WINTER 2016
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EBP COMMENTATOR

THE NEWSLETTER OF THE BDO EMPLOYEE BENEFIT PLAN AUDIT PRACTICE

FASB'S ASU 2015-12 SIMPLIFIES FINANCIAL REPORTING FOR EBPs

Plan sponsors (and plan advisors) often struggle with the appropriate application of new accounting pronouncements due to limited and/or complex technical guidance on implementation. The Financial Accounting Standards Board (FASB) has provided relief for financial reporting for employee benefit plans (EBPs) with the issuance of Accounting Standards Update (ASU) 2015-12, *Plan Accounting: Defined Benefit Pension Plans (Topic 960), Defined Contribution Pension Plans (Topic 962), Health and Welfare Benefit Plans (Topic 965): (Part I) Fully Benefit-Responsive Investment Contracts, (Part II) Plan Investment Disclosures, (Part III) Measurement Date Practical Expedient (ASU)*. This ASU is part of the FASB's Simplification Initiative, which is an ongoing effort to improve the usefulness of the information provided to users of the financial statements while reducing costs and complexity related to financial reporting by EBPs. The ASU is divided in three parts and applies to plan accounting of certain benefit plans.

PART I - FULLY BENEFIT-RESPONSIVE INVESTMENT CONTRACTS

The guidance in Part I of the ASU applies to reporting entities within the scope of Topics 962 *(Plan Accounting - Defined Contribution Pension Plans)* and 965 *(Plan Accounting - Health and Welfare Benefit Plans)* that classify investments as fully benefit-responsive investment contracts (FBRICs) (e.g. guaranteed investment contracts or GICS).

To better comprehend the impact of this new guidance, it is important to first understand what was required under the old guidance. Prior to ASU 2015-12, generally accepted accounting principles in the United States of America (U.S. GAAP) required an entity to measure FBRICs at both contract value (for purposes of determining the net assets available for benefits) and fair value (for purposes of presentation and disclosure). In addition, U.S. GAAP required an adjustment on the face of the statements of net assets available for benefits to reconcile fair value to contract value (if the measured values differed).

Part I of the new ASU clarifies that contract value is the only required measurement for FBRICs. Contract value is considered to be the most relevant measurement since that is the amount at which plan participants would transact. The ASU requires plans to disclose the contract value of each type of FBRIC (e.g., traditional or synthetic) and eliminates the following reporting requirements:

- Measurement and presentation at fair value within the statements of net assets available for benefits
- Related disclosures required by Topics 820 (*Fair Value Measurement*) and 825 (*Financial Instruments*)
- Certain disclosures under Topics 962 and 965 requiring a fair value calculation (e.g., interest crediting rate and average yield disclosures)

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The ASU also clarifies that *indirect* investments in FBRICs (e.g., stable value common or collective trusts) should no longer be reflected as FBRICs and, therefore, should be reported at fair value. Generally, those funds calculate net asset value per share (NAV) or its equivalent in a manner consistent with the measurement principles of Topic 946 (*Financial Services – Investment Companies*). As such, those funds may qualify for the NAV practical expedient, which would then permit the funds to be omitted from the fair value hierarchy under ASU 2015-07, *Fair Value Measurement (Topic 820): Disclosures for Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent)*.

PART II - PLAN INVESTMENT DISCLOSURES

The guidance in Part II of the ASU applies to reporting entities that follow the requirements of Topics 960 (*Plan Accounting - Defined Benefit Pension Plans*), 962 and 965.

Prior to Part II of ASU 2015-12, U.S. GAAP required an entity to disclose the following:

(i) Individual investments that represent 5 percent or more of the net assets available for benefits

(ii) Net appreciation or depreciation for investments by general type of investment

(iii) Investment information disaggregated based on the nature, characteristics and risks

The following reflect the changes adopted under Part II of the ASU:

- Disclosure requirements (i) and (ii) above are eliminated. However, net appreciation or depreciation in fair value of investments for the period is now required to be presented only in the aggregate. In addition, investments (both participant-directed and nonparticipant-directed) are now required to disaggregate only by general type of investment (e.g., common stocks, corporate bonds, pooled separate accounts, mutual funds, government securities, mortgages, real estate, etc.) either on the face of the financial statements or in the notes.
- The ASU removes the requirement to disaggregate the investments within self-directed brokerage accounts. These investments should now be presented as a single type of investment.
- For investments measured using NAV as the practical expedient and that also file as a Direct Filing Entity (DFE), the disclosure of the investment's strategy is no longer required.

PART III – MEASUREMENT DATE PRACTICAL EXPEDIENT

The guidance in Part III of the ASU applies to reporting entities that follow the requirements of Topics 960, 962 and 965 and have a fiscal year-end that does not coincide with a month-end.

Part III permits plans to measure investments and investment-related accounts (for example, a liability for a pending trade with a broker) as of a month-end date that is closest to the plan's fiscal year-end (the "alternative measurement date"), when the fiscal period does not coincide with a month-end.

Plans that apply the practical expedient should disclose the accounting policy election, the alternative measurement date and the amount of any contribution, distribution, and/or significant events that occurs between the alternative measurement date and the plan's fiscal year-end. A similar measurement date practical expedient is available through ASU 2015-04, *Compensation – Retirement Benefits (Topic 715): Practical Expedient for the Measurement Date of an Employer's Defined Benefit Obligation*, for employers with fiscal periods that do not coincide with a month-end.

EFFECTIVE DATES

The guidance in each part of the new ASU is effective for fiscal years beginning after December 15, 2015, with early adoption permitted for all three parts individually or in the aggregate.

Parts I and II of the ASU should be applied retrospectively, while Part III should be applied prospectively. Only the nature and reason for the change in accounting principle is required to be disclosed in the annual period of adoption.

PRACTICAL CONSIDERATIONS FOR IMPLEMENTATION

While this new guidance is certainly welcomed for the potential time savings gained through eliminated and/or simplified disclosures, there are certain practical considerations to address when implementing. Some of these considerations include:

- Continue to understand the nature of the plan's investment contracts (e.g., are the contracts fully benefit-responsive and if so, are the contracts held *directly* or *indirectly* by the plan?).
- Watch for potentially counter-intuitive guidance (for instance, indirect investments in FBRICs may potentially be excluded from the fair value hierarchy, but the path to arrive at that conclusion is circuitous).
- Consider how the fair value of the investments in the hierarchy will be reconciled to the corresponding line items in the statements of net assets available for benefits (e.g., how will investments no longer required to be included in the fair value hierarchy be addressed?).
- Be aware of unintentional consequences of adopting this ASU and ensure minimum required disclosures are met. Elimination of disclosures discussed above may result in additional disclosures under other applicable reporting guidance. For example, disaggregation of investments by *general type* may result in additional disclosures needed regarding investment strategies, which may have been considered adequately disclosed when disaggregated by *investment class*. Also, if two or more disclosures were previously combined, portions of the original disclosure may still be required.

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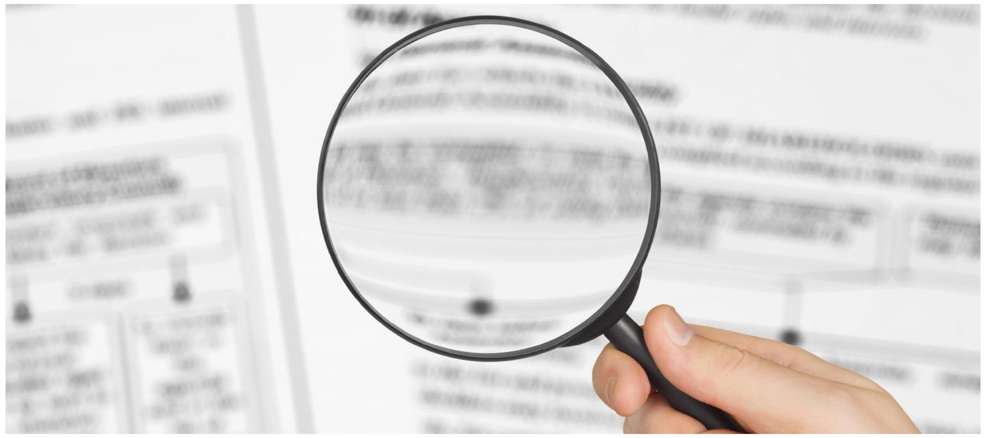
CHANGES TO THE 2015 ERISA ANNUAL REPORTS (FORM 5500)



The Summer 2015 edition of the *EBP Commentator* discussed noteworthy changes to the 2014 ERISA Annual Reports. We wanted to alert sponsors to additional changes anticipated for the 2015 *Annual Return/Report of Employee Benefit Plan* (Form 5500) and *Short Form Annual Return/Report of Small Employee Benefit Plan* (Form 5500-SF), based on initial drafts of the 2015 Form 5500 series released in December 2015 by the U.S. Department of Labor (DOL), Internal Revenue Service (IRS) and Pension Benefit Guarantee Corp (PBGC). Some of the more significant changes on the Form 5500 series are highlighted below:

PLAN TRUST'S FINANCIAL ACTIVITY

Several compliance questions have been added to the 2015 Form 5500 Schedules I and H and Form 5500-SF. While optional for 2015, the IRS nonetheless is encouraging sponsors to answer these questions. Even if a sponsor elects not to respond for 2015, be aware that these questions will likely require additional time and preparation for the 2016 plan filing year when the requirement to answer becomes mandatory.

- Schedule H and Schedule I, Line 4o and Form 5500-SF, Line 10j ask "Did the plan trust incur unrelated business taxable income during the year?"

  This question relates to unrelated business income tax (UBIT), which according to IRS Publication 598 means the plan has incurred gross income derived from an unrelated trade or business unrelated to the plan's exempt purpose within the trust. Generally, this results from alternative investments within a plan such as partnerships and real estate investments. UBIT can result in a tax consequence for the normally exempt trust and should be evaluated by an experienced tax professional. Although the Form 5500 instructions note that Form 990-T, *Exempt Organization Business Income Tax Return,* is required for gross income of $1,000 or more, there may be additional tax benefits of filing 990-T in years when the gross income is $1,000 or less. Plan sponsors should consult with their investment and tax advisors when making a determination regarding UBIT and the related tax filing.

- Form 5500 Schedule H and Schedule I, Line 4p and Form 5500-SF, Line 19 ask "Were in-service distributions made during the plan year?"

  In-service withdrawals include pre-retirement distributions while actively employed as well as hardship distributions. It also includes amounts withdrawn from a profit sharing plan after a fixed number of years and withdrawals from plans subject to minimum funding including a money purchase plan at age 62 and defined benefit plans. Note the dollar amount of these distributions is required to be reported.

Additionally, the name of the trustee or custodian of the plan (along with their contact information) has been added to both the Form 5500 and Form 5500-SF series.

PLAN QUALIFICATION REQUIREMENTS AND COMPLIANCE UNDER INTERNAL REVENUE CODE (SECTION 6058)

Schedule R (Part VII) and Schedule SF (Part IX) asks specific compliance questions related to discrimination testing, including:

- 401(k) plan testing questions
- Whether the plan satisfied nondiscrimination requirements
- Questions related to plan's favorable determination letter status
- Updates related to plan amendments
- Whether the plan is maintained in a U.S. Territory

5500-SF also contains an additional question as to whether minimum distributions were made to 5% owners who have attained age 70 ½ (whether or not retired).

Specifically related to nondiscrimination testing, there is a question regarding which method a 401(k) plan utilized to satisfy the ADP/ACP testing, including the current year testing method and safe harbor designed based methods. Sponsors must also indicate whether the ratio, average benefit test or permissive aggregation was utilized to satisfy 410(b) and 401(a)(4). In regards to plan qualification, the Plan sponsor must indicate whether the plan was timely amended to comply with all required tax law changes, date of the amendment or restatement and applicable code and date of the favorable IRS opinion or determination letter based on the plan document type as pre-approved master and prototype or individually designed. Plan sponsors will need to work closely with their benefits professionals in order to correctly answer these questions.

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FORM 5500-SUP

The IRS has issued 5500-SUP, *Annual Return of Employee Benefit Plans Supplemental Information*, as a separate filing for the compliance questions that are also covered on the Form 5500 series. Electronic filing of the Form 5500 for plan years beginning on or after January 1, 2015, is required by the IRS for Form 5500 series filers who file at least 250 returns (including Form W-2, corporate returns). Sponsors already meet this requirement since these returns have been required to be filed electronically with the Department of Labor at EFAST2 since 2009. IRS has provided Form 5500-SUP for sponsors who file fewer than 250 tax returns of any type and choose not to answer the IRS compliance questions electronically through the EFAST2 system. However, sponsors will be able to satisfy the compliance filing requirement by answering the new questions on Form 5500 or Form 5500-SF and filing through EFAST2.

DEFINED BENEFIT PLANS

Modifications to Schedule MB include a new question that requires multiemployer defined benefit plans with 500 or more total participants to provide an attachment of projected benefits to be paid over the next ten years, including the current filing year. This specifically applies to plans in critical and declining status.

Schedule SB instructions are modified to simplify the attachment required for cash balance plans with 1,000 or more active participants. These changes are mandatory for the 2015 filing year and must be answered.

The changes are in addition to the previous revisions to the 2014 Form 5500 so sponsors may need to proof more closely to ensure any mistakes (even seemingly minor ones) are caught before submission. As was noted in the Summer 2015 edition, incorrect filings can expose a plan and/or sponsor to enforcement agency scrutiny and/or penalties.

FORM 5500 AUTOMATIC EXTENSION TIMING REMAINS THE SAME

For those who may have heard of changes to the filing extension available for Form 5500s, the extended deadline has been changed back to 2½ months, which is consistent with current practice. Section 32104 of the FAST Act repealed the earlier automatic extension of 3 ½ months for filing Form 5500 so plans will have the 2 ½ month automatic extension to file Form 5500 for 2016 and later calendar plan year filings.

IRS ANNOUNCEMENT 2015-19 - CHANGES TO THE INDIVIDUALLY DESIGNED DETERMINATION LETTER PROGRAM

Effective January 2, 2017, the IRS will eliminate the staggered 5-year remedial amendment cycles for individually designed plans and will no longer accept these determination letter applications. IRS Announcement 2015-19 indicates that individually designed plans will be permitted to submit an application for determination under the following circumstances:

- Sponsors of Cycle A plans (described in section 9.03 of Rev. Proc. 2007-44) may continue to submit determination letter applications for the period February 1, 2016 - January 1, 2017
- During the initial plan qualification on Form 5300, *Application for Determination for Employee Benefit Plan*
- Qualification upon plan termination

There have been no changes to the pre-approved master and prototype (M&P) and Volume Submitter plan submissions that generally have a regular, 6-year remedial amendment cycle.

WHERE WE'VE BEEN

AICPA Employee Benefit Plans Conference

In December, several members of our National Employee Benefit Audit Group participated in the American Institute of Certified Public Accountants (AICPA) Employee Benefit Plan Accounting, Auditing and Regulatory Updates Conference held in Washington, D.C. One of the key topics of the conference was the newly released ASU 2015-12 (for more on this ASU, see article in this edition) .

IFEBP Annual Conference

This past November, we hosted a booth at the International Foundation of Employee Benefit Plans (IFEBP) Annual Conference. This annual event is the largest employee benefit plan conference of its kind in the U.S. and is designed to provide educational support for multiemployer trustees, administrators and advisors of pension or health and welfare funds.

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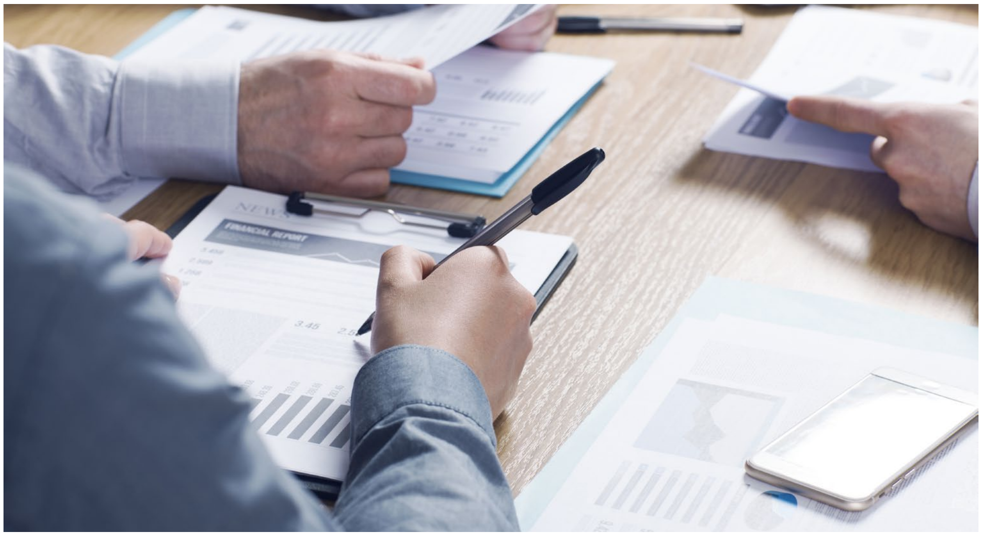
NOW IS THE TIME FOR A REGULATORY COMPLIANCE CHECK FOR 403(b) PLANS



Tax-exempt organizations that sponsor 403(b) plans are being advised to check their plans for possible compliance issues since the IRS recently announced that these plans are on its priorities list for 2016. Below are some questions that 403(b) plan sponsors may want to ask their plan management as part of ensuring the plan is compliant before a possible IRS review:

- Has plan management determined (and documented appropriately) if there is a plan audit requirement?
- If there is first-time audit requirement, has plan management gathered sufficient documentation to support account balances as of the beginning of the plan year?
- Did the organization report a pension contribution on the Form 990? If there is no associated Form 5500 filing for the pension plan, then this may be a red flag of a possible missed audit.
- Does the plan have a formal (e.g., written) plan document? Do the plan's day-to-day activities conform to what the plan document stipulates? This is one of most common operational errors BDO encounters, regardless of the plan type.

  Simply put, the terms of the plan need to agree to what is offered by the sponsor in operation. If there are differences, consider whether consultation and corrective action may be needed.
- Does the plan have an advisor who regularly is involved in review of the plan document, features, investments offered, etc.? Plan sponsors who lack the internal expertise can benefit from using a provider with the requisite knowledge and expertise, provided that the sponsor maintains both continued oversight over the plan and good communication with the provider.

In our opinion, compliance checks are not a "one and done" activity, but rather a recurring part of the sponsor's annual process that demonstrates good governance practices and a strong commitment to proper fiduciary responsibility.

UPDATE ON DOL "CONFLICT-OF-INTEREST" FIDUCIARY RULE

The omnibus spending bill passed by Congress in December 2015 was notable in that it did not contain any language to "defund" the conflict-of-interest rule. The fiduciary rule has been subject to previous legislative attempts to prohibit the use of funds to implement, administer or enforce the proposed definition of the term "Fiduciary" under the DOL's proposed regulation. Based on this latest development, some predict it is likely that the fiduciary rule will survive and ultimately be implemented, although others suggest that it will be subject to continued challenges.

NOTEWORTHY FOR ESOPs

Under IRS Revenue Procedure 2015-36, the IRS will permit employee stock ownership plans (ESOPs) that meet certain requirements to qualify for pre-approval for initial and cyclical letters of determination if the ESOP adopts a prototype plan or volume submitter plan.

Also, the DOL has indicated that it will remove a component of the revised fiduciary rule proposal that addresses whether ESOP valuation advisors are considered fiduciaries. (Stay tuned as this hotly contested issue is expected to be addressed in a separate regulatory initiative.)

HELPFUL WEBSITES

http://www.dol.gov/ebsa/

http://www.efast.dol.gov

http://www.irs.gov/

http://ebpaqc.aicpa.org

http://asc.fasb.org

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DO YOU HAVE QUESTIONS ABOUT YOUR ROLE AS PLAN FIDUCIARY?

IF SO, JOIN US FOR A PLAN SPONSOR-FOCUSED WEBINAR SERIES

Fiduciary Gridiron – How to Succeed on the Field is a four-part webinar series for plan sponsors that tackles some of the common challenges and responsibilities facing plan management when dealing with their fiduciary responsibility. The Q&A discussion format provides a three-fold perspective from the panelists, consisting of an attorney specializing in ERISA plans, an experienced plan advisor and one of our own EBP auditors.

Part One – Selecting Your Retirement Plan Team addresses who should be involved in the plan and the critical EBP team selection process. The webinar addresses the role of fiduciaries, the number of fiduciaries required to be named in a plan, best practices in carrying out fiduciary responsibilities, and how prudent processes can help mitigate fiduciary liability. Panelists discuss the importance of sponsors understanding that ERISA requires fiduciaries to act as prudent experts and suggest some potential ways sponsors can minimize their liability. The webinar then delves into required versus optional plan service providers, approaches for evaluating service providers, and trends in service provider compensation methods. If you missed the webinar (held May 2015), the recording is available at www.bdo.com/events/fiduciary-gridiron-how-to-succeed-on-the-field.

In **Part Two – Kicking Off the Season**, the panelists discuss the best practices of having a plan committee, recommended documentation to help mitigate liability for plan committees and insight on who should be on a plan committee. The webinar also outlines best practices as to *what* and *how much* information to document within an investment policy statement. Topics also include: trends in plan designs (including auto enrollment and auto escalation), the "right" number of investments, who is monitoring plans, and critical factors to ensuring plans are compliant. Panelists provide their thoughts on sponsors offering professional advisors to participants and the potential added responsibilities of providing this benefit. This webinar also provides an overview of fees, fee benchmarking, allocation of fees to participants, and the use of revenue sharing agreements. To listen to the August 2015 recording, go to www.bdo.com/events/fiduciary-gridiron-how-to-succeed-on-the-field-aug.

Part Three - Push for the Playoffs continues the focus on plan fees with a discussion of fee allocation, revenue sharing, and plan investments. Panelists weigh in on the types of fees that can generally be paid from plan assets, best practices in assessing the reasonableness of plan fees, and why plan fees should be reviewed. The discussion also includes the various methods used to pay plan fees (including revenue sharing, pro rata, and per capita). Trends and illustrations of fee structures are reviewed to assist sponsors in understanding the process of analyzing fees. The panelists consider investment share classes and how these classes can impact plan performance. Best practices on the timing of reviewing investments, documenting the investment monitoring process, and investment policy statements conclude the discussion. The recording from the November 2015 webinar is available at www.bdo.com/events/fiduciary-gridiron-how-to-succeed-on-the-field-nov.

Part Four – On The Road to the Championship will be held on January 21, 2016 (12:30 p.m. ET). This webinar focuses on ensuring plan management is ready to meet enforcement guidelines. Discussion inlcudes the latest news from the DOL and the IRS as well as how to prepare for a plan audit and suggested best practices for plan operations. Register for this upcoming webinar using the following link: www.bdo.com/events/fiduciary-gridiron-how-to-succeed-on-the-field-jan.

BDO EBP PRACTICE

Nationally recognized in the field of employee benefit plan consulting and auditing, BDO audits over 1,700 plans ranging in size from 100 to close to 400,000 participants. Our engagements are staffed with accountants experienced with all types of audits including defined contribution (401(k), profit sharing, ESOP, and 403(b) plans), defined benefit (pension equity or cash balance) and health and welfare plans (defined benefit or defined contribution). We have extensive ERISA knowledge of audit and filing requirements, including full-scope, limited-scope, SEC Form 11-K filings and Master Trusts.

BDO's National Employee Benefit Plan Audit Group meets regularly to develop training and guidance and discuss updates in the industry and auditing practices. Our professionals are regular presenters at local, state and national seminars. We continue to be extensively involved with the American Institute of Certified Public Accountants (AICPA) National Conferences on Employee Benefit Plans. Many of our professionals serve in leadership roles in the accounting profession as senior advisors and are active members of several governing boards and CPA societies. For example, our professionals currently serve on various AICPA committees, such as the AICPA's Joint 403(b) Plan Audit Task Force (we are proud to have had representation at the chair level for this committee) and the AICPA Technical Standards Subcommittee of the Professional Ethics Executive Committee. BDO's EBP professionals have also served on the AICPA Employee Benefit Plan Audit Quality Center Executive Committee (immediate past chair) and the Employee Benefit Plan Expert Panel.

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