Section 6801.102 Definitions

For purposes of interpreting the provisions in this part, § 6801.102 sets forth a proposed definition of the terms ''affiliate,'' ''debt or equity interest,'' ''dependent child,'' ''depository institution,'' ''employee'' and ''primary government securities dealer'' and ''supervisory employee.''

Proposed § 6801.102 would include as an *affiliate* companies that control, are controlled by, or are under common control with, a depository institution. This definition was taken from the Bank Holding Company Act of 1956 and is intended to include any holding companies, subsidiaries or other affiliated companies of depository institutions.

The term *debt or equity interest* as proposed would include ''secured and unsecured bonds, debentures, notes, securitized assets, commercial paper, and preferred and common stock.'' It would extend to any right to acquire or dispose of any such debt or equity interest and to beneficial or legal interests derived from a trust. The proposed term does not, however, include deposit accounts, future interests created by someone other than the employee or the employee's spouse or dependent, or any right as a beneficiary of an estate that has not been settled.

The term *dependent child* is to be given the same meaning as in OGE's financial disclosure regulation at 5 CFR 2635.105(d).

The term *depository institution* is defined in proposed § 6801.102 as any institution that accepts deposits. This would include thrifts and foreign banks.

The term *employee* would include all Board employees, including Board members, but would not include special Government employees.

The term *primary government securities dealer* as proposed is defined as a firm with which the Federal Reserve conducts its open market operations.

The term *supervisory employee* would encompass Board members, all professional staff in the Division of Banking Supervision and Regulation, and professional staff in other divisions who participate substantially in supervisory matters involving depository institutions.

Section 6801.103 Prohibited Financial Interests

Section 6801.103(a) as proposed would prohibit a Board employee, and the spouse and minor child of a Board employee, from owning or controlling any debt or equity interest in a depository institution or its affiliates or of a primary government securities dealer or its affiliates. Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the holding of a financial interest by its employees and the spouses and minor children of those employees based on the agency's determination that the acquisition or holding of such financial interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. The Board has determined that, in light of the Board's sensitive bank regulatory and monetary policy functions, the restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the Board executes its regulatory and monetary policy functions; (2) eliminate any concern that sensitive information provided to the Board might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might result in the Board's inability to fulfill its mission.

The Board's current rule prohibits employees from holding equity interests in banks or their affiliates. 12 CFR 264.735–6(d). This rule does not apply to debt interests in banks, such as bonds, or to equity interests in thrifts. The proposed prohibition in § 6801.103(a) would extend to debt and equity interests in all depository institutions regardless of whether the depository institution is regulated by the Board. The Board believes that this is appropriate in light of the Board's broad regulatory and supervisory authority. For example, the Board is responsible for setting reserve requirements for all depository institutions, and the Federal Reserve System provides liquidity to all depository institutions through the discount window. In connection with a discount window advance, the Board is authorized to examine any depository institution.

The Board's current rule also prohibits employees from holding equity interests in government securities dealers. 12 CFR 264.735–6(d). The proposed rule would clarify and expand this prohibition by extending to debt and equity interests in primary government securities dealers and their affiliates. The Federal Reserve conducts business with primary government securities dealers, which in turn are expected to facilitate the Federal Reserve's open market operations and to provide the Federal Reserve with information to assist it in performing its duties. Primary government securities dealers are required to submit reports reflecting their activities to the Federal Reserve on a regular basis, and must meet qualification requirements of the System and the Treasury Department

The proposed prohibition in § 6801.103(a) would apply to the spouse and minor children of a Board employee. In the past, spouses and minor children of Board employees have not been subject to the Board's rule on prohibited financial interests. As a result, there has been a need to disqualify employees from official matters in order to avoid violations of the criminal laws (18 U.S.C. 208) and in order to maintain public confidence in the objectivity and impartiality with which Board programs are carried out. Under 5 CFR 2635.403(a), any restriction on the holdings of financial interests by the spouses or minor children of agency employees must be based on the agency's determination that there is a direct and appropriate nexus between the restriction as applied to spouses and minor children and the efficiency of the service. Based on the experiences outlined above, and in order to avoid the potential appearance that an employee's spouse could trade on information obtained through the employee's position with the Board, the Board has determined that such a nexus exists.

Section 6801.103(b) as proposed would provide several exceptions to the proposed prohibition in § 6801.103(a) on financial interests. The proposed exceptions are intended to ease the restrictions on the financial interests of Board employees, their spouses and minor children, and to permit interests of a character unlikely to raise questions regarding the objective or impartial performance of Board employees' official duties or the possible misuse of their positions. The exception proposed for nonbanking holding companies would permit an employee to own stock in an automobile manufacturer or a retail company, for example, that owned a credit card bank or other depository institution, provided the company's principal line of business was not banking. The next two proposed exceptions would permit employees to own interests in depository institutions indirectly through investments in a publicly traded or available mutual fund (so long as it does not have a stated policy of concentrating in the financial services industry), or in a widely held, diversified pension plan.

Section 6801.103(c) of the proposed rule would authorize the Board's Designated Agency Ethics Official (DAEO), in consultation with Division