan assets in certain short-term investments in debt obligations issued by certain persons who provide services to the plan or are affiliated with such service providers. This class exemption covers investments in banker's acceptances, commercial paper, repurchase agreements, and certificates of deposit. This class exemption was amended on April 2, 1985 to add securities issued by banks or their affiliates in cases where the bank is a party in interest only by reason of the furnishing of checking account or related services (such as clearing and recordkeeping services) to the list of acceptable short-term investments in the existing class exemption. In addition, the class exemption was amended to expand the category of sellers with whom the plan may enter into repurchase agreements to include dealers in bank acceptances who report their security positions on a daily basis to the Federal Reserve Bank of New York.

Section 406 of ERISA prohibits various transactions between a plan and certain related parties. Those parties in interest described in section 3(14) of ERISA and disqualified persons described in section 4975(e)(2) of the Code, such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates, may not engage in a transaction described in section 406 of ERISA and section 4975(c) of the Code with a plan without an exemption. Specifically, these sections prohibit sales, leases, loans, or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest or a disqualified person, unless a statutory or administrative exemption applies to the transaction.

The Department of Labor has authority under Reorganization Plan No. 4, pursuant to section 408 of ERISA and section 4975(c) (2) of the Code to grant either individual or class exemptions. In order to grant an exemption under section 408 and section 4975(c) (2), the Department must determine that the exemption is:

(1) administratively feasible,

(2) in the interests of the plan and its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

In order to ensure that the exemption is not abused, that the rights of the participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department often requires minimal information collection pertaining to the affected transactions.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Department has included in the class exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements.[1] The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The repurchase agreements are for a period of one year or less and may be in the form of a blanket agreement that covers the transactions for the year. The written agreement is intended to put the plan on notice of possible fees associated with the redemption of open-end mutual fund shares.

The second requirement obliges the seller of such repurchase agreements to provide financial statements to the plan at the time of the sale and as the statements are issued. The seller must also represent, either in the repurchase agreement or prior to each repurchase agreement transaction, that as of the time the transaction is negotiated, there has been no material adverse change in the seller's financial condition since the date the most recent financial statement was furnished that has not been disclosed to the plan fiduciary with whom the written agreement is made.

Without the relief provided by this class exemption, plans would be unable to invest plan assets in certain short term investments in debt obligations issued by certain persons who provide services to the plan or who are affiliated with such service providers. In most

1 Repurchase agreements are agreements whereby persons owning securities sell them to a third party and agree to repurchase the securities at a later time at an increased price that reflects an interest factor.

instances, the service providers engaging in such transactions with the plans are already providing services to the plan. Without this class exemption, these types of transactions could not continue, causing the disruption of existing business practices for plans and the businesses that service them.

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 for using information technology to reduce burden.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, "where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries." Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

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.*

The repurchase agreements are individual contracts between the seller and the plan and are not duplicative of any other disclosure requirements.

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.*

As noted above, the information collection requirements are limited to that portion of the class exemption pertaining to repurchase agreements. This class exemption is not oriented towards any particular segment of the plan community. However, due to the complexities associated with the types of short-term investments described in the class exemption, and in particular repurchase agreements which require knowledgeable investment advisors and large amounts of plan assets, we anticipate that any significant use of the class exemption will be limited to large plans. Therefore, it is not anticipated that small plans will have the expertise or the plan assets necessary to engage in this type of investment program.

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.

The disclosure requirements of the class exemption are only mandatory if plans wish to utilize this class exemption. The frequency is dependent on the occurrence of such transactions, not on a predetermined time period.

This class exemption was requested by the American Bankers Association, and by six insurance companies (filing jointly), to avoid possible violations of ERISA's prohibited transaction provisions. In addition, the exemption relates to certain matters raised in an application for an individual exemption filed by R. I. du Pont de Nemours and Company. The amendments to the class exemption were requested by Cantor, Fitzgerald Securities Corporation and the American Bankers Association.

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;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *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;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*

- *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*

- *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.*

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the above.

8. If applicable, provide a copy and identify the date 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.

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.

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.

Attached is a copy of the Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the information collection. This notice was published in the Federal Register on December 21, 2007 (72 FR 72763) providing the public 60 days to comment on the submission. No comments were received.

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

No payments or gifts are provided to 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 promise of confidentiality of the information. The class exemption requires information concerning the possible payment of redemption fees to be included in the investment company's prospectus, and, therefore, available to the plan and interested parties.

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 questions of a sensitive nature pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private. Therefore, this is not applicable to the requirements of this class exemption.

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.*

- *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.*

- *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.*

The class exemption has two basic information collection requirements, both of which affect only that portion of the exemption dealing with repurchase agreements. The first requirement calls for repurchase agreements between the seller and the plan to be in the form of a written agreement and the second requirement obliges the seller to provide his or her most recent financial statement to the plan at the time of a transaction or to agree in the instrument of the transaction that there has been no material adverse change since the last financial statement was furnished. A written agreement insures the protection of plans (and their participants and beneficiaries) by defining the rights of the parties to the agreement. The agreement also assists the Department in determining the plan's compliance with the terms of the exemption.

Written evidence confirming a transaction can most easily be accomplished by the use of preprinted forms. Preprinted forms can be designed to contain most of the necessary information with blanks provided for the individualized information pertaining to the transactions. The seller will complete these forms in-house. The class exemption allows for a repurchase agreement for each transaction or a blanket agreement to cover all such transactions for up to one year. Based on comments received, we assume that plans utilizing this investment vehicle would enter into a blanket agreement each year. We estimate that it would take no more than 10 minutes or 1/6 of an hour to complete a preprinted blanket repurchase agreement due to the limited amount of individualized information that is requested.

Statistics gathered from the 2005 Form 5500 annual reports indicate that there are approximately 50,000 pension plans that have assets in excess of $5 million and are not fully insured. Based on the Department's experience, plans with less than $5 million in assets would typically not have the assets necessary or the investment expertise to engage in this type of investment vehicle. This type of investment is normally centered in or around large metropolitan areas where the large banks and investment institutions are located. However, we recognize that large plans may use more than one bank or investment company to handle its assets. Therefore, for purposes of this estimate, we assume that each large plan enters into an average of five repurchase agreements involving different financial institutions each year.

The written agreement consists of a preprinted form prepared by a service provider with blanks provided for the individualized information pertaining to the transactions. Since the class exemption has been in effect for over 15 years, we are assuming that every service provider utilizing it has already created such a form; therefore, we are not considering such costs in our estimates.

We estimate the hour burden for completing written repurchase agreements to be approximately 41,700 hours a year (50,000 plans x 5 agreements x 1/6 hour).

We assume that of the estimated 10 minutes required for the preparation and mailing of each repurchase agreement form, two-thirds represents professional staff hours (at $79 per hour)[2] required for completion of the individualized information and one-third will be clerical staff hours (at $25 per hour) required for mailing the form to the plan. The cost of the hour burden is therefore, $2,543,800 ($2,196,300 for professional staff and $347,500 for clerical staff).

We estimate that the requirement to provide audited and unaudited financial statements as they become available on a normal business basis will add no burden. The class exemption covers only those repurchase agreements for which the seller of the underlying securities is a bank that is supervised by the United States or a State, a broker-dealer registered under the Securities and Exchange Act of 1934, or a dealer who makes primary markets in securities of the United States government and reports its position daily with respect to government securities and borrowing thereon to the Federal Reserve Bank of New York. Dealers of non-governmental securities are required by Securities and Exchange Commission (SEC) rules to provide current financial statements to their shareholders. However, of the three types of security selling entities which the class exemption covers, all deal in both government and non-government securities and all would be covered by the SEC rule. The requirement to provide a financial statement or a verification of no change since the last financial statement would not create an additional paperwork burden beyond that which is already required by the SEC; therefore, no paperwork burden has been accounted for under this requirement.

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

We assume that completion of the repurchase agreement form will be accomplished in house. Therefore, the cost burden for mailing 250,000 repurchase agreements, at $.41 per agreement, is $102,500. However, this exemption does not preclude the use of electronic means for delivery of the agreements, which would mitigate the costs.

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.*

There is no disclosure to the Federal government and, consequently, no cost to the government as a result of this class exemption.

[2] EBSA estimates based on the National Occupational Employment Survey (May 2006, Bureau of Labor Statistics) and the Employment Cost Index (March, 2007, Bureau of Labor Statistics).

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

    The methodology used to estimate burden hours and costs for this submission is the same as for the 1995 Form 83-I submission. The total burden hour has been adjusted to reflect updated information on the number of uninsured plans utilizing repurchase agreements.

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.*

    This is not a collection of information for statistical use and there are no plans to publish the results of this collection.

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 collection of information will display a currently valid OMB control number.

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

    Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable. The use of statistical methods is not relevant to this collection of information.