

ADDRESSES section below on or before January 5, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

**ADDRESSES:** Contact Ms. Margaret Sherrill at the U. S. Department of Labor, 200 Constitution Avenue, N.W., Room S-3201, Washington, D.C. 20210, telephone (202) 219-7601. The Fax number is (202) 219-6592. (These are not toll-free numbers.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Employees' Compensation Act (FECA) provides for the collection of information from claimants, receiving continuing compensation on the periodic disability rolls. The FECA states the following: Compensation must be adjusted to reflect a claimant's earning while in receipt of benefits (5 U.S.C. 8106); Compensation is payable at the augmented rate of 75 percent only if the claimant has one or more dependents (5 U.S.C. 8110); Compensation may not be paid concurrently with certain benefits from other Federal agencies, e.g., Social Security (5 U.S.C. 8116); and, Compensation must be adjusted to reflect any settlement from a third party responsible for the injury for which the claimant is being paid compensation (5 U.S.C. 8132). Completion of Form CA-1032 is requested annually and is used to ensure that compensation being paid on the periodic roll is correct.

##### II. Current Actions

The Department of labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of FECA to obtain

information for determining claimants' entitlement to ongoing compensation. The information on Form CA-1032 enables the Director, Office of Worker's Compensation Programs to ensure that the correct compensation is being paid to claimants on the periodic roll.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements.

*OMB Number:* 1215-0151.

*Agency Numbers:* CA-1032.

*Affected Public:* Individuals or households.

*Total Respondents:* 50,000.

*Frequency:* Annually.

*Total Responses:* 50,000.

*Average Time Per Response for Reporting:* 20 minutes.

*Estimated Total Burden Hours:* 16,667.

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (Operating/maintenance):* 95,163.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 28, 1997.

**Cecily A. Rayburn,**

*Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

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#### DEPARTMENT OF LABOR

##### Pension and Welfare Benefits Administration

[Application No. D-10471, et al.]

##### Proposed Exemptions; First Bank System Personal Retirement Account (the Plan)

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

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

##### Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

##### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of

proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**First Bank System, Personal Retirement Account (the Plan), Located in Minneapolis, Minnesota**

[Application No. D-10471]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted 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, shall not apply to (1) the proposed contribution to the Plan by U.S. Bancorp (the Employer), formerly First Bank System, Inc., the sponsor of the Plan, of the Employer's interests in two limited partnership funds (the Interests) organized and managed by Kohlberg Kravis Roberts & Co. (KKR); and (2) the grant by the Employer to the Plan of an option (the Put) under which the Plan is empowered at any time to require the Employer to repurchase the Interests from the Plan at any time; provided that the following conditions are satisfied:

(a) The Interests are valued at their fair market value as of the date of contribution by a qualified, independent appraiser;

(b) The sum of the fair market value of the Interests plus the fair market value of any other KKR-related investments held by the Plan does not exceed ten percent of the fair market value of the Plan's total assets at the time of the contribution of the Interests to the Plan;

(c) The Plan is represented for all purposes with respect to the Interests by a qualified independent fiduciary (the Fiduciary), as described below, for the duration of the Plan's holding of any of the Interests;

(d) The Fiduciary takes whatever action is necessary, as determined by the Fiduciary in its sole discretion, to enforce the conditions of this exemption and to protect the Plan's investment in the Interests, including, but not limited to the exercise of the Put;

(e) The Fiduciary retains the right under the Put to require the Employer, at any time, to purchase some or all of the Interests from the Plan for the greater of (1) the Interests' fair market value as of the contribution date, or (2) the fair market value of the Interests as of the date of such sale pursuant to the Put; and

(f) For the duration of the Plan's investment in the Interests, the Employer's obligations under the Put are secured by the Collateral (as described below) in escrow representing no less than one third of the fair market value of the Interests at the time of their contribution to the Plan, and the Fiduciary requires additional Collateral to be deposited in the escrow whenever the value of the Interests increases.

**Summary of Facts and Representations**

1. The Plan is a defined benefit pension plan with approximately 21,000 participants and assets of approximately \$382,392,832 as of June 30, 1997. The Plan is sponsored by the Employer, which was known as First Bank System, Inc. until August 1, 1997. The Employer is a Delaware public corporation functioning as a bank holding company with banks, brokerage, insurance, and credit card operations conducted through subsidiaries in 14 states. Numerous corporate subsidiaries of the Employer are also sponsors of the Plan. The trustee of the Plan is the First Trust National Association (the Trustee), a wholly-owned subsidiary of the Employer. Under the Plan document, the Employer has the authority, directly or through a committee of appointed officers of the Employer, to determine investment policy of the Plan and to appoint investment managers. The investment manager of the assets of the Plan is First Asset Management, a division of a wholly-owned subsidiary of the Employer.

2. The Employer currently has investments in two investment funds (the KKR Funds) sponsored and managed by KKR designated as the Kohlberg Kravis Roberts and Co. 1986 Fund and the Kohlberg Kravis Roberts and Co. 1987 Fund. KKR, established in 1976, serves as manager and general partner, as well as management and planning services provider, for investment enterprises and limited partnerships, including the KKR Funds which are the subject of this proposed exemption. Each of the KKR Funds invests in, and consists solely of, holdings in five businesses which are publicly-traded and three business which are privately held. The Employer represents that its investments in the Interests were acquired by the Employer

over time for general investment purposes. The Interests are not publicly traded. The Employer represents that the Interests have increased in value substantially since acquisition by the Employer, and the Employer represents that continued increases in value are expected. The Employer represents that investors in the KKR Funds include individuals, institutions and employee benefit plans. Because the Interests have proven to be favorable investments with likely future increases in value and continued favorable performance, the Employer desires to contribute the Interests to the Plan. Accordingly, the Employer proposes to contribute the Interests to the Plan and is requesting an exemption to permit such contribution transaction under the terms and conditions described herein.

3. The Employer proposes to contribute the Interests to the Plan at their fair market value as of the date of the contribution transaction and to grant the Plan the Put, an option empowering the Plan to require the Employer to purchase the Interests back from the Plan in the event such repurchase is directed by the independent fiduciary, discussed below, which represents the Plan's interests with respect to the Interests. The fair market value of the Interests upon their contribution to the Plan will be determined by Piper Jaffray Inc. (the Appraiser), an independent investment banking services provider located in Minneapolis, Minnesota engaged in, among other activities, the valuation of securities. The Appraiser represents that as of September 3, 1997, the Interests had a fair market value of \$25.5 million. The Employer represents that the Plan does not yet own any interests in either of the KKR Funds, although the Plan does own interests in two other entities of which KKR is either the general partner or an investment advisor.<sup>1</sup> The Employer represents that the total fair market value of the Plan's interests in these other KKR-related enterprises was \$6.2 million as of the most recent valuation of Plan assets on June 30, 1997.

4. The Put, which has already been executed by the Employer, enables the Plan, represented by the Fiduciary (discussed below), to sell the Interests back to the Employer at any time. The Put requires the Employer, upon notification by the Fiduciary, to purchase all or any portion of the Interests from the Plan as directed by the Fiduciary for a purchase price to be

<sup>1</sup> The Employer represents that the other KKR-related investments held by the Plan consist of interests in a limited partnership designated as Union Texas-UTH and another limited partnership designated as Auto Zone Pittco Assoc. Ltd.

the greater of (a) the fair market value of such portion of the Interests as of the date of its initial contribution to the Plan, as determined by the Appraiser, or (b) the fair market value of such portion of the Interests as of the date of the exercise of the Put as determined by the mutual agreement of the Fiduciary and the Employer or, if the Fiduciary and Employer are unable to agree, as determined by an appraiser selected by the Fiduciary. Under the terms of the Put, the Employer grants the Plan a first security interest in collateral in escrow which secures the Employer's obligations under the Put. The Collateral consists of debt obligations of the United States having an initial fair market value of not less than one third of the fair market value of the Interests upon their contribution to the Plan. The Put requires the escrow agent to execute such other instruments and perform such acts as the Fiduciary may reasonably request to establish and maintain the Plan's security interest in the Collateral.

5. The interests of the Plan and its participants and beneficiaries with respect to the proposed contribution transaction, including the Put, are represented by the Fiduciary, which is the First State Bank of Bayport. The Fiduciary is a Minnesota state-chartered bank which represents itself to be independent of and unrelated to the Employer. The Fiduciary will oversee and monitor the Plan's investment in the Interests and the Plan's rights under the Put for the duration of the Plan's investment in the Interests. The Fiduciary will require an appraisal of the Interests for their fair market value by the Appraiser upon their contribution to the Plan, and will continue to require annual valuations of the Interests as long as the Plan remains invested in the Interests or any portion thereof. The Fiduciary will ensure that the Collateral required to secure the Employer's obligations under the Put is deposited in escrow in the appropriate amount, and the Fiduciary will require additional collateral to be deposited in the escrow from time to time if the value of the Interests increases. The Fiduciary represents that it has reviewed and evaluated the proposed contribution of the Interests to the Plan, including the terms of the Put, and has determined that the Plan's acquisition of the Interests by the Employer's contribution would be prudent and would add diversification to the Plan's assets. The Fiduciary states that due to the Put, the Plan will have little or no investment risk with respect to the Interests while the Interests offer the potential for

considerable gain. The Fiduciary states that the contribution of the Interests to the Plan will comply with the Plan's investment objectives and policies and would not adversely affect the Plan's liquidity needs with respect to current and projected benefit obligations. The Fiduciary concludes that the contribution of the Interests to the Plan will be in the best interests and protective of the participants and beneficiaries of the Plan. The Fiduciary states that its duties with respect to the Plan's investment in the Interests include ongoing monitoring of the investment performance of the KKR Funds in comparison to performance of other investment alternatives to determine if continued investment in the Interests by the Plan is warranted, and to ensure that the investment objectives and strategies of the KKR Funds remain consistent with the needs of the Plan. The Fiduciary also states that it will continue to review the Plan's liquidity needs to determine they are consistent with continued investment in the Interests. The Fiduciary represents that if, at any time, it determines that the Interests constitute an inappropriate investment for the Plan, it will exercise the Put in order to protect the Plan's participants and beneficiaries from adverse affects.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons:

- (a) The Plan's investment in the Interests will be protected by the Put, which will require the Employer to purchase the Interests from the Plan at any time for a price of no less than the greater of the fair market value of the Interests upon exercise of the Put or the fair market value of the Interests at the time of their contribution to the Plan;
- (b) The Employer's obligations under the Put will be secured by the Collateral, consisting of debt obligations of the United States having an initial fair market value of not less than one third of the fair market value of the Interests upon their contribution to the Plan;
- (c) The interests of the Plan with respect to the contribution of the Interests and under the terms of the Put will be represented by an independent fiduciary who will require annual valuations of the Interests and additional deposits of Collateral by the Employer whenever the value of the Interests increases; and
- (d) After an evaluation of the proposed transactions, the Fiduciary has determined that the Plan's investment in the Interests, protected by the Put, will be in the best interests and

protective of the participants and beneficiaries of the Plan.

**FOR FURTHER INFORMATION CONTACT:** Ron Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Profit Sharing Keogh Plan of Richard D. Wickerham, Esq. (the Plan) Located in Schenectady, New York**

[Application No. D-10505]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, 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, shall not apply to: (1) Two proposed loans (the Loans) totaling \$50,000 by the Plan to Mr. Richard D. Wickerham (Mr. Wickerham), a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loans by Mr. Wickerham, provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Plan; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain personal property (the Personalty) which has a fair market value, as determined by a qualified independent appraiser, of not less than 200% of Loan 2; (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans; and (f) Mr. Wickerham is the only Plan participant to be affected by the Loan transactions.<sup>2</sup>

**Summary of Facts and Representations**

1. Richard D. Wickerham, Attorney and Counsellor at Law (the Firm), is a law firm located in Schenectady, New York. The Plan is a defined contribution

<sup>2</sup>Since Mr. Wickerham is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

plan with one participant, Mr. Wickerham, who is also the Plan's trustee. Mr. Wickerham is also the sole owner of the Firm. As of July 31, 1997, the fair market value of the assets in the Plan was approximately \$343,088.

2. Mr. Wickerham wishes to borrow \$50,000 from the Plan, which represents approximately 15% of the current fair market value of the Plan. The money will be loaned to Mr. Wickerham in two separate Loans. The Loans will each be amortized over a 5 year period, with equal monthly payments of principal and interest over the 5 year term. The interest rate for each Loan will be 9.5% per annum. The total monthly payments for the Loans will be \$1,050.10 per month. Mr. Anthony J. Lanzillo, Vice President of KeyBank (the Bank) of Clifton Park, New York, has represented in a letter dated October 1, 1997 that the Bank would lend money to Mr. Wickerham at the same terms as those of the Loans.

3. Loan 1 will be secured by the Property, which consists of Mr. and Mrs. Wickerham's residence, which is located at 6 Delaware Bay Drive, Villas, Cape May County, New Jersey. The Property has been appraised by Ms. Dolores K. Lanzalotti of Jersey Cape Realty, Inc., an independent real estate broker in Cape May, New Jersey, to have a fair market value of \$140,000 as of August 9, 1997. The Property has a first mortgage in the amount of \$75,986. Loan 1 would be secured by a second mortgage on the Property in the amount of \$17,000. Thus, the appraised fair market value of the Property would represent not less than 150% of the total outstanding principal amount of debt secured by the Property. The applicant represents that the mortgage to the Plan will be duly recorded in the Office of the County Clerk, Cape May County, New Jersey.

4. Loan 2, which will be in the principal amount of \$33,000, will be secured by the Personalty. The Personalty consists of eighteenth century antique period furniture and artifacts which are owned by Mr. and Mrs. Wickerham. The Personalty has been appraised by Ms. Ona Curran, AAA, Certified Appraiser of Personal Property, an independent appraiser in Esperance, New York, as having a fair market value of \$69,190 as of August 1, 1997. This amount represents approximately 210% of the principal amount of Loan 2. The applicant represents that the Plan's security interest in the Personalty will be duly recorded in the appropriate County Clerk office.

5. Mr. Wickerham represents that in addition to the collateral described above, he will also be giving his personal guarantee for each of the Loans. Mr. Wickerham further states that should the collateral-to-loan ratio described above for either Loan fall below the described percentages, he will add additional collateral such that the 150% ratio will be maintained for Loan 1 and the 200% ratio will be maintained for Loan 2 throughout the five year period of the Loans.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loans represent approximately 15% of the assets of the Plan; (b) the terms of the Loans will be at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party, as demonstrated by the letter from the Bank; (c) Loan 1 will be secured by a second mortgage on the Property, which has been determined by a qualified, independent appraiser to have a fair market value of not less than 150% of the total principal amount of the loans that it will secure; (d) Loan 2 will be secured by the Personalty, which consists of eighteenth century antique period furniture and artifacts with a current fair market value of approximately 210% of Loan 2, as determined by a qualified, independent appraiser; and (e) Mr. Wickerham is the only participant in the Plan to be affected by the transactions, and he desires that the transactions be consummated.

#### Notice to Interested Persons

Since Mr. Wickerham is the only Plan participant to be affected by the proposed transactions, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of October, 1997.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

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