



Frequently asked questions

The CARES Act represents a giant booster shot into the American economy. Its less of a stimulus bill than a bridge loan to the American economy. This 800-page, \$2 Trillion-dollar bill stands as the single most significant governmental act to support individuals and businesses in our nation's history. Though impossible to analyze every pertinent section, this FAQ breaks down the provisions most likely to impact the average taxpayer. For ease of reading, it's separated into individual, business and retirement sections. This is a new law, Federal Agencies such as the IRS, DOL, SBA, will be interpreting this new law and responding with guidance and regulations, you should seek advice of counsel with respect to these issues.

Individual

## **Recovery rebates**

# Are all taxpayers supposed to receive recovery rebate checks? What amounts can a taxpayer expect?

Not all taxpayers but quite a few will be eligible for a rebate. The CARES Act provides rebates of up to \$1,200 for an individual (\$2,400 for married filing jointly). Individuals earning up to \$75,000 (married filing jointly \$150,000) are eligible for the rebates. There is a phaseout of 5% over these thresholds of adjusted growth income. In addition, the Act grants \$500 per child under the age of 17. The rebates will be advanced based on the taxpayers 2019 OR 2018 tax return. If the 2019 tax return has not been filed, the IRS will use the adjusted gross income (AGI) filed with the 2018 return.

*For example:* James Weber is an unmarried mechanic making an AGI of \$75,000 per his 2018 tax return. James' income is right at the income cutoff and so he is entitled to the full \$1,200 recovery rebate. If James earns less than \$99,000, (the beginning of the phase-out range for a single individual) he is entitled to a recovery rebate, but at a reduced amount. If James is married and filing jointly, and the couple has no other income, he and his spouse are now entitled to a \$2,400 recovery rebate. In this scenario, the rebate is fully phased out, or not eligible to receive one, if the couple makes more than \$198,000.

### Income tax payment extensions

#### Who is affected by the IRS notice to postpone taxpayers' tax filing deadline?

Although not included in the CARES Act, the Treasury Secretary has determined that any "person" with a Federal income tax payment or a Federal income tax return due on April 15, 2020 is affected by a nationwide federal disaster declaration. The term "person" includes an individual, trust, estate, partnership, association, company or corporation. The new tax filing and payment deadline is now July 15, 2020. This includes payments of self-employment tax and estimated tax payments that were normally due on April 15, 2020.

*For example:* Barry and Iris are married and file as married filing jointly. They file their tax return for 2019 on July 1<sub>st</sub>, 2020 and owe \$500. They will be considered to have filed and paid on time. There will not be penalties or interest for filing and paying on or before July 15.

In addition, Iris runs a small business and makes quarterly estimated tax payments. Her payment for the first quarter of 2020 is normally due on April 15, 2020. With the new guidance from the IRS, this payment is now due on July 15, 2020.

Acme Widgets is a C corporation. It files its corporate income tax return for 2019 on July 10th, 2020 and pays what it owes to the IRS on that date. Acme is not subject to penalties or interest for filing on July 10 as opposed to filing by April 15.

#### Telehealth remote visits

#### I heard that the CARES Act will affect my HSA and FSA. Is that true?

Yes. The CARES Act rolls back one of the provisions of the Affordable Care Act that made over-thecounter drugs *ineligible* FSA and HSA expenses. OTC drugs are now FSA and HSA *eligible*, retroactive to 1/1/2020. Virtual doctor visits will also be considered HSA eligible expenses for 2020 and 2021 with no deductible requirement.

*For example:* Jill isn't feeling well but she doesn't want to go out in public. Jill can schedule a virtual doctor visit and use her HSA to cover the \$40 fee. Thankfully, the doctor thinks it's just allergies and suggests that Jill buys over the counter

allergy and anti-inflammatory medications. Jill went online and ordered both medicines from her local grocery store, paid for them with her HSA (or FSA) card, and used the convenient grocery store pickup line instead of shopping inside the store.

### Charitable deductions

# Are taxpayers who do not itemize their deductions able to take a deduction for charitable contributions made in 2020?

Yes. For taxpayers who take the standard deduction and therefore do not itemize deductions for their 2020 tax year, up to \$300 of charitable contributions may be deducted "above the line." Note that contributions to donor advised funds and certain organizations that support charities do not qualify for this deduction.

*For example:* With the increased standard deductions in the 2017 Tax Cuts and Jobs Act, Eric has stopped making charitable contributions. However, now because of the CARES Act, Eric decides to contribute \$300 to his local zoo, a qualified charity. Eric can deduct this \$300 off his income even though he also takes the standard deduction for 2020.

# Were taxpayers who do itemize deductions given additional incentives to make contributions to charities?

Yes. The CARES Act increased the limit on deductions from cash contributions made to charities in 2020 from 60% of the taxpayer's AGI to 100% of AGI. Contributions in excess of this 100% limit may be carried forward to future years.

*For example:* Stan has an AGI of \$200,000 in 2020. Because of his financial situation he's able to give even more than \$200,000 to various charities and still feel financially secure. Because of the increased deduction limit, Stan deducts \$200,000 in 2020 and as a result has zero taxable income. If he made contributions in excess of \$200,000, he could carry those over to future tax years. This decreased taxable income could lead to other financial planning strategies such as engaging in a Roth conversion and using a charitable contribution to offset the income from the Roth conversion.

### Student Loan Repayment Extenders

#### How does the CARES Act provide relief to student loan borrowers?

The CARES Act suspends monthly payments for most student loan borrowers who are making payments on their loans from March 13 through September 30, 2020. The Act also reduces student loan interest to zero percent from March 13, to September 30, 2020.

*For example:* David is making payments on a student loan that is covered by the CARES Act. Because of COVID-19, he has not been able to work in his profession due his employer closing. He is not required to make payments on his student loan until September 30, 2020. In addition, no interest will accrue on those loans through September 30.

**Does this suspension of payments and interest apply to all student loan borrowers?** Perkins loans and commercially owned student loans are not covered by the suspension provisions. The Secretary of Education is to notify student loan borrowers if covered.

*For example:* Continuing from the previous example, David is also making payments on a Perkins loan, where the payments are made to the school that he attended. That loan is not covered by the CARES Act, so payments are still required.

**How are student loan payments that are made by employers treated under the CARES Act?** Employer payments of up to \$5,250 toward an employee's student loans that are made between March 27 and December 31, 2020 are not included in the employee's income for federal income tax purposes.

*For example:* Carl goes to work for an employer on April 1, 2020. As part of Carl's compensation package, his employer agrees to make payments on his student loans in the amount of \$5,250 before the end of 2020. These payments are not included in Carl's income for 2020.

If you have additional questions about how the CARES Act effects individuals, please contact AIC customer service at 800-335-9858, option 2, 2 or Ameritas advanced markets at 800-319-6903, option 2.

# **Business**

### Employee sick leave provisions

# Which employers are subject to the paid leave provisions of the Families First Coronavirus Responses Act (FFCRA, as amended by the CARES Act)?

Most private employers with fewer than 500 combined (full- and part-time employees) are subject to the provisions in the CARES Act. The number of employees is determined at the time the leave is taken.

*For example:* Acme Widget company has employees who have children they must care for while school is not in session due to the COVID-19 situation. At the time, Acme has 400 full-time employees and 150 part-time employees, for a total of 550 employees. Acme is not subject to the paid sick leave rules of the CARES Act. After a short period of time, 60 of the part-time employees resign to work in other industries. This leaves Acme with 490 full- and part-time employees. Acme is now subject to the sick leave rules of the CARES Act.

#### How do the sick leave provisions of the CARES Act work?

Under the CARES Act employers must provide up to 10 weeks paid family leave and 10 days of paid sick leave benefits to eligible employees affected by COVID-19. The 10 days of paid sick leave benefits are paid at the rate of either:

- 1. The employee's regular rate of pay, up to a maximum of \$511 per day; OR
- 2. Two-thirds of the employee's regular rate of pay, up to a maximum of \$200 per day.

Employees are compensated at the higher rate if they are out of work due to their own health condition and are compensated at the lower rate if they are out of work for any other qualifying reason.

Employees may take an additional 12 weeks of emergency family leave (the first two weeks of which are unpaid) to care for a child whose school or care center is closed due to COVID-19 and the employee is

unable to telecommute. The covered 10 weeks of paid leave are compensated at two-thirds of the employee's regular rate of pay, up to a maximum of \$200 per day.

Note that the paid family leave entitlement is part of the employee's Family and Medical Leave Act (FMLA) entitlement, not in addition to it.

*For example:* Continuing the example from above, Acme has 490 total employees (full-time and parttime). Because of the state requiring the shut-down of some businesses as non-essential, it must lay off or furlough 200 workers. Because these lay-offs were due to business conditions and not due to employee sickness or the need to care for family members, these layoffs are not covered by the sickleave rules of the CARES Act.

## Employer payroll provisions

# I've heard employers no longer have to pay their portion of payroll taxes under the CARES Act. How broad is this new provision and how does it work?

The CARES Act allows an employer to defer (not avoid) their share of the 6.2% Social Security Tax. An equivalent portion is also available for self-employment taxes. Keep in mind, the deferral only applies March 27th, 2020 through December 31st, 2020. The deferred amounts are payable in two installments, with 50% of such taxes due on December 31, 2021, and the remainder due on December 31, 2022. This deferral of Social Security taxes is not, however, allowed where the employer has had a covered loan forgiven, as discussed under the Forgivable SBA Loan Program. This deferment may be best looked upon as an interest free loan

*For example:* Jane Feldman, owner of Feldman Inc Consulting, has 5 employees. She recently heard about the payroll deferment provision of the CARES Act from her financial advisor. On May 1<sub>st</sub>, she can adjust her internal payroll procedure to terminate withholding of the 6.2% employer portion of her employee's wages for the remainder of the year. She continues to track this amount through 12-31-20 and determines this deferred withholding is equal to \$50,000. Jane must repay the IRS \$25,000 (50% of \$50,000) on 12-31-21 and \$25,000 on 12-31-22.

### Employee retention credits

What options does a business owner have if they want to retain their employees on the payroll? For an employer who desires to retain their employees for as long as possible, the Act provides an employee retention credit. Under the CARES Act, employers may be eligible for a refundable tax credit for the employer's share of the 6.2% Social Security tax (the "SSI Tax Credit"). The potential SSI Tax Credit is for 50% of the first \$10,000 in qualified wages (including health plan expenses) paid to each employee commencing on March 13, 2020. The bottom line: The employer's share of the 6.2% Social Security Tax will be refundable as a credit up to \$5,000 (50% of \$10,000).

To be eligible the employer must:

- 1. Have had operations fully or partially suspended because of a shut-down order from a governmental authority related to COVID-19 or;
- 2. Have had gross receipts decline by more than 50% in a calendar quarter when compared to the same quarter in 2019 and will remain eligible until the earlier of gross receipts exceeding 80% relative to the same quarter in the prior year, or December 31, 2020.

It important to note that the retention credit is not available for employers who receive a covered loan from the SBA like the Paycheck Protection Program.

### Net operating loss

# Can I now look back to the net operating losses from previous years to offset income that is otherwise taxable?

The Cares Act allows businesses (including passthroughs and sole proprietors) to carry losses back from the 2020, 2019 and 2018 tax years. In allowing losses to be carried back, businesses can amend past tax returns up to 5 years. This means that the amendment of tax returns could go back as far as 2013.

*For example:* Dr. James Weber, along with his dental practice, owns several rental properties in a separate LLC. The LLC had losses in 2018 that he was not able to take advantage at the time. After conferring with his accountant, Dr. Weber amends his 2016 return to gain immediate access to tax refunds that might otherwise be deferred.

### SBA loan provisions - Paycheck Protection Program

Several of my business owner friends have already applied for SBA loans under the new Paycheck Protection Program (PPP Loan). Their advisors have told them the maximum loan is the lesser of average payroll costs from the previous year multiplied by a factor of 2.5 or \$10 million. These average payroll costs must exclude salary of employees making over \$100,000.

They go on further to say 8 weeks of this loan amount are completely forgivable if the loan proceeds are spent on payroll costs, and things like mortgage payments, rent and insurance. Lastly, they say no more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll items. I'm getting lost in the legal jargon. Help!

This is an understandable reaction. However, when one sees how the math works, this becomes quickly manageable. The drafters of this legislation seek a strong grasp of your previous year's payroll to determine how much of the loan can be forgiven using this year's payroll and other operational expenses. It's important to note that unlike other forgivable loans, the CARES Act specifically exempts the forgiven loan amounts from income.

*For example:* George Ludwig, the sole owner of an S Corporation, employees 20 people. He has total payroll costs of \$1,432,000, which includes his own compensation of \$150,000. George would like to apply for a PPP loan and get a sense of what amount may be later forgiven. As the example at the end of this FAQ will demonstrate, George may be eligible to have just under \$288K forgiven as nontaxable income. The following chart shows the full details of how this works for George.

Payroll Costs:	2019	Monthly Average
2019 Wages, Salary, Commissions, Vacation,	\$1,300,000	\$108,333
Sick Pay		
Retirement Benefit Costs	\$48,000	\$4,000
Group Health Insurance	\$72,000	\$6,000
State & Local Taxes on all Employee	\$12,000	\$1,000
Compensation		
Reduce by portion of George's compensation	-\$50,000	\$4166
over \$100,000		
Total	\$1,382,000	\$115,167
		Multiply by 2.5
Maximum Loan Amount		\$287,943
		<b>\$287,943</b> * loan is forgivable over an 8-week period in 2020.**
		*Only covered payroll and operational costs may be forgiven
		**No more than \$\$71,986 of the forgiveness can be for non-payroll operational costs (\$287,943 X 25%)

## SBA loan provisions – Economic Injury Disaster Loan

#### I've heard there is another type of SBA loan available. Can you tell me more about it?

The CARES Act also creates a new grant program under the SBA's Office of Disaster Assistance to provide quick relief for applications awaiting processing of SBA Economic Injury Disaster Loans ("EIDL"). Loan applicants can get up to \$10,000 to cover immediate payroll, mortgage, rent and other specified expenses. This grant does not have to be repaid. A business that receives an EIDL can apply for, or refinance its EIDL into, the forgivable loan product. Further, lenders on existing SBA backed loans are encouraged to provide payment deferments and extend maturity dates to avoid balloon payments or requirements that would increase debt as a result of deferment. The SBA will pay lenders the deferred principal and interest for a period. The EIDL must be for different purposes than the PPP loan

*For example:* George applies for a PPP loan but quickly realizes he requires additional assistance to keep his business afloat, especially with his large payroll. He then applies for an EIDL loan of \$10,000 after authenticating to the SBA and lender the loan is for a different purpose.

If you have additional questions about how the CARES Act effects businesses, please contact AIC customer service at 800-335-9858, option 2, 2 or Ameritas advanced markets at 800-319-6903, option 2.

# **Retirement Plans**

Skipping Required Minimum Distributions (RMDs)

#### Does the CARES Act address Required Minimum Distributions (RMDs)?

Yes. Any RMD that is required to be taken in 2020 is waived.

*For example:* Tom is 72 and normally gets his RMD in April every year, but the market has dropped so much in 2020 that he doesn't want to take a distribution right now. Tom can delay or skip his April 2020 distribution. He is under no obligation to take a 2020 RMD at all.

# If I recently turned 70 ½ and delayed my RMD until April 1, 2020. Is it waived for 2020?

Yes, the CARES Act also eliminates any RMD attributable to 2019 that was not paid by January 1, 2020.

*For example:* Bonnie turned 70 ½ on December 15, 2019 but has not yet taken her first RMD, which was due April 1, 2020. Her second RMD is due December 31. 2020. She can now skip both 2020 distributions.

### I had an RMD due for the first year but took it out by 12/31/2019. Do I get any relief?

Unfortunately, no. The CARES Act only affects RMDs withdrawn in 2020.

*For example:* Jeannette turned 70 ½ in November 2019 and took her first RMD in December 2019. She can skip her 2020 RMD but she cannot put the December 2019 distribution back into her qualified plan.

#### Do I have any options if I've already received my 2020 RMD?

Yes, you may put it back into your plan and avoid paying 2020 taxes. There is currently a 60-day period to do this.

*For example:* Bill took his RMD in mid-February but didn't really need the money. He can put that money back into a qualified plan within 60 days of the original distribution date.

#### Why would I want to skip my 2020 RMD or put the money back into my IRA?

The markets are changing rapidly. 2020 RMDs are calculated on balances as of 12/31/2019, which were likely higher than what may be in the account today. Forcing a large taxable distribution now, when the account balance is much lower, could negatively affect your client.

*For example:* Keith is 75 and lives comfortably off his savings, but also has a 401(k) that he takes his RMD from in March. His 401(k) balance has dropped 15% since 12/31/19. Instead of taking the RMD and selling his shares at a much lower price, under the CARES Act, Keith will not have to take his 2020 RMD.

#### Extension of contribution deadlines

# Does the new deadline for tax filing mean that the deadline for contributions to an IRA for the 2019 tax year has also been extended?

Yes. With the tax filing deadline now July 15, 2020, the deadline for contributions to an IRA for the 2019 tax year is also July 15, 2020.

*For example:* Barry and Iris have not yet contributed to their IRAs for the 2019 tax year. They each contribute \$6,000 to their traditional IRA on June 15, 2020. Barry and Iris may treat these contributions as made for the 2019 tax year.

### Enhanced loan & distribution criteria

# What criteria do I have to meet in order to take a loan or distribution under the rules of the CARE Act?

One of these criteria must be met:

- You are diagnosed with COVID-19.
- Your spouse or a dependent is diagnosed with COVID-19.
- You have experienced adverse financial consequences as a result of being quarantined, furloughed or laid off due to COVID-19.
- Your work hours have been reduced due to COVID-19.
- You are unable to work because of child-care due to COVID-19.
- The closing or reducing the hours of your business due to COVID-19.
- Other factors as determined by the treasury secretary.

*For example:* Kati's daughter, Victoria, is running a fever and coughing, so her doctor ordered a CDCapproved COVID-19 test and quarantined the household. This meant that Kati was unable to work during the two-week quarantine period. Since Kati's employer adopted the CARES Act distribution provision, she was able to take advantage of the provisions that impact distributions and loans.

#### New distribution limits & rules

# Are retirement plan participants affected by COVID-19 able to withdraw money from their account?

Yes, if allowed by the plan, participants who meet the COVID-19 criteria above may withdraw up to \$100,000 of their vested balance, between January 1, 2020 and December 31, 2020.

*For example:* Clara has experienced financial difficulty due to COVID-19 and her plan has adopted the CARES Act provisions. Her vested account balance is \$150,000. She can withdraw up to \$100,000 from her account. The distribution is exempt from the 10% early withdrawal penalty. Though taxable, Clara can opt to spread the taxes out over a three-year period. She can also repay all or part of the money back into a qualified plan within three years from the distribution date, avoiding taxes on the repaid portion of the distribution. It should be noted that Clara cannot also take money out of her IRA because the \$100,000 limit applies to each taxpayer, not each retirement account.

# Our 401(k) plan already allows hardship distributions. Does COVID-19 meet the criteria for a hardship?

Maybe. Unreimbursed medical expenses meet the definition of a hardship expense. So does expenses incurred as a result of living in an area declared a national disaster by FEMA. FEMA has declared some states disaster areas due to COVID-19.

*For example:* Hank works for The Local Grocery Store, which has been declared an essential business during the business shut down in Ohio. The Local Grocery Store did not adopt any of the special COVID-19 distribution or loan provisions for their 401(k) plan, however, since Ohio has been declared a FEMA disaster response area, Hank is eligible for a hardship withdrawal. He will have to follow his employer's instructions for requesting the hardship, and his employer will need to make a hardship determination for his request. However, if they had adopted the COVID-19 distribution provision, they could have avoided the hardship approval process and just relied upon Hank's declaration that his family has suffered financial difficulty due to COVID-19.

### New loan limits & rules

#### Does the CARES Act change the maximum available loan amount for everyone?

Not exactly. Employers have the option to amend their retirement plan to allow loans up to \$100,000 or 100% of the participant's vested balance. However, this special loan limit is not available to everyone and the loan must be withdrawn no later than September 23, 2020. Like the COVID-19 distribution and COVID-19 loan payment extension options, the maximum loan extension is only available to those who meet the COVID-19 criteria.

*For example:* Dave is the owner of Main Street Metal Fabrication. Due to the government's stay-at-home order, he had to shut down his business temporarily, sending home hundreds of employees. Knowing this would cause a financial hardship, Dave instructed his TPA to allow the special COVID-19 loan provisions. His employees will each be able to request a loan up to \$100,000 or 100% of their vested balance, whichever is less, and delay payments until they are able to return to work.

### Loan repayment rules of the road

#### Can loan payments be pushed out?

Yes, assuming the employer has adopted COVID-19 loan provisions, payments can be pushed out to one year without regard to the 5-year loan period for participants who qualify for COVID-19 loans and distributions. Interest continues to accrue. New loans must be taken no later than September 23, 2020 to qualify for this extension.

*For example:* Michelle took out a \$50,000 loan on May 1, 2020, with a 5-year repayment period. Her employer adopted the loan provisions in the CARES Act, and since Michelle tested positive for COVID-19, she can delay payments for one year. Her first payment will be due May 1, 2021 and the loan will be paid off in May of 2026, six years after she took it out.

#### Can existing outstanding loans have payments adjusted?

Yes, if allowed by the plan and if you meet the requirements listed above. Any scheduled loan repayment due from March 27, 2020 until December 31, 2020 may be delayed for up to one year, extending payments to the term of the loan out past five years. Interest continues to accrue.

*For example:* Tammy has had extended circumstances in her family due to COVID-19 and as a result is having a financial hardship. Since her plan offers loan extension due to the CARES Act, she can certify that she is having a financial hardship due to COVID 19 and request her loan payments be pushed out for one year.

# We had to lay off some employees who have 401(k) loans. Does the CARES Act provide any relief for these employees?

Yes. As the employer, you can amend your plan to allow laid off employees that meet the eligibility requirements listed above to delay loan payments due between March 27-December 31, 2020 for one year. Interest will continue to accrue during this period. Missed payments will be added to the end of the loan, extending it beyond the original term of the loan, even if the loan was originally taken out for the maximum repayment term.

*For example:* Angela took out a 5-year loan for \$10,000 in February to pay for a home improvement project. Sadly, she was laid off because her employer was forced to shut down temporarily due to COVID-19. Since her employer adopted the COVID-19 loan provisions, Angela was able to skip payments for the three months she was out of work. Her original 60-month loan automatically became a 63-month loan.

## Employer adoption & verification of CARES Act provisions

#### Does my employer's plan document need to be amended?

The CARES Act was effective March 27, 2020. CARES Act provisions may be used immediately if the employer chooses to adopt the provisions. The plan document will need to be amended later. These amendments are anticipated to be due sometime after 2022. Your recordkeeper and TPA will keep you posted on when amendments are due.

*For example:* Stores Inc. decided to offer the CARES Act loan and distribution provisions in their 401(k) plan. They worked with their TPA and recordkeeper to immediately offer this benefit to their employees, and, once final guidance is provided by the IRS, will sign the amendment.

# Does the plan sponsor need to verify whether an individual qualifies for a COVID-19 withdrawal or loan?

No, the participant will self-certify, and the plan sponsor may rely on the participant's statement.

*For example:* Joan has been diagnosed with COVID-19. Her plan is offering COVID-19 distributions. The plan sponsor does not need to ask for proof of the diagnosis. The plan sponsor only needs for Joan to certify she has been diagnosed in order to approve the distribution.

### Delayed pension plan contributions

#### Can I delay my pension plan contribution obligations for 2020 under the CARES Act?

Money purchase and single-employer defined benefit plans have a delayed funding due date of January 1, 2021. This contribution will require interest to be calculated and deposited to the plan as well.

*For example:* Edward Ball, a business owner, is facing financial difficulty during 2020 due to decreased sales as a result of COVID-19, making him worry that he won't be able to meet the minimum quarterly funding requirements for the Ball Company Defined Benefit Plan. Thankfully, the CARES Act will allow him to delay the contribution until January 1, 2021, at which time he must fund all four 2020 contributions plus interest from the original due dates through the actual deposit date.

### Relief from plan sponsor notice requirements

### Will there be any relief in required notices to participants?

Currently, there is no relief for plan sponsors for required notices. However, the CARES Act provides the Department of Labor authority to extend deadlines. We will keep you posted should relief be given.

*For example:* After reviewing their 12/1/2019 investment monitoring report with their investment advisor, John, the trustee for the Brain Trust 401(k) decided to replace the XYZ Fund in their plan. The replacement is scheduled for May 20, 2020, which means that the required participant notice is due no later than April 20, 2020. The CARES Act does not allow an extension of the required notice delivery date.

If you have additional questions about how the CARES Act effects retirement plans, please contact Ameritas retirement plans at 1-800-923-2732.

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