



## RULES and REGULATIONS

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

(T.D. 8431)

Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements

Thursday, September 3, 1992

**\*40319** AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to reporting requirements with respect to single-class real estate mortgage investment conduits (REMICs) and the market discount fraction reported with other REMIC information. This document also contains final regulations that require an issuer of publicly offered debt instruments with original issue discount (OID) to file an information return with the Internal Revenue Service. The relevant provisions in the Internal Revenue Code were added or amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and by the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATES: [Sections 1.67-3](#) and [1.6049-7\(f\)\(2\)\(i\)\(G\)](#) are effective for calendar quarters and calendar years ending after September 2, 1992. [Section 1.1275-3](#) is effective for debt instruments issued after September 2, 1992. The amendments to [§ 602.101](#) are effective September 2, 1992.

FOR FURTHER INFORMATION CONTACT: James W.C. Canup, 202-622-3950 (not a toll-free number), with respect to the REMIC reporting regulations, and William E. Blanchard, 202-622-3930 (not a toll-free number), with respect to the OID reporting regulations.

## SUPPLEMENTARY INFORMATION:

## Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 ([44 U.S.C. 3504\(h\)](#)) under control numbers 1545-1018 (relating to REMICs) and 1545-0887 (relating to OID).

The estimated total annual reporting and/or recordkeeping burden for the requirements contained in [§ 1.67-\(f\) \(1\), \(2\), \(3\), \(4\)\(i\), \(5\), and \(6\)](#) of this regulation is reflected in the burden of Schedule Q and Forms 1066, 1099-INT, 1099-OID, 8281, and 8811. The estimated annual burden per respondent for [§ 1.67-3\(f\)\(4\)\(ii\)](#) varies from 0.1 hours to 1.0 hours, depending on individual circumstances, with an estimated average of 0.3 hours. The estimated annual burden per respondent for [§ 1.1275-3](#) is reflected in the burden of Form 8281.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of these burden estimates and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

## Background

### *REMIC Provisions*

Temporary regulations ([T.D. 8366](#)) and a notice of proposed rulemaking (FI-61-91) under [sections 67](#) and [6049 of the Internal Revenue Code](#) of 1986 (Code), relating to REMICs, were published in the Federal Register on September 30, 1991 ([56 FR 49512](#) and [49524](#), respectively). No written comments were received from the public on the proposed regulations. In addition, on December 5, 1991, the Internal Revenue Service held a public hearing concerning these regulations. No statements were made at the public hearing concerning these proposed regulations. The proposed regulations are adopted as revised by this Treasury decision.

Section 132 of the Tax Reform Act of 1986 (the 1986 Act) added to the Code [section 67](#), which disallows certain miscellaneous itemized deductions in computing the taxable income of an individual to the extent that the aggregate of those deductions does not exceed two percent of the individual's adjusted gross income. [Section 67\(c\)](#) directs that regulations be issued to prohibit the indirect deduction through pass-through entities of amounts that are not allowable as a deduction if paid or incurred directly by an individual. [Section 67\(c\)](#) also directs that regulations provide any necessary reporting requirements. The regulations under [section 67](#) that are contained in this document fulfill the requirements of [section 67\(c\)](#) as it applies to REMICs.

### *OID Provisions*

Section 41(a) of the Tax Reform Act of 1984 added to the Code [section 1275\(c\)\(2\)](#), which requires certain information relating to OID on publicly offered debt instruments to be submitted to the Secretary in the time and manner prescribed by the Secretary in regulations. Pursuant to the authority in [section 1275\(c\)](#), [§ 1.1275-3T \(TD 8030\)](#) was published in the Federal Register on June 18, 1985 ([50 FR 25219](#)). Under [§ 1.1275-3T\(b\)](#), unless otherwise provided, an issuer must file an information return (Form 8281) with the Internal Revenue Service within 30 days after the issue date of an issue of publicly offered debt instruments that have OID. [Section 1.1275-3T\(b\)](#) lists the information required to be reported on the information return, such as the name, address, and taxpayer identification number of the issuer and the amount of OID for the entire issue.

Amendments to [§ 1.1275-3T\(b\)](#) were proposed in a notice of proposed rulemaking (LR-189-84), which was published in the Federal Register on April 8, 1986 ([51 FR 12086](#)). In addition, [§ 1.1275-3T\(b\)](#) was amended by [T.D. 8259](#), which was published in the Federal Register on September 7, 1989 ([54 FR 37102](#)). A cross-reference notice of proposed rulemaking (FI-27-89) was published in the Federal Register on the \***40320** same day. In general, the amendments provided additional exceptions to the types of debt instruments subject to the regulation and required additional information to be reported on the information return.

Written comments were received from the public on the temporary and the proposed regulations. As explained below, the

comments were considered in the drafting of the final regulations.

#### *Explanation of Provisions*

In general, a REMIC is a fixed pool of mortgages in which multiple classes of interests are held by investors and which elects to be taxed as a REMIC. The regulations under [sections 67](#) and [6049](#) require notice of income and other information to be provided to REMIC investors and the Internal Revenue Service.

#### *Treatment of Allocable Investment Expenses*

Section 1.67-3T(a)(1) requires a REMIC to allocate to each of its pass-through interest holders (as defined in § 1.67-3T(a)(2)(i)(A)) the holder's proportionate share of the aggregate amount of allocable investment expenses of the REMIC for the calendar quarter.

Pursuant to § 1.67-3T(b)(1) a pass-through interest holder is treated both as having received or accrued income and as having paid or incurred an expense described in section 212 (or section 162 in the case of a pass-through interest holder that is a regulated investment company) in an amount equal to the pass-through interest holder's proportionate share of the allocable investment expenses of the REMIC.

A REMIC is required under [§ 1.67-3\(f\)\(1\)](#) to provide written notice to each pass-through interest holder to whom an allocation of expenses is required to be made. Except in the case of notice to a regular interest holder in a single-class REMIC (as described in § 1.67-3T(a)(2)(ii)(B)), notice is furnished quarterly on Schedule Q (Form 1066). The notice must list the aggregate amount of expenses accrued during each calendar quarter for which the REMIC is allowed a deduction under section 212 and the interest holder's proportionate share of these expenses for the calendar quarter. A REMIC must also report this information annually to the Internal Revenue Service pursuant to [§ 1.67-3\(f\)\(3\)\(i\)](#).

If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may provide the written notice to the nominee and make the information return to the Internal Revenue Service with respect to the nominee. [Section 1.67-3\(f\)\(5\)](#) provides reporting requirements for nominees to which a REMIC provides notice.

#### *Single-Class REMICs*

In the case of a single-class REMIC (as described in § 1.67-3T(a)(2)(ii)), the term "pass-through interest holder" is defined more broadly to include any regular or residual interest holder that is either an individual (other than certain non-resident aliens), a person that computes its taxable income in the same manner as would an individual, or a pass-through entity, interests which are owned by certain types of holders. Under § 1.67-3T(c)(3), a single-class REMIC allocates its investment expenses for a calendar quarter to each holder in proportion to the amount of income that accrues to the holder for that quarter.

As required under [§ 1.67-3\(f\)](#) for all other REMICs, a single-class REMIC must report to pass-through interest holders and the Internal Revenue Service the holder's proportionate share of allocable investment expenses. The REMIC is required to report this information quarterly to pass-through interest holders who hold a residual interest on Schedule Q (Form 1066) and annually to the Internal Revenue Service as required in [§ 1.860F-4\(e\)\(4\)](#).

#### *Notice to Pass-Through Interest Holders who Hold Regular Interests in Single-Class REMICs*

[Section 1.67-3\(f\)](#) provides that a single-class REMIC must furnish information to certain of its regular interest holders showing each such interest holder's allocable share of the REMIC's investment expenses. The information may be fur-

nished annually and, as provided in [§ 1.67-3\(f\)\(2\)\(ii\)](#), may be separately stated on the statement containing Form 1099 information instead of in a separate statement provided in a separate mailing. The REMIC, however, must provide quarterly information to a person who requests information pursuant to [§ 1.6049-7\(e\)](#) together with the information described in that section.

#### *Market Discount Fraction and de minimis OID*

A REMIC or an issuer of a collateralized debt obligation is required to provide information necessary to compute the accrual of market discount. Market discount is allocated based on a fraction determined by reference to either the interest or OID or an instrument. The regulations under [§ 1.6049-7\(f\)\(2\)\(i\)\(G\)](#) permit the use of de minimis OID in computing the market discount fraction required to be reported with other financial information with respect to REMICs and other collateralized debt obligations.

#### *Information Reporting Requirements for an Issuer of Publicly Offered Debt Instruments With OID*

In general, the final regulations adopt the rules of [§ 1.1275-3T\(b\)](#), as amended by [§ 1.1275-3\(b\)](#) of the proposed regulations. Under [§ 1.1275-3\(c\)](#), an issuer of publicly offered debt instruments with OID must provide the information required by Form 8281 (or any successor form) to the Internal Revenue Service within 30 days from the issue date of the debt instruments. The regulations, however, do not apply to debt instruments described in section 1272(a)(2), debt instruments issued by natural persons, certificates of deposit, REMIC regular interests or other debt instruments subject to section 1272(a)(6), or (unless otherwise required by the Commissioner) stripped bonds and coupons.

The final regulations do not contain rules for the information reporting requirements under section 1275(c)(1) and [§ 1.1275-3\(a\)](#) of the proposed regulations (the legending requirements). These rules will be addressed in future regulations.

#### *Summary of Amendments*

No comments were received on the proposed [section 67](#) and [section 6049](#) REMIC reporting regulations. Therefore, no amendments to those proposed regulations were made. Editorial change, however, have been made to clarify the final regulations.

In general, the final OID reporting regulations adopt the amendments contained in the proposed regulations. The final regulations also make editorial changes to the temporary regulations, including the deletion of the detailed list of information that was in [§ 1.1275-3T\(b\)](#). Form 8281, however, currently requires the issuer to submit the same information that was listed in [§ 1.1275-3T\(b\)](#).

In addition, [§ 1.1275-3\(d\)](#) clarifies that neither a foreign nor a domestic issuer is required to file an information return if the issue is not offered for sale or resale in the United States in connection with its original issuance. This change was made in response to several comments on the definition of issuer in the temporary and proposed regulations.

#### *Special Analyses*

These final regulations are not major rules as defined in [Executive Order 12291](#). Therefore, a Regulatory Impact \***40321** Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to [section 7805\(f\) of the Internal Revenue Code](#), the notices of proposed rulemaking were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these regulations is James W. C. Canup, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

## List of Subjects

### *26 CFR 1.61-1 through 1.67-4T*

Income taxes, Reporting and recordkeeping requirements.

### *26 CFR 1.1231-1 through 1.1297-3T*

Income taxes.

### *26 CFR 1.6031-1 through 1.6060-1*

Income taxes, Reporting and recordkeeping requirements.

### *26 CFR 602*

Reporting and recordkeeping requirements.

## Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953  
Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: [26 U.S.C. 7805](#) \* \* \* [Section 1.67-3](#) also issued under [26 U.S.C. 67\(c\)](#). \* \* \* [Section 1.1275-3](#) also issued under [26 U.S.C. 1275\(c\)](#). \* \* \*

### [26 CFR § 1.67-3](#)

Par. 2. [Section 1.67-3](#) is added to read as follows:

### [26 CFR § 1.67-3](#)

[§ 1.67-3](#) Allocation of expenses by real estate mortgage investment conduits.

- (a) Allocation of allocable investment expenses. (Reserved)
- (b) Treatment of allocable investment expenses. (Reserved)
- (c) Computation of proportionate share. (Reserved)
- (d) Example. (Reserved)
- (e) Allocable investment expenses not subject to backup withholding. (Reserved)

(f) Notice to pass-through interest holders—(1) Information required. A REMIC must provide to each pass-through interest holder to which an allocation of allocable investment expense is required to be made under § 1.67-3T(a)(1) notice of the following—

(i) If, pursuant to paragraph (f)(2) (i) or (ii) of this section, notice is provided for a calendar quarter, the aggregate amount of expenses paid or accrued during the calendar quarter for which the REMIC is allowed a deduction under section 212;

(ii) If, pursuant to paragraph (f)(2)(ii) of this section, notice is provided to a regular interest holder for a calendar year, the aggregate amount of expenses paid or accrued during each calendar quarter that the regular interest holder held the regular interest in the calendar year and for which the REMIC is allowed a deduction under section 212; and

(iii) The proportionate share of these expenses allocated to that pass-through interest holder, as determined under § 1.67-3T(c).

(2) Statement to be furnished—(i) To residual interest holder. For each calendar quarter, a REMIC must provide to each pass-through interest holder who holds a residual interest during the calendar quarter the notice required under paragraph (f)(1) of this section on Schedule Q (Form 1066), as required in § 1.860F-4(e).

(ii) To regular interest holder. For each calendar year, a single-class REMIC (as described in § 1.67-3T(a)(2)(ii)(B)) must provide to each pass-through interest holder who held a regular interest during the calendar year the notice required under paragraph (f)(1) of this section. Quarterly reporting is not required. The information required to be included in the notice may be separately stated on the statement described in § 1.6049-7(f) instead of on a separate statement provided in a separate mailing. See § 1.6049-7(f)(4). The separate statement provided in a separate mailing must be furnished to each pass-through interest holder no later than the last day of the month following the close of the calendar year.

(3) Returns to the Internal Revenue Service—(i) With respect to residual interest holders. Any REMIC required under paragraphs (f)(1) and (2)(i) of this section to furnish information to any pass-through interest holder who holds a residual interest must also furnish such information to the Internal Revenue Service as required in § 1.860F-4(e)(4).

(ii) With respect to regular interest holders. A single-class REMIC (as described in § 1.67-3T(a)(2)(ii)(B)) must make an information return on Form 1099 for each calendar year, with respect to each pass-through interest holder who holds a regular interest to which an allocation of allocable investment expenses is required to be made pursuant to § 1.67-3T(a)(1) and (2)(ii). The preceding sentence applies with respect to a holder for a calendar year only if the REMIC is required to make an information return to the Internal Revenue Service with respect to that holder for that year pursuant to section 6049 and § 1.6049-7(b)(2)(i) (or would be required to make an information return but for the \$10 threshold described in section 6049(a)(1) and § 1.6049-7(b)(2)(i)). The REMIC must state on the information return—

(A) The sum of—

(1) The aggregate amounts includible in gross income as interest (as defined in § 1.6049-7(a)(1) (i) and (ii)), for the calendar year; and

(2) The sum of the amount of allocable investment expenses required to be allocated to the pass-through interest holder for each calendar quarter during the calendar year pursuant to § 1.67-3T(a); and

(B) Any other information specified by the form or its instructions.

(4) Interest held by nominees and other specified persons—(i) Pass-through interest holder's interest held by a nominee. If a pass-through interest holder's interest in a REMIC is held in the name of a nominee, the REMIC may make the information return described in paragraphs (f)(3) (i) and (ii) of this section with respect to the nominee in lieu of the pass-through interest holder and may provide the written statement described in paragraphs (f)(2) (i) and (ii) of this section to that nominee in lieu of the pass-through interest holder.

(ii) Regular interests in a single-class REMIC held by certain persons. If a person specified in [§ 1.6049-7\(e\)\(4\)](#) holds a regular interest in a single-class REMIC (as described in [§ 1.67-3T\(a\)\(2\)\(ii\)\(B\)](#)), then the single-class REMIC must provide the information described in paragraphs (f)(1) and (f)(3)(ii) (A) and (B) of this section to that person with the information specified in [§ 1.6049-7\(e\)\(2\)](#) as required in [§ 1.6049-7\(e\)](#).

(5) Nominee reporting—(i) In general. In any case in which a REMIC provides information pursuant to paragraph (f)(4) of this section to a nominee of a pass-through interest holder for a calendar quarter or, as provided in paragraph **\*40322** (f)(2)(ii) of this section, for a calendar year—

(A) The nominee must furnish each pass-through interest holder with a written statement described in paragraph (f)(2) (i) or (ii) of this section, whichever is applicable, showing the information described in paragraph (f)(1) of this section; and

(B) The nominee must make an information return on Form 1099 for each calendar year, with respect to the pass-through interest holder and state on this information return the information described in paragraphs (f)(3)(ii) (A) and (B) of this section, if—

(1) The nominee is a nominee for a pass-through interest holder who holds a regular interest in a single-class REMIC (as described in [§ 1.67-3T\(a\)\(2\)\(ii\)\(B\)](#)); and

(2) The nominee is required to make an information return pursuant to [section 6049](#) and [§ 1.6049-7 \(b\)\(2\)\(i\)](#) and [\(b\)\(2\)\(ii\)\(B\)](#) (or would be required to make an information return but for the \$10 threshold described in [section 6049\(a\)\(2\)](#) and [§ 1.6049-7\(b\)\(2\)\(i\)](#)) with respect to the pass-through interest holder.

(ii) Time for furnishing statement. The statement required by paragraph (f)(5)(i)(A) of this section to be furnished by a nominee to a pass-through interest holder for a calendar quarter or calendar year must be furnished to this holder no later than 30 days after receiving the written statement described in paragraph (f)(2) (i) or (ii) of this section from the REMIC. If, however, pursuant to paragraph (f)(2)(ii) of this section, the information is separately stated on the statement described in [§ 1.6049-7\(f\)](#), then the information must be furnished to the pass-through interest holder in the time specified in [§ 1.6049-7\(f\)\(5\)](#).

(6) Special rules—(i) Time and place for furnishing returns. The returns required by paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for any calendar year must be filed at the time and place that a return required under [section 6049](#) and [§ 1.6049-7\(b\)\(2\)](#) is required to be filed. See [§ 1.6049-4\(g\)](#) and [§ 1.6049-7\(b\)\(2\)\(iv\)](#).

(ii) Duplicative returns not required. The requirements of paragraphs (f)(3)(ii) and (f)(5)(i)(B) of this section for the making of an information return are satisfied by the timely filing of an information return pursuant to [section 6049](#) and [§ 1.6049-7\(b\)\(2\)](#) that contains the information required by paragraph (f)(3)(ii) of this section.

[26 CFR § 1.1275-3](#)

Par. 3.[Section 1.1275-3](#) is added to read as follows:

26 CFR § 1.1275-3

§ 1.1275-3 Original issue discount information reporting requirements.

(a) In general. (Reserved)

(b) Information required to be set forth on face of debt instruments that are not publicly offered. (Reserved)

(c) Information required to be reported to Secretary upon issuance of publicly offered debt instruments—(1) In general. Except as provided in paragraph (c)(3) or paragraph (d) of this section, the information reporting requirements of this paragraph (c) apply to any debt instrument that is publicly offered and has original issue discount. The issuer of any such debt instrument must make an information return on the form prescribed by the Commissioner (Form 8281, as of September 2, 1992. The prescribed form must be filed with the Internal Revenue Service in the manner specified on the form. The taxpayer must use the prescribed form even if other information returns are filed using other methods (e.g., electronic media), unless the Commissioner announces otherwise in a revenue procedure.

(2) Time for filing information return. The prescribed form must be filed for each issue of publicly offered debt instruments within 30 days after the issue date of the issue.

(3) Exceptions. The rules of paragraph (c)(1) of this section do not apply to debt instruments described in section 1272(a)(2), debt instruments issued by natural persons (as defined in § 1.6049-4(f)(2)), certificates of deposit, REMIC regular interests or other debt instruments subject to section 1272(a)(6), or (unless otherwise required by the Commissioner pursuant to a revenue ruling or revenue procedure) stripped bonds and coupons (within the meaning of section 1286).

(d) Application to foreign issuers and U.S. issuers of foreign-targeted debt instruments. A foreign or domestic issuer is subject to the rules of this section with respect to an issue of debt instruments unless the issue is not offered for sale or resale in the United States in connection with its original issuance.

(e) Penalties. See section 6706 for rules relating to the penalty imposed for failure to meet the information reporting requirements imposed by this section.

(f) Effective date. Paragraphs (c), (d), and (e) of this section are effective for an issue of debt instruments issued after September 2, 1992.

26 CFR § 1.6049-7

Par. 4. Section 1.6049-7 is amended by revising paragraph (f)(2)(i)(G) to read as follows:

26 CFR § 1.6049-7

§ 1.6049-7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

\* \* \* \* \*(f) \* \* \*

(2) \* \* \*

(i) \* \* \*



(g) Information necessary to compute accrual of market discount. For calendar years after 1989, this requirement is satisfied by furnishing to the holder for each accrual period during the year a fraction computed in the manner described in either paragraph (f)(2)(i)(G)(1) or (f)(2)(i)(G)(2) of this section. For calendar years after December 31, 1991, the REMIC or the issuer of the collateralized debt obligation must be consistent in the method used to compute this fraction.

(1) The numerator of the fraction equals the interest, other than original issue discount, allocable to the accrual period. The denominator of the fraction equals the interest, other than original issue discount, allocable to the accrual period plus the remaining interest, other than original issue discount, as of the end of that accrual period. The interest allocable to each accrual period and the remaining interest are calculated by taking into account events which have occurred before the close of the accrual period and the prepayment assumption, if any, determined as of the startup day (as defined in section 860G(a)(9)) of the REMIC or the issue date (as defined in section 1275(a)(2)) of the collateralized debt obligation that would be made in computing original issue discount if the debt instrument had been issued with original issue discount.

(2) If the REMIC regular interest or the collateralized debt obligation has de minimis original issue discount (as defined in section 1273(a)(3) and any regulations thereunder), then, at the option of the REMIC or the issuer of the collateralized debt obligation, the fraction may be computed in the manner specified in paragraph (f)(2)(ii)(K) of this section taking into account the de minimis original issue discount.

\* \* \* \* \*PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACTPar. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

26 CFR § 602.101

Par. 6. Section 602.101(c) is amended by adding the following entries to the table:

26 CFR § 602.101

§ 602.101 OMB Control Numbers.

\* \* \* \* \*40323 (c) \* \* \* \*

CFR part or section where identified and described	Current OMB Control No.
	* * * * *
1.67-3	1545-1018
	* * * * *
1.1275-3	1545-0887
	* * * * *
1.6049-7	1545-1018
	* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: August 20, 1992.

Robert Glenn Hubbard,

Acting Assistant Secretary of the Treasury.

(FR Doc. 92-21153 Filed 9-2-92; 8:45 am)

BILLING CODE 4830-01-M

1992-40 I.R.B. 5, T.D. 8431, 57 FR 40319-01, 57 FR 40319, 1992-2 C.B. 39, 1992 WL 211277 (IRS TD)  
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