

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSIONS

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

Section 104(b)(1) of the Employee Retirement Security Act of 1974 (ERISA) requires the administrator of an employee benefit plan to furnish each plan participant and each beneficiary receiving benefits under the plan a copy of the plan's summary plan description (SPD) within 90 days after an individual becomes a participant and (in the case of a beneficiary) within 90 days after an individual first receives benefits, or, if later, within 120 days after the plan first becomes subject to Part 2 of Title I of ERISA. Section 104(b)(1) further specifies that an updated SPD must be furnished subsequently every fifth year, integrating all plan amendments made within such five-year period. The information required to be contained in the SPD is set forth in section 102(b) of ERISA.

If a plan is amended to make a material modification in its terms or to change the information required to be contained in the SPD (other than a material reduction in covered services or benefits under a group health plan), section 104(b)(1) requires the plan administrator to furnish participants and beneficiaries receiving benefits a summary of the material modifications (SMM) within 210 days following the end of the plan year in which the change was adopted. Section 104(b)(1) separately provides that, in the case of any modification or change that is a "material reduction in covered services or benefits provided under a group health plan," the plan must provide a summary of such material reduction (SMR) not later than 60 days after the adoption of the modification or change, unless the plan routinely provides summaries of modifications or changes at regular intervals of not more than 90 days.

Section 109(c) of ERISA grants the Secretary of Labor the authority to prescribe the form and content of the SPD, as well as other documents required to be furnished or made available to plan participants and beneficiaries receiving benefits under a plan.

The Department has promulgated regulations governing the content and furnishing of SPDs, SMMs, and SMRs at 29 CFR 102-2 (Style and Format of Summary Plan Descriptions); 29 CFR 2520.102-3 (Contents of Summary Plan Descriptions); 29 CFR 2520.102-4 (Option for Different Summary Plan Descriptions); 29 CFR 2520.104b-1 (Disclosure); 29 CFR 2520.104b-2 (Summary Plan Descriptions); 29 CFR 104b-3 (Summary of Material Modifications to the Plan and Changes in the Information Required to be Included in the Summary Plan Description); and 29 CFR 104b-4 (Alternative Methods of Compliance for Furnishing the Summary Plan Description and Summaries of Material Modifications of a Pension Plan to a Retired Participant, a Separated Participant, and a Beneficiary Receiving Benefits). These regulations set standards for the content of these disclosure documents, the methods of furnishing that will satisfy the statutory disclosure requirements, and alternative methods of compliance. In particular, regulations at 29 CFR 2520.104b-1(c) specifically describe the circumstances under which the administrator of an employee benefit plan may furnish required disclosure documents, including the SPD/SMM/SMR, through electronic media.

The Department's regulations contain information collections that constitute mandatory third-party disclosure requirements applicable to the majority of ERISA-covered pension and welfare benefit plans. The Department has determined that these information collections are necessary in order to ensure the participants and beneficiaries in employee benefit plans covered under ERISA receive adequate information about the benefits due to them and their rights under the plans.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

The information collections covered by the subject regulations are necessary to ensure that participants and beneficiaries are adequately and timely informed about their rights and benefits under their plans. The SPD, together with the relevant SMMs and SMRs, constitutes the single most important source of information about a plan for the plan participants, and, if properly updated through SMMs and SMRs, it provides participants and beneficiaries with complete knowledge about how to manage their benefits, including how to file benefit claims, what rights they may have under different situations, under what circumstances benefits can be lost, whom to contact about benefits, and many other essential matters. In order to insure that participants and beneficiaries receive this information, the regulations require SPDs to be written in language calculated to be understood by the average plan participant and to be provided through a method that ensures receipt. ERISA also requires that the information in the SPD be kept current. This is accomplished through the use of the SMM or SMR, which inform plan participants and beneficiaries about material plan changes, and the requirement for periodic updated SPDs.

The current ICR relates exclusively to the third-party information collections arising from regulations governing furnishing the SPD, SMM, and SMR to participants and beneficiaries. Under section 104(a)(6) of ERISA, the Department may request plan administrators to furnish the Department copies of the plan's SPD. The information collection associated with the Department's regulations pertaining to section 104(a)(6) and the Department's right to request SPDs, however, is approved under a separate OMB control number (1210-0112) and is not the subject of the current ICR.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

The Department has published rules at 29 CFR 2520.104b-1(c) that describe the circumstances under which plan administrators may use electronic technologies to satisfy disclosure requirements under ERISA, including the information collections included in this ICR. Plan administrators may rely on that regulation to use electronic technologies to fulfill disclosure obligations with respect to the SPD and SMM/SMR so long as they comply with the conditions in the rule. Assumptions as to the extent to which plan administrators currently use electronic technology to satisfy these information collections are incorporated in the burden estimates for this ICR, as described in the response to Item 12, below.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

These disclosure requirements are not duplicated in any other Federal statutes or regulations. In some instances, state statute pertaining to insurance regulation may require insurers to provide certain similar information to policyholders. However, to the extent that state requirements may require disclosure of the same information, federal requirements under this information collection may be satisfied through the state-required disclosure, eliminating duplication.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

The Department's implementing regulations regarding furnishing SPDs, SMMs, and SMRs do not distinguish between small and large entities, either employers or employee benefit plans, inasmuch as the Department believes that participants and beneficiaries need the same quality and quantity of information regardless of employer or plan size. However, the Department's regulations do not mandate the specific format of the SPD, which provides plan sponsors with the flexibility to design their specific SPDs to meet their own needs. Small plans or employers may adopt suitable means of preparing the document that fit within their resources and abilities. Small plans also typically hire professional service providers, especially with regard to welfare benefits, to design and distribute SPDs, which generally lowers overall costs due to economies of scale.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The purpose of these information collections is adequate disclosure of plan provisions to plan participants and beneficiaries. The collection is conducted in a manner that is consistent with statutory requirements and only frequently enough to insure that participants and beneficiaries are in possession of relatively current information about their benefit plans.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
- *requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*

- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department published a notice in the Federal Register on November 27, 2009, 74 FR 62351, soliciting comments on the proposed extension of approval of this information collection and burden estimates. No comments were received.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Not applicable.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

None.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

None.

Provide estimates of the hour burden of the collection of information. The statement should:

Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

The Department's regulations on SPDs, SMMs, and SMRs require employee benefit plans to provide certain disclosure documents, containing specified information, to specified individuals upon the occurrence of a variety of triggering events. Some of the triggering events are periodic (e.g., at intervals of 5 or 10 years) and some are circumstance-based (e.g., when an individual first becomes covered under a plan). The regulations differentiate as to the required recipients: pension plans must make disclosures to each participant covered under the plan and to each beneficiary receiving benefits under the plan. Welfare plans, in contrast, must provide the disclosure documents only to participants covered under the plan. The specified triggering events for SPDs include (1) when a participant first becomes covered (and, for pension plans, when a beneficiary first begins to receive benefits) or, if later, when the plan first becomes subject to Part 1 of Title I; and (2) every fifth year thereafter (if the plan has been materially modified) or every 10th year thereafter (if the plan has not been materially modified). SMMs or SMRs must be provided in any year, other than a year in which an SPD is provided, in which the plan has been materially modified. In addition, plans must furnish SPDs to participants (and pension plan beneficiaries receiving benefits) on request and must also make these and related documents available for inspection at reasonable times and places.

In order to estimate the burden of these information collection requirements, the Department had to establish basic estimates and assumptions. To determine the number of respondents, the Department estimated the number of existing pension and welfare plans from data derived from Form 5500 filings for the 2007 plan year (latest complete available data) and certain other data pertaining to the incidence of employer-provided group health coverage. The available data support an estimate of approximately 708,000 pension plans and 2.8 million health plans. Because of the variety of different triggering events for the disclosures and the fact that all plans must be prepared to respond to participant requests for disclosure, the Department considers all plans to be respondents to the information collection requirements in each year. The Department therefore estimates a total of nearly 3.5 million annual respondents for this ICR. This ICR will impose no annual obligation other than being prepared to disclose SPDs on an estimated 24 percent of these plans, primarily small ones (see Table 6).

In order to determine annual frequency of response, the Department estimated the number of triggering events that would occur in any year, requiring any of the disclosures including new SPDs, updated SPDs, and SMMs/SMRs. The estimate was derived based on data and assumptions regarding the frequency at which each of the triggering events would occur. Empirical estimates include the rate of plan amendment, the rate of new participants becoming covered, and the rate of new plans' being established.. Based on these assumptions, the Department's calculations produced an estimate of approximately (108,006,000) responses annually. Tables 4, 5 and 6 (Total Annual Responses by Triggering Event, Annual Number (in thousands) of Responses by Reason for Receipt and Percentage of Annual Responses by Reason for Receipt) provide break-outs of this calculation by type of triggering event and type of plan.

The Department also allocated the burden of this ICR to hours or to cost based on assumptions regarding the extent to which respondents would either use their own in-house resources or would hire third-party service providers to perform the work. Based on its expert knowledge and accumulated experience of employee benefit practices, the Department has assumed that most plans (95 percent) will hire outside third-party service providers to prepare and distribute these documents, rather than using in-house resources. The burden attributable to hiring third-party service providers for 95 percent of respondent plans is treated, in this ICR, as a cost burden and described in the response to Item 13, below, while the use of in-house resources by the remaining 5 percent of plans is treated as an hour burden described in this response to Item 12.

Under the Department's regulation, an employer that uses an electronic method of communications at the worksite may choose, without the participant's consent, to provide disclosures through the worksite computers, subject to certain conditions; use of electronic communications at a participant's or beneficiary's home requires the individual's consent. For the estimated 38 percent of disclosures made through electronic means, printing and postage costs are reduced accordingly (electronic communications are assumed to require zero additional distribution costs, since employers are assumed to have established the infrastructure for electronic communications for other business purposes).

The burden estimate of this ICR derives from two distinct activities: preparation of disclosure documents (SPDs, SMMs, SMRs) and distribution of disclosure documents. The burden analysis for each of these activities is described separately, below. Because of the complexity of the calculations that bring together the various factors that comprise this burden analysis, the results are presented in table form in the supplemental document. Table 3 – Summary of Total Annual Cost and Hour Burden sets out the total burden and provides break-outs of the burden according to cost, hour, type of plan, type of burden, and type of disclosure. The narrative description below summarizes the Department's approach to the burden analysis.

Preparation

In any year, all new plans will prepare a new SPD, which is estimated to require ten hours of a legal professional's time at a labor rate of \$119.03 per hour. All plans that have been materially modified in that year will prepare an SMM or SMR, which is estimated to require three hours of a legal professional's time, unless that plan is already required to produce an updated SPD (in the 5th or 10th year), which is estimate to require 4 hours of a legal professional's time. Tables 1 and 2 (Input Data and Input Parameters) in the supplemental document describe more of the Department's assumptions regarding the time needed to prepare each type of document.

The Department's aggregate estimate of the burden of preparing the disclosure documents is comprised of several elements. First, for pension plans, the Department has assumed that each plan will prepare an individualized "customized" SPD or SMM when needed. The preparation burden for these plans is based, therefore, on a count of the number of documents needed to be prepared and the time needed for that type of document. For welfare plans, however, a composite approach was required. The Department believes that many welfare plans are established and maintained under prototype "noncustomized" plan documents prepared and marketed to plans by a small group of third-party benefit providers. The use of "noncustomized" SPDs and SMMs/SMRs by welfare plans will substantially reduce the cost of preparing these documents since a single benefit provider will take on the responsibility of developing and maintaining up-to-date documents for a large number of plans that are the provider's customers, spreading the cost of document preparation among the larger group of plans.

In developing this burden estimate, the Department has assumed that the 3,565 welfare plans that are either multiemployer plans or that have that more than 10,000 participants will develop "customized" SPDs and SMMs/SMRs. For that group of welfare plans, therefore, the Department developed an estimate of the burden of preparation based on the actual number of documents such

plans will need in a year. All other welfare plans have been assumed to satisfy the information collection requirements of this ICR through use of “noncustomized” SPDs and SMMs/SMRs. To estimate the burden of preparation of the “noncustomized” documents, therefore, the Department estimated the number of third-party benefit providers that contract with group health plans, multiplied that estimate by an assumption as to the average number (10) of distinct health benefit products each of these providers offer to group health plans, and applied the assumptions regarding number of hours of legal work required to prepare or modify these documents and the total labor cost of legal work (see first two tables in supplemental document) to the resulting aggregate number of products. The total aggregate annual estimate for preparation represents the summing of these composite parts. Table 3 – Summary of Total Annual Cost and Hour Burden in the supplemental document presents the results of the calculation of hour burden for preparation and a break-out of the preparation burden across types of plans and types of documents. Since the preparation of the documents is done primarily by outside service providers, only 5 percent of the time devoted to these documents is assigned to the hourly burden. The total hour burden for the preparation of SPDs and SMMs/SMRs for plans is 55,000 hours (roughly 65% of which is for SPDs)

Distribution

The results described in the preparation section are central in estimating the number of each type of document required to be distributed. The distribution burden for this ICR was based on estimates of the number of participants and (for pension plans) beneficiaries receiving benefits, combined with assumptions concerning the rate at which these disclosures will need to be made in any year and the rate of electronic distributions, which was assumed to require negligible time and cost. As described above, plan changes trigger the distribution of new SPDs or SMMs/SMRs. Thus, all participants in a plan receive an SPD when a new plan is created or an existing plan updates its description. Additionally, all participants receive an SMM when a plan is modified. However, participants within plans may receive documents even if there is not a plan level trigger. For example, plans are required to distribute SPDs to new entrants (estimated at 7% of participants) and participants separating and/or retiring from a plan. If an individual requests an SPD, then the plan is required to provide one. These assumptions are described in the Tables 1 and 2 of the supplemental document, attached to this supporting statement. For non-electronic distributions, the Department assumed that distribution of an SPD (new or updated) or an SMM/SMR in print for mailing or distribution by hand would require, on average, 0.5 minutes per document. The methods employers use to implement disclosure for the 62 percent of participants estimated to receive non-electronic disclosures are assumed to be evenly divided between direct mail to home and workplace distribution. It was assumed that clerical staff with a labor rate of \$26.14 per hour will require 0.5 minutes per disclosure to distribute.

Table 3 – Summary of Total Annual Cost and Hour Burden in the supplemental document, presents the aggregate results of the calculation of hour burden for distribution and a break-out of the burden across types of plans and types of documents. The hour burden for the distribution of these documents is 207,000 hours (149,000 for pension plans and 58,000 for welfare plans).

Table 3 also presents the overall total hour burden for this ICR and its dollar equivalent value. Based on the assumptions and analysis described above, the estimated total annual hour burden for this ICR is 262,000 hours (146,000 hours for large pension plans, 57,000 hours for small pension plans and 59,000 hours for welfare plans). The equivalent dollar value of this annual hour burden is estimated at \$11,911,000 (\$4,491,000 for large pension plans, \$5,795,000 for small pension plans and \$1,624,000 for welfare plans) .

13. *Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12.)*

The basic assumptions and estimates underlying the cost burden estimate for this ICR are described in the response to Item 12, above, and are further set out in Tables 1 and 2 of the supplemental document attached to this ICR. The cost burden of this ICR derives principally from purchase of third-party service provider services, which it is assumed, as described further in response to Item 12, above, is undertaken by 95 percent of plans. Thus, the same analysis used to generate the dollar equivalent cost burdens in question 12 are used to estimate the annual cost burden here; 95% of the cost is incorporated into the cost burden. The total cost burden stemming from preparation and distribution costs is \$295,148,000 (\$107,019,000 for large plans, \$112,862,000 for small plans and \$75,268,000 for welfare plans). In addition to the preparation and distribution time burdens, the paper burden from printing and mailing are included here for all plans. Overall, preparation time from legal professionals amounts to \$123,360,000 in costs and the distribution costs which account for clerical labor costs plus printing and mailing costs account for \$171,788,000

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

There is no cost to the Federal government associated with this information collection, inasmuch as it consists exclusively of third-party disclosures.

15. *Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.*

There have been no program changes to this ICR since the prior submission. Differences in burden estimation arise from adjustments to hourly rates, plan and participant numbers as well as the cost of postage. The Department has also updated its estimate of the extent to which respondents will use electronic methods of communication, based on technological advances and increased experience with these methods.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

Not applicable.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.

If the plan has not been amended during the five years after the SPD was first furnished, an updated SPD must be furnished every tenth year.

Because many welfare benefit plans are not required to file Form 5500, the aggregate number of such plans had to be derived from other sources. Due to lack of more specific data, the Department based this estimate on data related to the incidence of employer-provided group health benefits. Because many employers provide different types of welfare benefits through a single welfare benefit plan, and because group health coverage is the most frequently provided types of employer-based benefit, the Department deemed this approach the most likely to produce an accurate estimate. Use of this approach is further supported by the fact that employer-based group health coverage is the most studied type of welfare benefit and therefore yields the most reliable data available.

All estimates in this ICR have been rounded to the nearest thousand.

According to Departmental estimates using the 2008 Medical Expenditure Panel Survey-Insurance Component, there are 2.8 million health plans; the Department does not have comparable numbers for the other welfare plans in existence, such as those providing life or disability insurance, therefore the burden for these plans is not included, but could be nearly as large as for health plans.

EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index June 2009, Bureau of Labor Statistics).

Using Form 5500 plan filings, the Department can make cross tabulations of the number of plans that have 10,000 or more participants as well as the number of plans that are multiemployer. Those plans that fall into at least one of these categories are assumed to have prepared in house customized SPDs and distribute their own SMMs/ SMRs.

Using NAIC figures, the Department estimates that 1,000 health and life plan service providers are established across the country. If each of the 1,000 service providers has 10 distinct products, then the number of welfare SPDs that must be prepared would be 10,000.

The analysis provided here stems from a rather complex algorithm. However, looking at a subset of plans is a useful exercise in understanding the Department's logic. The example given here will concentrate on large pension plans (100 or more participants), of which there are approximately 82,000. Of this total, approximately 2% of the plans are new plans. These new plans must prepare SPDs. Of the remaining large plans (98%), 89% will have amended their plans in the last five years. Thus, 87% of the plans fall in the category of plans that are not new this year but have been amended in the last 5 years. Thus, if we assume that the year of these plans most recent SPD is evenly distributed over the last five years, approximately 17.4% ($87\% \times 20\%$) of the plans will be due for a new SPD and will have been amended in the last five years. This leaves approximately 70% of plans that have amended in the last five years but will not issue an SPD this year. Making some additional assumptions, of the remaining SPDs that will be amended within a five year period, roughly 37% of them will have amended their plans within the last year. Thus, 26% ($70\% \times 37\%$) of the overall plans will fall in the category of plans that have amended in the last five years that issue SMMs without issuing SPDs. Thus, 44% ($87\% - 17.4\% - 26\%$) of the plans are recently amended not new plans that have not issued an SPD or an SMM in the past year. The remaining 11% of plans have not amended in the last 5 years. However, if the infrequently amended plans are evenly distributed over the last ten years, then another 1% of the overall plans will issue SPDs this year. Additionally, some of these plans will issue an SMM without issuing an SPD. Thus, overall approximately 20% of these plans will issue an SPD this year and over 26 % will issue an SMM without an SPD

Over 1 million participants are assumed to cash out their pension benefits in a given year and over 11 million are currently retired or separated participants receiving benefits; of the retirees, roughly 5 percent are estimated to have retired in the past year).

The Department estimates that upon receiving an SMM, many participants will want to investigate more details about their plan. The Department assumes that 5 percent of participants request an SPD during non SMM years and 20 percent request one during an SMM year.

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