

**DEPARTMENT OF LABOR****Employment and Training Administration****Workforce Investment Act, Sections 127 and 167 Migrant and Seasonal Farmworker Youth Program**

**AGENCY:** Employment and Training Administration, DOL.

**ACTION:** Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker (MSFW) Youth Program under the Workforce Investment Act (WIA).

**SUMMARY:** All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (the Department), Employment and Training Administration (ETA), announces the availability of funds as authorized in section 127(b)(1)(A)(iii) of the Workforce Investment Act, to provide MSFW youth workforce investment activities.

It is anticipated that up to \$10,000,000 will be available for the grant year (commencing April 1, 2002) for funding up to 15 projects covered by this Solicitation. It is the Department's intent to fund grants in the 12 agricultural geographic areas of the United States. Grantees will be selected for a two-year designation period. The Department intends to provide non-competitive funding for the succeeding one-year period for grantees that perform satisfactorily during the first year, subject to availability of federal funds.

**DATES:** Applications will be accepted commencing on the date of publication. The closing date for receipt of applications under this announcement is February 15, 2002, at 4:00 p.m. Eastern Standard Time (EST). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

**ADDRESSES:** Applications shall be mailed or hand-carried to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mrs. Serena Boyd, SGA/DFA 02-104, 200 Constitution Avenue, NW., Room S-4203, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Questions should be faxed to (202) 693-2879 (this is not a toll-free number) to the attention of Mrs. Serena Boyd. All inquiries should include the SGA number 02-104, and a contact name,

fax, and telephone numbers. This Solicitation is also being published on the Internet at ETA's homepage at <http://www.doleta.gov>. Award notifications will also be published on the ETA homepage.

**Part I. General Information***A. Background*

The purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk MSFW youth that lead to academic success, economic stability and development into productive members of society.

The MSFW Youth program is described at 20 CFR 669.600 through 669.680. It is designed:

- (1) to strengthen the ability of eligible farmworker youth to obtain or retain unsubsidized employment, or
- (2) to stabilize their unsubsidized employment by providing related assistance, integrated and coordinated with other appropriate services.

*B. MSFW Youth Participant Eligibility*

Eligible participants must be 14 to 21 years of age, and a farmworker or a dependent of farmworker parent(s) (or guardian(s)) as defined in section 167(h) of the Workforce Investment Act and at 20 CFR part 669.

Eligible farmworkers are those economically disadvantaged persons who, for 12 consecutive months out of the 24 months preceding their application for services, have been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment. Complete eligibility requirements will be provided upon request.

*C. Eligible Entities*

To be eligible for receipt of funds under this program, an organization must have:

- (1) Documented experience in providing services to migrant and seasonal farmworker youth;
- (2) a working familiarity with the geographic area to be served and be able to show its ability to work within the existing service environment;
- (3) the capacity to administer the program of activities and services proposed for MSFW youth; and
- (4) the appropriate legal status to enter into a grant agreement with the U.S. Department of Labor (e.g. a private non-profit corporation or a unit of State or local government).

*D. Consultation With Governors and Local Boards*

Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA section 167(e) concerning consultation with Governors and Local Boards. To strengthen the implementation of Executive Order No. 12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of applications;
2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;
3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and
4. The Department will implement that decision within 10 days after it has notified the SPOC.

*E. Grant Duration and Period of Performance*

The Department anticipates that grants will be funded for two one-year time periods—with funding in the second year contingent on satisfactory performance during the first year and the availability of funding in the second year. The period of performance for the first year is expected to commence April 1, 2002.

**Part II. Application Process and Guidelines***A. Submission of the Grant Application Package*

Applicants must submit an original and three (3) copies of the complete application package for review.

Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Standard Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received by the specified time and closing date. Telegraphed, faxed and e-mailed proposals will not be honored. Applications that do not adhere to the above instructions will not be honored.

#### B. Late Applications

Any applications received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring a receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal will be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been applied or affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applications should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next Day Service-Post Office to Addressee" is the date entered by the post office receiving clerk on the Express Mail Next Day Service-Post Office to Addressee label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as

defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

#### C. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before the award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and representative signs a receipt for the proposal.

#### D. Grant Application Package

The grant application package must consist of:

(1) A Standard Form 424 (Application for Federal Assistance) found in OMB Circular A-102 and as an attachment to this Solicitation.

(2) A Standard Form 424A (Budget) found in OMB Circular A-102 and as an attachment to this Solicitation. Costs in section B (Budget Categories), Item 6 (Object Cost Categories) should be budgeted by Administrative, Program, and Total. Administrative costs are to be included in column (1), program costs in column (2), and the total cost in column (5) of Form 424A. Budgets are required only for the first year of the two-year plan and designation period. Administrative costs are limited to 15 percent of the total grant award.

(3) A certification, prepared within the last six months prior to the submission of this application, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The required certification must be obtained as follows:

a. For incorporated organizations, from a Certified Public Accountant.

b. For public agencies, by its Chief Fiscal Officer.

(4) A statement describing the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(5) A copy of the current indirect cost rate agreement issued by the cognizant federal agency, if applicable.

(6) The completed grant application as described below.

#### E. Format of the Grant Application

The grant application is limited to 50 numbered pages, double-spaced, using type no smaller than 11 point. The page number limitation does not include letters of support or the required

attachments. Proposals may be fastened using a binder clip. Please do not use 3-ring binders, or otherwise bind your proposal package. To ensure full consideration, the application must follow the numerical sequence of the sections 1 through 5 as presented in II E of this solicitation immediately below. The application must include a table of contents. To ensure your application is considered fully, be sure to respond completely to each section. All attachments should be included at the end under a section 6 heading.

#### F. Contents of the Grant Application

Specific Rating Criteria for section 1 [15 points]—This factor rates the applicant's understanding of the proposed service area and its experience within the service environment described. Ratings will be based on factors such as the reasonableness of matching the proposed service area to the scope of the program and the amount of funds sought and the applicant's ability to work within the service environment, as evidenced by the existence of appropriate and documented linkages—especially those related to other MSFW program activities.

Section 1—Knowledge of the Area To Be Served and Capacity To Operate Within the Existing Service Environment

(A) Geography:

(1) Identify the geographic boundary of the proposed service area (or areas). An explanation should be provided, wherever there are service areas that are not contiguous. Include a map.

(2) Describe your organization's capacity to operate in the proposed service area.

(B) Community Resources:

(1) Describe the communities where migrant and seasonal farmworker youth, who would be served by the proposed project, reside and where they travel for work purposes. The description must include a discussion of the educational, social, cultural, workforce, community programs and services and other relevant opportunities available for youth. Be sure to explain how these community services are responding to the needs of MSFW youth.

(2) Describe how your organization works with the community resources described above.

(C) NFJP Relationship: Describe the relationship between the grant applicant and the NFJP grantees operating the area under your proposal. Specifically, where the applicant is not the current NFJP grantee in the proposed service area, describe the arrangements that

have been or will be made to coordinate the delivery of services and avoid duplication of services.

(D) One-Stop Coordination: Provide an itemization of Workforce program linkages. Specifically include the name of each entity with whom a linkage has been established, the relationship of each entity to the applicant, the specific service to be provided by the established linkage and an explanation of how the linkage will support the proposed program. Please indicate if documentary evidence of the linkage is provided as an attachment.

Specific Rating Criteria for section 2 [15 points]—This factor rates the applicant's knowledge and understanding of the needs, problems, and demographic characteristics of the target group. Ratings are based on the degree to which the narrative shows how the applicant organization has developed its capacity to understand the MSFW youth population within the proposed service area.

#### Section 2—The Problems of Migrant and Seasonal Farmworker Youth

Provide a socio-economic analysis of the migrant and seasonal farmworker youth in the area you propose to serve, made as follows:

(A) Describe the demographic and socio-economic characteristics of migrant and seasonal farmworker youth in the service area, and identify the sources (which may include experiences or knowledge developed by your agency) you rely upon;

(B) Describe the needs and problems of farmworker youth you have identified for serving, and show how you have made the identification; and

(C) Describe the farmworker youth that you propose to serve.

Specific Rating Criteria for section 3 [50 points]—Applications will be rated according to how well the proposed program of services is shown to respond to the identified MSFW Youth needs. You must show how your service delivery system will respond by offering services to the MSFW Youth in the area that are appropriate to the needs you have identified for them. Up to 15 points may be earned under part (C).

#### Section 3—Proposed Program Activities and Services

Noting any differences between the first and second years, provide a detailed description of the proposed program activities:

(A) State two or more goals for the proposed MSFW Youth program.

(B) Provide a detailed description of the proposed program of activities and

services. The description must address each of the following program elements:

(1) Core services, including outreach, recruitment and eligibility determination;

(2) Intensive services (Preliminary information from two of the migrant youth demonstration grants is showing there are broad benefits to be gleaned from parental participation in the development of their child's individual service strategy. Include a description of your plans for parental participation);

(3) Training services;

(4) Life skill activities which may include self and interpersonal skills development;

(5) Community service projects;

(6) Small business development, technical assistance and training in conjunction with entrepreneurial training;

(7) Supportive services and other related assistance services, described in 20 CFR 669.430; and

(8) Other proposed activities and services, if any, that conform to the use of funds for youth activities described in 20 CFR part 664.

(C) Provide an analysis that shows how the proposed program of services and activities is responsive to the needs of MSFW Youth described in part (C) of section 2. Provide an explanation how the proposed program will lead to the fulfillment the goals proposed in part (A) of section 3.

Specific Rating Criteria for section 4 [10 points]—Based on the applicant's previous relevant program experience and performance, applicants will be rated according to their relative capacity to provide effectively workforce investment activities for MSFW youth.

#### Section 4—Capacity To Operate a Workforce Investment Program for MSFW Youth

(A) Provide the published mission or principal goals/objectives of the applicant organization and explain how service to MSFW youth promotes the organization's mission.

(B) Describe the applicant organization's experience providing services to youth, to MSFWs and to MSFW youth.

(C) Describe the programs operated by the applicant organization during the last two years, presented in tabular form. Each entry on the table must include:

(1) Funding source (Name of Agency/Organization, Address, Telephone, and Contact Person);

(2) Program Information (Type of Program, Grant/Contract/Agreement Number, Principle Activities, Period of Performance and Funding Amount);

(3) Customers (Number of participants served, percent of MSFW participant, percent of MSFW youth (age 14–21) served);

(4) Performance standards and outcomes achieved; and

(5) Outcomes achieved specifically for farmworker youth (ages 14–21).

(D) Provide a description of the proposed implementation schedule, which clearly shows exactly when the proposed program will be fully operational.

Specific Rating Criteria for section 5 [10 points]—This factor rates the applicant's managerial experience and the potential for efficient and effective administration of the proposed program and budget.

#### Section 5—Applicant's Administrative and Management Capability:

(A) Provide a chart depicting the applicant's overall organization structure, including the organizational design of the proposed youth program. The chart must clearly show how the proposed program will be supported by the organizational structure. It must include both staffing patterns and office locations. In addition, the chart must show which parts of the proposed MSFW youth program structure are in place and which parts would be established if the proposal were funded.

(B) Describe the applicant's administrative and program management processes which include the fiscal management systems and the program management systems (including management information system). Program management must describe the applicant's systems for participant tracking, follow-up, program monitoring and oversight, and the provision of training and technical assistance for those individuals who work directly with participants.

(C) Provide a proposed budget and describe in narrative form how the proposed cost categories and amounts were determined. The description should explain and justify the costs budgeted for the first year only. Be sure to include in your description how you believe the budgeted cost supports the proposed program of activities and services and the staffing pattern.

#### Section 6—Attachments

All attachments referenced in the proposal are to be included under a section 6 heading of your proposal. The first page should itemize the attachments.

**Part III—Review Process of Grant Application Panel Review**

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer will give appropriate consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee (20 CFR 669.630). Further, the Grant Officer will make selections that promote a geographic distribution of funds where merited (20 CFR 669.650). The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

**Responsibility Review**

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review. The responsibility review is an analysis of available information and records to determine if an applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for designation as a grantee without respect to their standing in the competitive process. An applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are required by the WIA regulations at 20 CFR 667.170.

**Notification of Non Selection**

Any applicant that is not selected as a potential grantee, or that has its grant

application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

**Notification of Selection**

Applicants that are selected will be notified in writing by the Grant Officer. Formal designation as a grantee will be contingent on the successful negotiation of a grant agreement for the first year of operation.

Signed at Washington, DC, this 3rd day of January 2002.

**Lorraine H. Saunders,**

*Grant Officer, Office of Grants and Contract Management, Division of Federal Assistance.*

**Attachments**

1. Appendix A—"Application for Federal Assistance" (Standard Form 424)
2. Appendix B—Budget Information Form

**BILLING CODE 4510-30-P**

**APPLICATION FOR  
FEDERAL ASSISTANCE**

**OMB Approval No. 0348-0043**

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction	Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, State and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN):  □□-□□□□□□□□		7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/> A. State                    H Independent School Dist. B. County                 I State Controlled Institution of Higher Learning C. Municipal             J Private University D. Township             K Indian Tribe E. Interstate            L Individual F. Intermunicipal      M Profit Organization G. Special District    N Other (Specify): _____	
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision  If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award      B. Decrease Award      C. Increase Duration D. Decrease Duration    Other (specify): _____		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:  □□-□□□□  TITLE:		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):			
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?  a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____  b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
a. Federal	\$ .00		
b. Applicant	\$ .00		
c. State	\$ .00		
d. Local	\$ .00		
e. Other	\$ .00		
f. Program Income	\$ .00		
g. TOTAL		17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? <input type="checkbox"/> Yes      If "Yes," attach an explanation. <input type="checkbox"/> No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative			e. Date Signed

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Standard Form 424 (REV 4-88)  
Prescribed by OMB Circular A-102

**PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

**SECTION B - Cost Sharing/ Match Summary (if appropriate)**

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

**NOTE:** Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

**INSTRUCTIONS FOR PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

1. **Personnel:** Show salaries to be paid for project personnel.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

**SECTION B - Cost Sharing/Matching Summary**

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

**NOTE:**

**PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.**

[FR Doc. 02-494 Filed 1-8-02; 8:45 am]

BILLING CODE 4510-30-C

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Exemption Application No. D-10762, et al.]

#### Prohibited Transaction Exemption 2002-01; Grant of Individual Exemptions; Key Trust Company of Ohio, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon

the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

#### Key Trust Company of Ohio (Key Trust), Located in Cleveland, OH

[Prohibited Transaction Exemption 2002-01; Exemption Application No. D-10762]

#### Exemption

##### I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply to the making of interest-free loans to a defined contribution plan (the Plan) by its respective sponsor (the Plan Sponsor) pursuant to the terms of a credit facility arrangement (the Credit Facility Arrangement), established by Key Trust and its affiliates (collectively, KeyBank), which enables daily transactions, such as participant investment transfers, distributions or participant loans, in connection with the Plan's unitized employer stock fund (the Unitized Employer Stock Fund or Fund) within KeyBank; and (2) the repayment, by the Plan to the Plan Sponsor, of any interest-free loan within 90 days with cash proceeds received from the sale of employer stock (Employer Stock) held in the Unitized Employer Stock Fund.

##### II. General Conditions

(a) Each loan made under the Credit Facility Arrangement provides short-term funds to the Plan for a period of no longer than 90 days for the purpose of facilitating Plan participant transfers, distributions, loans and other participant transactions involving the Plan's Unitized Employer Stock Fund.

(b) The maximum amount of short-term funds available to a Plan under the Credit Facility Arrangement, in the aggregate, does not exceed 25 percent of the fair market value of the Plan's Unitized Employer Stock Fund.

(c) Each loan made under the Credit Facility Arrangement is repaid with proceeds from the sale of Employer Stock held in the Unitized Employer Stock Fund.

<sup>1</sup> Unless otherwise noted, references to specific sections of the act refer also to the corresponding provisions of the Code.

(d) For purposes of repaying a loan under the Credit Facility Arrangement, the sales price for the Employer Stock is based upon its fair market value as determined on the New York Stock Exchange (the NYSE) or other applicable securities exchange where such Employer Stock is primarily traded on the date of the transaction, as calculated by an independent pricing service.

(e) Each loan made under the Credit Facility Arrangement is unsecured and no commitment fees, interest or commissions are paid by the Plan.

(f) In the event of a loan default or delinquency, the Plan Sponsor has no recourse against the Plan.

(g) Each loan is initiated, accounted for and administered by KeyBank, the independent fiduciary, which will monitor the terms and conditions of the exemption on behalf of the Plan, at all times.

(h) KeyBank maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (i) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of KeyBank, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than KeyBank, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h).

(i)(1) Except as provided in paragraph (h)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (h) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (i)(1)(B) or (C) shall be authorized to examine the trade secrets of KeyBank or commercial or financial information which is privileged or confidential.