

## **Fiduciary Standard Debate:**

### **Department of Labor Proposal, Testimony, and Plan Sponsor Considerations**

#### *Introduction*

There is significant debate about proposed Department of Labor (DOL) and Securities Exchange Commission (SEC) regulations concerning fiduciary standards. This debate will likely have a meaningful impact on plan sponsors. In this white paper we are attempting to help clarify this debate including:

- Pros and cons of a fiduciary standard
- Potential benefits to an employer
- Potential benefits to employees
- Practical ramifications including implementation and cost

#### *Part I – Background Information*

ERISA says a person is a fiduciary if he or she renders advice for a fee or other compensation, direct or indirect, with respect to any monies or any other property of a retirement plan. However, in 1975 the DOL adopted a regulation that severely cut back the application of ERISA's statutory definition of fiduciary by creating a rigid five-part test.

- A fiduciary must render advice as to the value of property or make investment recommendations.
- They must do this on a regular basis.
- They must do this pursuant to a mutual understanding.
- The advice will serve as the primary basis for investment decisions.
- They will render individualized advice to the plan based on the particular needs of the plan.

If the financial professional fails to meet any one of these criteria, they are not currently a fiduciary. Since that time there has been a seismic shift from defined benefit retirement plans where a financially sophisticated plan sponsor made most of the investment decisions to defined contribution plans where participants have significant influence over their own outcomes (401(k) plans were created in 1978 – after the fiduciary tests were established). Investment options have greatly increased in the last 35 years along with becoming far more complex.

The Employee Benefits Security Administration (EBSA) is evaluating what it means to be a “fiduciary” in today's retirement plan environment and has proposed significant changes that could have meaningful impacts on large plan sponsors. The newly proposed standard has the potential to greatly expand the definition of “fiduciary” as it relates to employer provided retirement plans. The following EBSA fact sheet summarizes some of the proposed changes: <http://www.dol.gov/ebsa/newsroom/fsfiduciary.html>

EBSA recently extended the comment period for parties to make their argument for or against the proposed fiduciary standard. The EBSA hopes to issue final regulations before year end.

There are three separate elements of the fiduciary debate being considered by the EBSA and the Department of Labor (DOL):

- Plan design and administration - including fund selection, plan fees, or record keeping
- Participant services including education and advice
- IRA rules

We will not spend much time on the aspect of fiduciary status associated with plan design and administration - these are activities with a thriving consulting community serving large plan sponsors in evaluating their options. Most of this e-mail series will focus on those services offered to the plan participants directly. Unlike most large plan sponsors, plan participants are individuals who may not have access to professional advice (whether cost prohibitive or not sure where to go in a complicated marketplace) and are rarely considered sophisticated investors.

#### *Part II – Context of Fiduciary Standard Debate*

To this point there has been a clear distinction in plan participants receiving general education and “guidance” as compared to individualized advice and recommendations. Department of Labor Bulletin 96-1 set out which education and guidance activities were not considered a “fiduciary” activity. Plan vendors used these guidelines to offer mainly generic education and plan information – often delivered primarily through call centers and/or online resources. However, it appears the DOL is concerned plan participants do not always understand the difference between plan guidance and advice and acknowledge many plan participants are asking what they should do rather than asking for generic plan information. The current system often leaves the plan participant confused which then leads to potentially poor decisions or procrastination resulting in less than optimal outcomes.

The newly proposed regulations have the potential for plan vendors to become fiduciaries even through call centers giving mainly ministerial information rather than advice. Large plan vendors such as JP Morgan and Fidelity have expressed concern if call center activities have the potential to become considered fiduciary investment advice, it will be difficult and potentially cost prohibitive to get participants the information they need to make informed decisions. In 1993 the Supreme Court decided plan participants were not entitled to legal relief against a non-fiduciary even if the non-fiduciary helped assist a fiduciary in committing a breach of duty. Expanding the meaning of the word “fiduciary” in relation to plan vendors raises concerns in this context especially with regard to cross-selling activities that may contain conflict of interest. The main plan vendor concerns appear to be increased liability for plan vendors, higher costs to plan sponsors, and less information available to plan participants as a result of the newly proposed regulations.

The DOL understands plan participants are now far more responsible for their own financial outcomes through the shift toward defined contribution plans in recent decades. The DOL concern appears to be

helping plan participants get the resources they need to make prudent, informed decisions while protecting plan participants from receiving potentially poor or conflicted advice. Many plan participants do not have access to outside professional advice (whether cost prohibitive or not sure where to go in a complicated marketplace) and they rely almost entirely on their employer and/or plan vendor for guidance.

The DOL appears intent on trying to remove as much conflict as possible from employee participants receiving information and advice about their company sponsored retirement plan. In DOL IB 96-1:

*“At the same time there has been increasing concern on the part of the Department, employers, and others that many participants may not have a sufficient understanding of investment principles and strategies to make their own informed investment decisions.”*

This is why the term “fiduciary” becomes so important and why the DOL is proposing to expand the meaning. An employer offering an ERISA plan is already a fiduciary to their employee participants and has a legal responsibility for the investments and services offered through that plan OR for those services not offered by the plan. Clearly the DOL is attempting to reform the current system where education and information is often offered by non-fiduciaries. The DOL appears to be making an attempt to move toward objective, actionable advice from fiduciaries working in the best interest of plan participants.

For many large employers the plan provider is the most convenient and least expensive option available for offering participants direction on their retirement plans. However, the plan providers may not be well equipped to serve in a fiduciary capacity for a number of reasons:

- Plan services are often offered through call centers where oversight of each representative is burdensome. Quality control over participant advice is potentially challenging.
- Plan services tend to be generic in nature while fiduciary advice needs to take into account specific circumstances of each participant.
- Plan services may be conflicted in nature (may be particularly true of mutual fund plan providers). ERISA strictly prohibits plan providers from giving advice on their own investment options.

The plan vendors have expressed significant concerns about the newly proposed rules. One of the responses to the fiduciary issue is simply adding more disclosures and disclaimers. The reasoning is if a plan vendor discloses their advice may not be in the best interest of the participant and/or is potentially conflicted in nature, the disclosure paves the way for that advice to be given. The problem here is participants may not always read or understand the nature of the disclosure. Do all participants realize how a potential conflict may be impacting the advice they are receiving? Disclosures and disclaimers alone do not seem to address the DOL concerns or their goal of providing plan participants with the tools they need to make informed, reasonable retirement plan decisions.

If plan sponsors or providers are unable to address the issue through more disclosures and disclaimers, then additional concerns are raised:

- The new rules could result in increased litigation and plan sponsors and vendors taking on potentially greater liability. Legal relief is available for a fiduciary breach of duty, but not in the case of non-fiduciary activities.
- Retirement plan costs will increase.

As a result, plan participants will have *less* access to communication, education, and information.

### *Part III – Liability Considerations*

EBSA received testimony and comment letters from plan vendor representatives expressing concern about increased litigation and greater liability if the proposed fiduciary standards were implemented. It is important to distinguish between greater liabilities for plan vendors as compared to liability for the plan sponsor (employer).

Plan vendors currently offer much of their information and guidance to plan participants through call centers and online resources. As the plan vendors have pointed out, it would be difficult for this delivery model to comply with fiduciary standards which require each person in the call center to become personally familiar with each caller and give advice appropriate for that individual. The oversight burden would be significant to make sure each call center representative is giving appropriate and consistent advice. Distinguishing between education and advice would be nearly impossible. Costs would increase and the potential for litigation would likely increase as well.

Keep in mind the Supreme Court ruling that plan participants could seek legal relief against a fiduciary, but legal relief is unavailable against a non-fiduciary. If the plan vendor seeks to remain non-fiduciary in the relationship, then the employer plan sponsor remains the only fiduciary and would be potentially liable for poor retirement outcomes due to a breach of duty. ERISA establishes the employer offering a participant directed retirement plan must prudently operate their plan to achieve successful retirement benefits. Simply offering appropriate investment options through a savings and investing vehicle is not enough if the participants are consistently making imprudent decisions leading to poor outcomes.

The DOL attempted to address this issue by encouraging greater education and information to plan participants through IB 96-1. It was generally believed education and information would be enough for plan participants to make well-informed, prudent decisions. The focus of IB 96-1 was to encourage greater education by providing clarification of what constitutes education as compared to advice. An employer plan sponsor and the plan vendor were able to provide education and information without worrying about being liable for giving fiduciary advice.

Unfortunately academic studies have indicated education and information are not enough for many employees which is leading the DOL to seek greater access to personal advice as compared to generic education. The DOL has acknowledged many plan participants want to know *what* they should be doing and *how* they should do it rather than *why*. The DOL acknowledges increasing complexity and a general unwillingness of plan participants to take the time and effort to become better informed investors. Adding more disclosures and disclaimers of potential conflict or specifically avoiding liability through

education as compared to advice does not solve the problem or eliminate the liability associated with poor outcomes when participants make imprudent investing decisions.

However, many plan sponsors have been hesitant to offer personalized advice solutions. Legal counsel might suggest offering advice could increase liability to the plan sponsor if the advice leads to poor outcomes. This makes sense, but only if one begins with the assumption advice solutions give imprudent advice. The issue here is one of perspective. If one begins with the assumption advice solutions give prudent advice, the natural conclusion is offering advice *decreases* liability. A change of perspective changes the debate because the plan sponsor can address their fiduciary duties by providing prudent advice solutions and reduce liability in the process. If an employer plan sponsor is aware many of their employees are not making prudent investment decisions and the plan sponsor is aware advice solutions exist that could help improve outcomes, the failure to consider those advice solutions could constitute a fiduciary breach of duty. Ignoring the problem carries risk.

Whether or not the proposed fiduciary rules are implemented, it is clear from the nature of the discussion the DOL is pushing to improve retirement benefit outcomes for more plan participants. Plan sponsors will need to consider the debate regardless of the outcome and will need to decide if providing advice solutions is appropriate based on cost, quality of advice, and accessibility by participants.

#### *Part IV – How to select appropriate advice solutions with the potential to reduce plan sponsor liability?*

Plan sponsors are fiduciaries with regard to the plan investment options and services they offer or choose NOT to offer. As independent options for providing participant advice continue to grow and expand, plan sponsors will come under greater scrutiny whether they are attempting to provide prudent advice necessary for employee plan participants to make informed investment and planning decisions. A lack of action in evaluating advice options could be considered a breach of fiduciary responsibility.

The consideration of advice alternatives must be in the best interests of the plan participants, must have reasonable expenses, and must comply with ERISA's "prudent man rule": *a fiduciary shall discharge his duties with respect to a plan "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."* This basically means plan sponsors need to prudently consider any advice alternatives that could be in the best interests of their plan participants based on a reasonable assessment of the investment capabilities of those participants. The DOL, academic studies, and many plan sponsors seem to agree those investment and planning capabilities are generally not very strong.

Plan sponsors should carefully consider many factors when evaluating whether they should offer fiduciary advice to plan participants – in the context of reducing plan sponsor fiduciary liability:

- *What is the context of "advice?"* – In recent years there has been an emergence of independent advice alternatives with regard to investment management products and services. Companies such as Financial Engines, GuidedChoice, Morningstar, and ProManage are all competing to help plan participants manage their retirement plan assets. These solutions offer differing levels of

customization and personalization, but are primarily focused on prudent investment management and monitoring through computer modeling. Investment management is often inaccurately conflated with retirement planning or financial planning which is generally more comprehensive in nature and involves much greater participant interaction and engagement. Some advice providers are focused on more personalized interaction including face-to-face meetings that might cover much more than retirement plan investment options.

- *How is the advice provider compensated for their services?* – Whether fees are paid by the plan sponsor, plan participants, or some combination, the fees should be transparent. Advice solutions that participate in revenue sharing with plan vendors should be carefully considered for transparency and if they are reasonable. Plan vendors are often the least expensive source of plan advice, but concerns might be raised about the objectivity of potentially conflicted advice which may increase liability.
- *Are the fees reasonable when compared to the potential value of the advice?* – Some of the computer modeling independent advice solutions might be similar in look and feel to lower cost target retirement investment options offered by a variety of mutual fund companies and plan vendors. The plan participant may not understand they are paying higher fees for investment management benefits they could realistically get at a lower cost.
- *Does the advice provider have a systematic approach to providing actionable participant advice?* – One of the main reasons for offering advice is to help participants feel confident and more knowledgeable about their investment and planning decisions in order to reduce procrastination. If the advice does not promote action, it is not going to be effective. Also, is the advice based on commonly accepted prudent investment and planning practices? Some generic online calculators and simplistic models might generate results that are not realistic for all participants.
- *How is the advice delivered?* – Investment management advice providers appear to be focused heavily on technology driven solutions rather than high-touch, face-to-face activities. Studies have indicated technology solutions such as computer models or internet advice do not work well for all employee participants.

The evaluation process should be carefully documented. If an advice solution is NOT offered, there should be documented reasons why the plan sponsor believed participants would not benefit from greater access to advice. If an advice solution IS offered, the plan sponsor should include documented goals for that advice so results can be periodically reviewed and monitored. It is also important to keep in mind offering independent advice is in addition to and should complement the non-fiduciary guidance and education that may be offered through other sources such as the plan vendor.

*Part V – What independent advice solutions are available, what do they cost, and what are their limitations?*

The DOL and academic studies have concluded retirement plan participants are not particularly well suited or prepared to manage the investments in their qualified plan. In recent years many independent investment management advice alternatives have evolved to address this issue. Companies such as Financial Engines, GuidedChoice, Morningstar, and ProManage are all competing to help plan participants manage their retirement plan assets. These solutions offer differing levels of customization and personalization, but are primarily focused on mass producing prudent investment management and monitoring through computer modeling.

It is often difficult to find comparative cost information for different investment management solutions making it challenging for plan sponsors to evaluate options. Costs for these services vary widely and are generally presented as either a percentage of assets being managed (such as 0.2%-0.5% of assets under management per year) or may be a fixed dollar amount per year (such as \$30-\$200 per plan participant per year). The additional expense can be paid by the employer, the participant, or some combination of the two. The added fees and expenses tend to be positioned as lower than individuals might be charged by wealth management firms outside of their employer.

While these services provide a valuable benefit in potentially improving investment allocations and ultimately risk adjusted returns for plan participants, it is questionable whether providing improved investment management alone is worth the additional cost. For example, in recent years the mutual fund industry has produced similar investment management concepts in the form of target date retirement funds. These all-in-one investment fund-of-funds options provide simple and convenient portfolios including automated diversification, rebalancing, and professional money management – many of the same benefits promoted by independent investment management advice providers, but usually without the added fees and expenses. This means plan sponsors have a lot of options for providing their plan participants with useful investment management tools that could help reduce liability and improve plan participant investment outcomes long term.

However, investment management advice and/or automated professional investment management still does not address some of the main underlying issues being raised by the DOL in their desire to implement newly proposed fiduciary standards. In 2007 the EBSA hosted a Working Group on Financial Literacy of Plan Participants (<http://www.dol.gov/ebsa/publications/AC-1107a.html>). The following are a sample of comments from testimony before the working group:

*“In an ideal world, financial literacy could be customized to each plan participant’s learning needs and desires. However, such an interaction would be so time consuming, costly and resource intensive as to border on impossible.”*

*“Third party education via the internet is not being widely used. People want one-on-one help from a person who they can trust. Employees generally do not have the confidence to implement advice provided to them via on-line tools.”*

*“Clearly, the one on one approach is the most expensive but also the most effective because it allows the interaction that people often desire.”*

*“Research shows that people have preferences for receiving retirement planning advice, including from their employer either in one-on-one meetings or in group settings. Of those that express a preference for one specific source, less wealthy retirees and pre-retirees report a preference for advice and planning assistance from their employer. Some retirees will need to consult with trained financial professionals for specific questions and guidance.”*

Investment management is *not* retirement planning or financial planning and generic financial education clearly does not work for many plan participants. In order to engage plan participants in better understanding how their employer sponsored plan ultimately helps achieve their personal goals, most employees would require one-on-one fiduciary advice based on their unique situation. Based on testimony from the EBSA working group, a plan sponsor fiduciary best practice would be to offer employee plan participants generic financial education (most large plans are already doing this), cost effective independent investment management options (many large plans do this), AND access to personalized financial advice based on their unique situation (very few large plans currently do this).

#### *Part VI – Benefits of implementing best practice fiduciary advice to retirement plan participants*

It is clear from EBSA testimony and comments from DOL regulators that a best practice fiduciary advice program would go far beyond generic financial education and should include access to independent advice. It is also clear if this independent advice is to be useful for all plan participants, there should be an option for one-on-one interaction between the advice provider and the plan participant. Revisiting testimony before the EBSA referenced in our last e-mail:

*“In an ideal world, financial literacy could be customized to each plan participant’s learning needs and desires. However, such an interaction would be so time consuming, costly and resource intensive as to border on impossible.”*

Based on our experience and research, providing independent, objective advice to plan participants does not have to be costly and certainly is not impossible. We believe access to customized fiduciary advisory programs designed specifically for each unique employer situation will become more common in the future and large plan sponsors will have to seriously consider these options as part of their fiduciary duties. It is time consuming to offer independent advice including one-on-one personalized interaction with plan participants, but there are significant tangible and intangible benefits to be achieved by offering a fiduciary advisory program – both to plan participants and to the plan sponsor.

Employee plan participants often struggle in their role of managing their employer retirement plans to achieve personal financial planning goals. Some of the following reasons have been identified:

- *Lack of knowledge leading to uncertainty* – This was the primary reason the DOL focused heavily on improving participant education in employer sponsored plans. However, it was determined

financial education alone does not reach many plan participants. Lack of knowledge and uncertainty can lead to feeling overwhelmed and ultimately to procrastination.

- *Lack of trust* – Many plan participants have feelings of distrust when it comes to making financial decisions. Plan participants are confused where to turn for information and advice they can trust in making informed financial decisions.
- *Fear* – When plan participants feel they are lacking knowledge and also feel distrustful, they naturally have a tendency to fear the future. Fear can lead to inaction and apathy with regard to retirement planning.

According to a June 2007 survey by the Spectrum Group, 85% of employees want professional investment advice through work and yet very few plan sponsors offer these services. In an April 2011 white paper from Financial Engines ([http://corp.financialengines.com/employer/Accidental\\_Investor\\_April2011.pdf](http://corp.financialengines.com/employer/Accidental_Investor_April2011.pdf)), they determined participants with feelings of uncertainty and fear had a greater desire for personal advice:

*“In analyzing how participants expressed a need for an advisor, we saw that many wanted an advisor to help them identify the right solution or strategy. Some participants just wanted someone to tell them what to do. “If I feel like they are professionals, then I’m going for it,” said Sue, age 61. “I just need some professional guidance... I feel very lost out there.” Larry, age 62, expressed a similar desire: “I don’t know what I’m doing and I’d love to have someone do it for me. I know it has to be done, I just haven’t done it.” Given many people’s lack of confidence with financial planning and the importance of the decisions involved, it is not surprising that many won’t act until they can talk to someone knowledgeable. For example, Percy, age 62, said, “If I can’t talk to anyone, I won’t do anything.”*

They also determined plan sponsor evaluation of advice providers was a valued benefit to employee plan participants:

*“Plan sponsors are in a unique position to provide access to professional retirement help. In a world where it is difficult to know whom to trust, participants said that their employer’s decision to select a retirement help provider was meaningful and could help them find providers they could trust.”*

*“Knowing that their employer had vetted a service could help participants get more comfortable trusting an advisor...Participants seemed to recognize that sponsor evaluation was not necessarily a full-fledged endorsement, but they were looking for assurance that they would not be taken advantage of. For example, Michael age 61, said, “It (sponsor evaluation) doesn’t suggest that it is the best thing, but at least you can be sure it won’t be a bad thing.”*

One might logically assume the most significant benefits of an employer sponsored fiduciary advice program would accrue to the plan participants. However, in our opinion, it is the plan sponsor employers who have the most to gain:

- Potential to reduce fiduciary liability associated with obligations as an ERISA plan sponsor – Plan sponsors must act in the best interest of plan participants and monitor the success of the plan in

regard to retirement outcomes. Providing access to independent advice is an obvious attempt to improve plan outcomes for employees.

- Human Resources and Benefits personnel likely receive financial questions from employees on a daily basis. Many of these questions involve financial issues the HR and Benefits people are not well suited to answer. Offering an independent source of financial advice to complement HR and Benefits has the potential to save time and alleviate frustration.
- Helps differentiate employer benefits packages from competitors with regard to recruitment and retention of quality workers – Studies indicate independent financial education and advice programs offer a low cost, but highly appreciated benefit that is often associated with executive level “perks.”
- Potential to increase participation rates and participant contributions – Access to specific advice and instructions can help reduce procrastination based on a lack of knowledge and uncertainty.

### *Fiduciary Debate Conclusions*

The Employee Benefits Security Administration (EBSA) is evaluating what it means to be a “fiduciary” in today’s retirement plan environment and has proposed significant changes that could have meaningful impacts on large plan sponsors. The newly proposed standard has the potential to greatly expand the definition of “fiduciary” as it relates to employer provided retirement plans. EBSA hopes to issue final regulations before year end.

The Department of Labor (DOL) understands plan participants are now far more responsible for their own financial outcomes through the shift toward defined contribution plans in recent decades. The DOL concern appears to be helping plan participants get the resources they need to make prudent, informed decisions while protecting plan participants from receiving potentially poor or conflicted advice. Clearly the DOL is attempting to reform the current system where education and information is often offered by non-fiduciaries. The DOL appears to be making an attempt to move toward objective, actionable advice from fiduciaries working in the best interest of plan participants.

Many plan sponsors have been hesitant to offer personalized advice solutions in part because legal counsel might suggest offering advice could increase liability if the advice leads to poor outcomes. This makes sense if one begins with the assumption advice solutions give imprudent advice. The issue here is one of perspective. If one begins with the assumption advice solutions give prudent advice, the natural conclusion is offering advice *decreases* liability. A change of perspective changes the debate because the plan sponsor can address their fiduciary duties by providing prudent advice solutions and reduce liability in the process. If an employer plan sponsor is aware many of their employees are not making prudent investment decisions and the plan sponsor is aware advice solutions exist that could help improve outcomes, the failure to consider those advice solutions could constitute a fiduciary breach of duty. Ignoring the problem carries risk. Whether or not the proposed fiduciary rules are implemented, it is clear from the nature of the discussion the DOL is pushing to improve retirement benefit outcomes for more plan participants. Plan sponsors will need to consider the debate regardless of the outcome and

will need to decide if providing advice solutions is appropriate based on cost, quality of advice, and accessibility by participants.

Plan sponsors should carefully consider many factors when evaluating whether they should offer fiduciary advice to plan participants – in the context of reducing plan sponsor fiduciary liability and improving retirement plan outcomes:

- What is the context of “advice?”
- How is the advice provider compensated for their services?
- Are the fees reasonable when compared to the potential value of the advice?
- Does the advice provider have a systematic approach to providing actionable participant advice?
- How is the advice delivered?

The evaluation process should be carefully documented. If an advice solution is NOT offered, there should be documented reasons why the plan sponsor believed participants would not benefit from greater access to advice. If an advice solution IS offered, the plan sponsor should include documented goals for that advice so results can be periodically reviewed and monitored.

In order to engage plan participants in better understanding how their employer sponsored plan ultimately helps achieve their personal goals, most employees would require one-on-one fiduciary advice based on their unique situation. Based on testimony from the EBSA working group, a plan sponsor fiduciary best practice would be to offer employee plan participants generic financial education (most large plans are already doing this), cost effective independent investment management options (many large plans do this), AND access to personalized financial advice based on their unique situation (very few large plans currently do this).

Based on our experience and research, providing independent, objective advice to plan participants does not have to be costly and certainly is not impossible. We believe access to customized fiduciary advisory programs designed specifically for each unique employer situation will become more common in the future and large plan sponsors will have to seriously consider these options as part of their fiduciary duties.

One might logically assume the most significant benefits of an employer sponsored fiduciary advice program would accrue to the plan participants. However, in our opinion, it is the plan sponsor employers who have the most to gain:

- Potential to reduce fiduciary liability associated with obligations as an ERISA plan sponsor – Providing access to independent advice is an obvious attempt to improve plan outcomes for employees.
- Human Resources and Benefits personnel likely receive financial questions from employees on a daily basis. Many of these questions involve financial issues the HR and Benefits people are not well suited to answer. Offering an independent source of financial advice to complement HR and Benefits has the potential to save time and alleviate frustration.

- Helps differentiate employer benefits packages from competitors with regard to recruitment and retention of quality workers – Studies indicate independent financial advice programs offer a low cost, but highly appreciated benefit.
- Potential to increase participation rates and participant contributions – Access to specific advice and instructions can help reduce procrastination based on a lack of knowledge and uncertainty.

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