



W. L. GORE & ASSOCIATES, INC.

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Via E-Mail

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Subject: Definition of Fiduciaries Proposed Rules

W. L. Gore & Associates, Inc., is a privately held enterprise known for its innovative products such as GORE-TEX® fabrics and its forward-looking participative corporate culture valuing the initiative and integrity of our people. Since 1974 the people employed by our company in the United States have participated in an ESOP, which had 6,229 participants as of the end of our last plan year (March 31, 2010). This is the W. L. Gore & Associates, Inc., Associate Stock Ownership Plan, or ASOP. I am the chairperson of the plan fiduciary, the ASOP Committee.

We ask that the Department of Labor reconsider this regulatory initiative and, if it is to be continued, redirect its energy towards rulemaking that could, helpfully, address the principal issue pointed out in the proposed rule's preamble and completion of the task begun in 1988 of a set of appraisal guidelines that would be helpful to the actual plan fiduciaries in judging whether we are getting qualified advice from our non-fiduciary service providers, the appraisal professionals.

From our contacts with the professional community that serves ESOPs, the ASOP Committee has learned that the proposed regulation expanding the definition of "fiduciary" will add cost and risk of new legal uncertainties to our operation of the ASOP and reduce the pool of skilled appraisal professionals to whom we can turn to for help in determining the fair market value of the common stock of our privately held enterprise. We are aware that DOL is receiving comments on this regulation from those professionals. Our comment is the request to you of an actual plan fiduciary of a mature, successful ESOP for a change in course.

The influence of both the Department of Labor and the U.S. Internal Revenue Service on plan fiduciaries in determination of whether we are meeting our fiduciary duties is crucial. Explicit and implicit regulatory guidance, case law, and professional literature guides us in this effort. We make use of, for example, IRS Revenue Ruling 59-60, and the Department of Labor's "Proposed Regulation Relating to the Definition of Adequate Consideration" (53 FR 17632, May 17, 1988), as well as the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation (www.uspap.org) (ISBN 978-0-9798 728-3-9). We also study the literature on this topic published by the National Center for Employee Ownership and the ESOP Association. The professionals on our plan's appraisal team have professional qualifications such as Chartered Financial Analyst and American Society of Appraisers certification, as well as many years of experience in the appraisal of the value of privately held companies. They have no relationship with our business enterprise except for their engagement by the ASOP Committee for the appraisal work.

Our request is that the Department of Labor redirect its effort to the completion of the work begun with the 1988 Proposed Regulation Relating to the Definition of Adequate Consideration and help both we fiduciaries and the plan participants we serve by giving us clearer regulatory guidance on the requirements for a qualified appraisal. This course of action could directly address both the Department's concern for improperly conducted or incompetent appraisals and for conflicts of interest. It is very important that this work be coordinated with the IRS so that plan fiduciaries are not subjected to inconsistent or conflicting regulatory requirements.

There are many legal and practical issues with the newly proposed definition of fiduciary that rare being addressed by for example the National Center for Employee Ownership. We second their comments, but wish to focus our own only on this request for reconsideration and redirection.

Thank you for your attention.

JWB/tbm