

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 245**

[Docket No. FR-4136-F-01]

RIN 2502-AG83

Tenant Participation in Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule consolidates into one subpart the nearly identical provisions concerning tenant participation in certain mortgagor initiated actions that require HUD approval. Currently, these procedures are found in four subparts. The rule also provides an easier to follow statement of applicability.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved.

As a result of this review the Department determined that 24 CFR part 245 could be streamlined to make it more understandable and easier to use. Part 245 implements various provisions of section 202 of the Housing and Community Development Amendments of 1978 (42 U.S.C. 1715z-1b). It contains provisions on tenants' right to organize, on noninterference with tenants' efforts to obtain assistance, and the procedures for tenant participation in several mortgagor initiated actions that require HUD approval.

Part 245 applies to certain types of multifamily housing projects, each of

which is or has been subsidized by HUD. This includes assisted projects that are or were insured by HUD under the National Housing Act, projects with direct loans from HUD under section 202 of the Housing and Urban Development Act of 1965, and State and local housing agency financed projects that receive section 236 or Rent Supplement assistance.

This rule revises § 245.10 to make it easier for the user to move from the information known to the user, namely, type of project and financing and get the information the user seeks from the section, namely, which subparts apply to a specific project.

Under the current rule there are five subparts containing tenant participation procedures. Subparts D through H concern, respectively, approvals of: (1) Increase in maximum permissible rents, (2) conversion from project-paid utilities to tenant paid utilities, (3) conversion of residential units to a nonresidential use, or to cooperative housing or condominiums, (4) partial release of mortgage security, and (5) major capital additions to the project.

This rule consolidates into one subpart (subpart E) the procedures for the actions described in items (2) through (5), above. It does not substantively alter the procedures. Rather, it reflects the fact that each of the current separate procedures are substantially the same and lend themselves to being consolidated. The Department has retained a separate subpart (subpart D) for tenant rent increase procedures. While the overall rent increase process is similar to the other tenant participation procedures, it is sufficiently different in detail that it would not be helpful to the user to consolidate it with the other procedures.

The rule also makes a conforming amendment to § 245.15(a) and updates cross-references in § 245.205.

Justification for Final Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule clarifies and consolidates regulatory provisions and does not establish or affect substantive policy.

Therefore, prior public comment is unnecessary.

Findings and Certifications**Paperwork Reduction Act Statement**

This rule does not alter existing information collection requirements. The information collection requirements contained in §§ 245.416, 245.417, 245.418, 245.419, and 245.425 of this rule were previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501-3520) and have been approved under the control number 2502-0310. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines the 24 CFR part 245 by removing redundant provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m., weekdays, at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject

to review under the Order. No programmatic or policy changes result from its promulgation which would affect the existing relationship between the Federal government and State and local government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

Accordingly, part 245 of title 24 of the Code of Federal Regulations is amended as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for part 245 is revised to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

2. Section 245.10 is revised to read as follows:

§ 245.10 Applicability of part.

(a) Except as otherwise expressly limited in this section, this part applies in its entirety to a mortgagor of any multifamily housing project that meets the following—

(1) *Project subject to HUD insured or held mortgage under the National Housing Act.* The project has a mortgage that—

(i) Has received final endorsement on behalf of the Secretary and is insured or held by the Secretary under the National Housing Act (12 U.S.C. 1701–1715z–20); and

(ii) Is assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program;

(D) The Section 8 Loan Management Set-Aside Program following conversion to such assistance from the Rent Supplement Program assistance;

(2) *Section 202 project.* The project has a direct mortgage loan from HUD at a below-market interest rate under the Section 202 Loans for the Elderly or Handicapped BMIR Program. This part applies in its entirety to the mortgagor if the project is assisted under the Rent Supplement Program or under the Section 8 LMSA Program following conversion to such assistance from Rent Supplement Program assistance. If the project is not so assisted, only subparts A, D, and E of this part apply to the mortgagor;

(3) *Formerly HUD-owned project.* The project—

(i) Before being acquired by the Secretary, was assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program; or

(D) The Section 8 LMSA Program following conversion to such assistance from assistance under the Rent Supplement Program; and

(ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low- and moderate-income character of the project; or

(4) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project.

(b) *Limitation for cooperative mortgagor.* Only the provisions of subparts A and C of this part apply to a mortgagor of any multifamily housing project described in paragraph (a) of this section if the mortgagor is a cooperative housing corporation or association.

(c) *Definitions.*

Rent Supplement Program means the assistance program authorized by section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Section 8 LMSA Program means the Section 8 Loan Management Set-Aside Program implemented under 24 CFR part 886, subpart A.

Section 202 Loans for the Elderly or Handicapped BMIR Program means the below-market interest rate loan program authorized under section 202 of the Housing Act of 1959, as in effect before August 22, 1974 (12 U.S.C. 1701q).

Section 221(d)(3) BMIR Program means the below-market interest rate mortgage insurance program under section 221(d)(3) and the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715l(d)(5)).

3. In § 245.15, paragraph (a) is revised to read as follows:

§ 245.15 Notice to tenants.

(a) Whenever a mortgagor is required under subparts D or E of this part to serve notice on the tenants of a project, the notice must be served by delivery, except, for a high-rise project, the notice may be served either by delivery or by posting. If service is made by delivery, a copy of the notice must be delivered directly to each unit in the project or mailed to each tenant. If service is made by posting, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located and, during any prescribed tenant period, in a conspicuous place at the address stated in the notice where the materials in support of the mortgagor's proposed action are to be made available for inspection and copying. Posted notices must be maintained intact and in legible form during any prescribed notice period.

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§ 245.205 [Amended]

4. In § 245.205:

a. Paragraph (b) is amended by removing the words “under part 215 of this chapter” and adding, in their place, the words “under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)”; and

b. Paragraph (c) is amended by removing the words “part 882” and adding, in their place, the words “part 982”.

5. Subpart E is revised to read as follows:

Subpart E—Procedures for Requesting Approval of a Covered Action

Sec.

245.405 Applicability of subpart.

245.410 Notice to tenants.

245.415 Submission of materials to HUD: Timing of submission.

245.416 Initial submission of materials to HUD: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

- 245.417 Initial submission of materials to HUD: Conversion of residential units to a nonresidential use, or to cooperative housing or condominiums.
- 245.418 Initial submission of materials to HUD: Partial release of mortgage security.
- 245.419 Initial submission of materials to HUD: Major capital additions.
- 245.420 Rights of tenants to participate.
- 245.425 Submission of request for approval to HUD.
- 245.430 Decision on request for approval.
- 245.435 Non-insured projects: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

Subpart E—Procedures for Requesting Approval of a Covered Action

§ 245.405 Applicability of subpart.

The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10, for HUD approval of one or more of the following covered actions:

(a) Conversion of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant utility allowances.

(b) Conversion of residential units in a multifamily housing project to a nonresidential use or to condominiums, or the transfer of the project to a cooperative housing mortgagor corporation or association. Conversion of a project to a cooperative or of a portion of a project to nonresidential use does not constitute a change of use requiring mortgagee approval.

(c) A partial release of mortgage security. The requirements of this subpart, however, do not apply to any release of property from a mortgage lien with respect to a utility easement or a public taking of such property by condemnation or eminent domain.

(d) Making major capital additions to the project. For the purposes of this subpart, the term "major capital additions" includes only those capital improvements that represent a substantial addition to the project. Upgrading or replacing existing capital components of the project does not constitute a major capital addition to the project.

§ 245.410 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of an action described in § 245.405, the mortgagor must serve notice of the proposed covered action on the project tenants, as provided in § 245.15. The notice shall state that—

(a) The mortgagor intends to submit a request to HUD for approval of the covered action or actions specified in the notice;

(b) The tenants have the right to participate as provided in § 245.420, and what those rights are, including the address at which the materials required to be made available for inspection and copying under that section are to be kept;

(c) Tenant comments on the proposed covered action may be sent to the mortgagor at a specified address or directly to the local HUD office, and comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD's approval is submitted;

(d) HUD will approve or disapprove the proposed action, based upon its review of the information submitted and all tenant comments received. In the case of a proposed reduction in tenant-paid utilities, the notice must also state that HUD may adjust the proposed reduction upward or downward;

(e) In the case of a proposed conversion of residential units, partial release of mortgage security, or major capital additions to the project, the proposed action may require the owner to request HUD approval of a rent increase; and

(f) The mortgagor will notify the tenants of HUD's decision and it will not begin to effect any approved action (in accordance with the terms of existing leases) until at least 30 days from the date of service of the notification.

§ 245.415 Submission of materials to HUD: Timing of submission.

(a) *Initial submission.* The mortgagor must submit the materials applicable to the covered action, as specified in §§ 245.416 through 245.419, to the local HUD office when the notice required under § 245.410 is served on the tenants.

(b) *Subsequent submission.* If additional notice under § 245.420(c) is required, the mortgagor must submit to HUD any changes to the materials required under §§ 245.416 through 245.419 when the notice required under § 245.420(c) is served on the tenants.

§ 245.416 Initial submission of materials to HUD: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

In the case of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the mortgagor must submit the following materials to the local HUD office:

(a) A copy of the notice to tenants;

(b) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities—

(1) A statement indicating:

(i) The type of utility or utilities involved;

(ii) The number of units in the project by type and size;

(iii) The average utility consumption data by unit type and size for comparable projects, and utility rate information, as obtained from the utility supplier;

(iv) The estimated monthly cost of the utilities to be paid by the tenants by unit type and size, based upon the consumption data and rate information described in paragraph (b)(1)(iii) of this section;

(v) The monthly cost for the past year of paying for the utility or utilities involved on a project basis (actual cost) and by unit type and size (estimated breakdown);

(vi) An estimate of the cost of conversion, as obtained from the utility supplier or from bids from contractors;

(vii) The source and terms of financing for the conversion (to the extent known); and

(viii) The estimated effect of the conversion on the total housing costs of the tenants by unit type and size, taking into account the estimated cost of conversion (including the cost of its financing), the estimated monthly cost of utilities to be paid by the tenants by unit type and size, the proposed utility allowances, and the estimated change in the rents paid to the mortgagor resulting from the conversion; and

(2) A copy of the portion of the project's Energy Conservation Plan which addresses the cost-effectiveness determination associated with converting the project to tenant-paid utilities; and

(c) In the case of a proposed reduction in tenant utility allowances, a statement indicating the information described in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section, the utility allowances proposed for reduction, and a justification of the proposed reduction.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.417 Initial submission of materials to HUD: Conversion of residential units to a nonresidential use, or to cooperative housing or condominiums.

In the case of a conversion of residential units to a nonresidential use, or to cooperative housing or condominiums, the mortgagor must submit the following materials to the local HUD office in accordance with §§ 245.415 and 245.419:

(a) In the case of a proposed conversion of residential rental units to nonresidential use:

(1) A statement describing the proposed conversion;

(2) A statement describing the estimated effect of the proposed conversion on the value of the project, the project rent schedule, the number of dwelling units in the project, a list of the units to be converted and their occupancy, the amount of subsidy available to the project, and the project income and expenses (including property taxes);

(3) A statement assessing the compatibility of the proposed nonresidential use with the residential character of the project;

(4) Written approval of the mortgagee if required;

(5) An undertaking by the mortgagor to pay all relocation costs that may be required by HUD for tenants required to vacate the project because of the conversion; and

(6) A copy of the notice to tenants.

(b) In the case of a proposed transfer of the project to a cooperative housing mortgagor corporation or association (conversion of residential rental units to residential cooperative housing), the materials specified in paragraphs (a)(1), (a)(2) and (a)(3) of this section and the following additional materials:

(1) An estimate of the demand for cooperative housing, including an estimate of the number of present tenants interested in purchasing cooperative housing;

(2) Estimates of downpayments and monthly carrying charges that will be required; and

(3) Copies of proposed organizational documents, including By-Laws, Articles of Incorporation, Subscription Agreement, Occupancy Agreement, and Sale Document.

(c) In the case of a proposed conversion of residential rental units to condominium units, the materials specified in paragraphs (a)(1), (a)(4), and (a)(6) of this section and the following additional materials:

(1) An estimate of the demand for condominium housing, including an estimate of the number of present tenants interested in purchasing units;

(2) Estimates of downpayments, monthly mortgage payments and condominium association fees that will be required; and

(3) A list of the units to be converted and their occupancy.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.418 Initial submission of materials to HUD: Partial release of mortgage security.

In the case of a partial release of mortgage security, the mortgagor must

submit the following materials to the local HUD office:

(a) A statement describing the portion of the property that is proposed to be released and the transaction requiring the release;

(b) A statement describing the estimated effect of the proposed release on the value of the project, the number of dwelling units in the project, the project income and expenses (including property taxes), the amount of subsidy available to the project, and the project rent schedule;

(c) A statement describing the proposed use of the property to be released and the persons who will have responsibility for the operation and maintenance of that property, and assessing the compatibility of that use with the residential character of the project;

(d) A statement describing the proposed use of any proceeds to be received by the mortgagor as a result of the release; and

(e) A copy of the notice to tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.419 Initial submission of materials to HUD: Major capital additions.

In the case of major capital additions, the mortgagor must submit the following materials to the local HUD office:

(a) The general plans and sketches of the proposed capital additions;

(b) A statement describing the estimated effect of the proposed capital additions on the value of the project, the project income and expenses (including property taxes), and the project rent schedule;

(c) A statement describing how the proposed capital additions will be financed and the effect, if any, of that financing on the tenants;

(d) A statement assessing the compatibility of the proposed capital additions with the residential character of the project; and

(e) A copy of the notice to tenants.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.420 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for tenants individually or as a group) must have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.415, for a period of 30 days from the date on which the notice required under § 245.410 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants

in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed conversion to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.415, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed covered action, before the mortgagor may submit its request to HUD for approval of the covered action.

§ 245.425 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval of the covered action;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed conversion or reduction;

(d) A certification by the mortgagor that it has complied with all of the requirements of § 245.410, § 245.415, §§ 245.416 through 245.419, as applicable, § 245.420, and this section; and

(e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502-0310)

§ 245.430 Decision on request for approval.

(a) After considering the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor in writing of its approval or disapproval of the proposed covered action, including, if applicable, its adjustment

upward or downward of the proposed reduction in tenant-paid utilities. HUD must provide its reasons for its determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed covered action, the notice must state:

(1) The effective date of the covered action (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases);

(2) In the case of HUD's approval of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the amount of the rent to be paid to the mortgagor and the utility allowance for each unit; and

(3) In the case of HUD's approval of a conversion of residential units in a multifamily housing project to a nonresidential use or the transfer of the project to a cooperative housing mortgagor corporation or association, which residential rental units are to be converted and whether the conversion is to nonresidential use or to cooperative or condominium units.

§ 245.435 Non-insured projects: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

(a) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances involving a project that is assisted under section 236 of the National Housing Act (12 U.S.C.

1715z-1) or section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) but that does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.405 through 245.425 apply to the mortgagor (project owner), except that—

(1) The notice to tenants required under § 245.410 must be modified to reflect the procedural changes made by this section;

(2) The materials (including tenant comments) required to be submitted to HUD under §§ 245.415 and 245.425 must be submitted to the State or local agency administering the Section 236 assistance or rent supplement assistance contracts, rather than to HUD; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.410, 245.415, 245.416, 245.420, and 245.425.

(b) After the State or local agency has considered the request for approval of a conversion or reduction that meets the requirements of § 245.425, it must make a determination to approve or disapprove the conversion, or to approve, adjust upward or downward, or disapprove the reduction. If the agency determines to approve the conversion or reduction (as originally proposed or as adjusted), it must submit to the appropriate local HUD office the mortgagor's request for approval of the conversion or reduction, along with the comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the

requirements of this subpart. HUD must review the agency's determination and certification and notify the agency of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval of the proposed reduction. HUD will not unreasonably withhold approval of a conversion or reduction approved by the State or local agency.

(c) If the agency determines to disapprove the conversion or reduction, there is no HUD review of the agency's determination.

(d) The agency must notify the mortgagor of the final disposition of the request, and it must furnish the mortgagor with a written statement of the reasons for its approval or disapproval. The mortgagor must make the reasons for approval or disapproval known to the tenants, by service of notice on them as provided in § 245.15. If the agency has approved the proposed conversion or a reduction, the notice must set forth the information prescribed in § 245.430(b) (1) and (2).

Subparts F, G, and H [Removed]

6. Subpart F (§§ 245.505 through 245.530), subpart G (§§ 245.605 through 245.630), and subpart H (§§ 245.705 through 245.730) are removed.

Dated: October 31, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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