DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Doc. No. FR–4459–N–07]

Tenant-Based Section 8 Program: Procedures for Determining Baseline Unit Allocations, Verifying Unit Allocations, Accessing, Using, Restoration of and Recapture of Program Reserves and Transfers of Baseline Unit Allocations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On October 21, 1999, HUD published its final rule specifying the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, the final rule was developed using negotiated rulemaking procedures. This notice, which was also developed during the negotiated rulemaking process, provides guidance on several topics relating to the final rule, including the procedures for verifying unit allocations; the accessing, using, restoration of and recapture of program reserves in the Annual Contributions Contract (ACC) Reserve Account; and the transfer of baseline unit allocations. HUD will make the necessary revisions to its standard ACC to incorporate the policies and procedures announced in this notice.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 708–1380. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

HUD developed this Notice during the negotiated rulemaking process that resulted in the publication of a revised 24 CFR 982.102 on October 21, 1999 (64 FR 56882). The Notice covers five separate topics:

- Section II (entitled ''Determination of Initial baseline (as of December 31, 1999)'') describes procedures for establishing the initial baseline number of units reserved for each PHA;
- Section III (entitled ''Verifying Number of Renewal Units'') describes the procedures for verifying unit allocations;
- Section IV (entitled ''Annual Contributions Contract (ACC) Reserve Account'') describes the procedures for accessing reserves in the ACC Reserve Account, the permissible uses of reserves, and the policy for restoration of depleted reserves;
- Section V states HUD's policy on recapturing program reserves in the PHA's ACC Reserve Account; and
- Section VI (entitled ''Reduction of Adjusted Baseline Number of Units and Budget Authority'') explains the procedures to be followed to require transfers of baseline unit allocations in the tenant-based Section 8 program.

This Notice supersedes Notices PIH 98–65 and 99–1, as well as HUD's February 18, 1999 **Federal Register** notice (64 FR 8187). HUD will make the necessary revisions to its standard ACC to incorporate the policies and procedures announced in this Notice.

The renewal funding methodology listed in revised 24 CFR 982.102 is designed to provide adequate funding for the number of units reserved for each PHA. PHAs have significant flexibility to manage their programs within the available funding including the amount of program reserves available in each PHA's ACC Reserve Account. HUD advises PHAs to use this flexibility first of all to ensure that they assist the number of families that equal the number of units reserved for the PHA—the baseline number of units. Because of local conditions, it is possible that PHAs may have some funds remaining after assisting the number of families that equal the PHA's baseline. HUD encourages PHAs in this situation to assist additional families; however, HUD also has to caution PHAs to carefully assess their local conditions (demographics of waiting list, turnover rate, future renewal funding) prior to issuing vouchers to families above those equivalent to the PHA's baseline. PHA's must plan ahead to avoid becoming overextended and unable to maintain adequate support for families in their tenant-based program.

II. Determination of Initial Baseline (As of December 31, 1999)

In order to calculate the allocation of renewal funding in the tenant based Section 8 program, HUD uses a renewal units number as a factor in its calculation (renewal units equal the number of units for which funding is reserved on HUD books for a PHA's program). HUD has established an initial baseline number of units reserved for each PHA as of December 31, 1999, to be used in calculating the renewal units number for calendar year 2000 and subsequent years (see 24 CFR § 982.102(d)(1)(ii)). HUD used the following process to determine the December 31, 1999 initial baseline:

Step 1: HUD determined the number of families assisted as of October 1, 1997. For purposes of calculating the initial baseline, HUD determined the number of assisted units under lease on October 1, 1997. The number of assisted units under lease was specified in the supporting documentation submitted by PHAs with the Voucher for Payment of Annual Contributions and Operating Statement (Form HUD–52681).

Step 2: HUD determined the adjusted reserved number of units as of October 1, 1997. HUD determined the number of reserved units as of October 1, 1997. HUD then added the number of authorized units reserved after October 1, 1997 as a result of HUD's review, conducted in Federal Fiscal Year 1998, of leasing in excess of the number of units reserved, in accordance with PIH Notice 98–22 and letters sent to each affected PHA.[1] The result of the addition is the adjusted reserved number of units.

Step 3: HUD compared the number of adjusted reserved units and the number of leased units as of October 1, 1997. In performing this step of the calculation, HUD compared the number of adjusted reserved units (from Step 2) and the number of leased units as of October 1, 1997 (from Step 1) and used the higher of the two as the basis of further calculation in step 4. The comparison was done separately for the certificate and the voucher programs.

Step 4: HUD added any additional units reserved for the PHA from October 1, 1997 to December 31, 1999 to the result of Step 3. HUD included all additional units reserved for the PHA from October 1, 1997 until December 31, 1999. Adjustments included incremental funding as well as conversion funding awarded to provide continued assistance to assisted families pursuant to the conversion of project based assistance to tenant based assistance. HUD also included adjustments for assistance transferred from one housing agency to another.[2]

Step 5: Finally, HUD added the calculated number of units from Step 4 in the certificate program to the calculated number of units from Step 4 in the voucher program to establish the

[1] This adjustment was necessary to avoid double counting units in the course of performing the comparison since a portion of the additional authorized units would also be included in the number of units leased on October 1, 1997.

[2] In this case, the gaining PHA's adjusted baseline would increase and the transferring PHA's adjusted baseline would decrease in an amount equal to the number of units transferred.

initial baseline (as of December 31, 1999) for each PHA.

For example, on October 1, 1997, the ''Main Street'' Housing Authority was listed as having 100 reserved voucher units in HUD's records and subsequently reported that it was leasing 110 units in its voucher program at that time. HUD determined in 1998 that 5 units (vouchers) should be added to the Main Street Housing Authority as additional authorized units. In performing the first three steps of the calculation, HUD would have done the following: Step 1—determined that the housing authority was leasing 110 units as of October 1, 1997; Step 2—added the 5 additional authorized units to the 100 reserved units to calculate a total of 105 adjusted reserved voucher units; and Step 3—compared the 105 adjusted reserved units in the Main Street Housing Authority's voucher program to the 110 units reported as actually leased. Because the 110 units reported as leased exceeded the 105 adjusted reserved units in the housing authority's voucher program, HUD would have used 110 units as the result of step 3 of the calculation for the housing authority's voucher program. Or alternatively, the housing authority might have reported that it was leasing 100 voucher units on October 1, 1997 in Step 1 in which case HUD would have compared the 100 units with the 105 adjusted reserved units in its voucher program and would have used 105 units as the result of Step 3 of the calculation. HUD would have performed a similar analysis of the housing authority's certificate program. For example for Step 1—the housing authority reported a lease rate of 175 in its certificate program as of October 1, 1997. For Step 2—HUD's records listed the Main Street Housing Authority as having 200 reserved certificate units as of October 1, 1997. HUD would have compared the two and determined that 200 certificate units was the result of the calculation of Step 3.

To continue the example for Step 4, in Fiscal Year 1998 HUD reserved funding for 10 voucher units for the Main Street Housing Authority under the Family Unification Program. In Fiscal Year 1999 the authority had 10 voucher units added to its inventory as a result of the conversion of a property from project based to tenant based assistance. All 20 of these additional units added subsequent to 1997 would have been added to the number of units calculated in Step 3 to calculate the number of units for the housing authority's voucher program, 130. No units were added to the housing authority's certificate program after October 1, 1997. HUD's unit number for the certificate program would therefore remain 200 units.

To complete the example for Step 5, HUD would have added the number of vouchers, 130 to the number of certificates, 200 to establish a December 31, 1999 initial baseline of 330 total units.

III. Verifying Number of Renewal Units

A. Section 8 Finance Division Exhibit

HUD uses the number of renewal units to calculate the amount of renewal funding. HUD has determined the December 31, 1999 initial baseline number of units to be used for each PHA's renewal calculation for calendar year 2000.The initial baseline is a primary component of the renewal units factor.

In March of 2000 the Section 8 Finance Division in the Headquarters Office of PIH has mailed to each PHA a letter with an exhibit that lists the number of units in the PHA's initial baseline (as of December 31, 1999). An example of this exhibit is attached as Appendix A to this Notice. The Section 8 Finance Division will simultaneously send a copy of the exhibits to the Section 8 Financial Management Center (FMC).

The exhibit will separately list:

1. All of the unit counts assigned to each active increment in HUDCAPS for the PHA as of December 31, 1999;
2. The number of leased units as of October 1, 1997;
3. The number of reserved units as of October 1, 1997;
4. Any additional authorized units reserved as a result of HUD's review of leasing in excess of contract levels conducted in Federal Fiscal Year 1998 and 1999 in accordance with letters sent to each affected PHA;
5. Any units reserved for the PHA between October 1, 1997 and December 31, 1999;
6. The total number of units scheduled to expire after December 31, 2000;
7. The total number of units determined to make up the Renewal Units for the purposes of calculating the allocation of renewal funding for calendar year 2000.

B. PHA Error Notifications

PHAs will have 90 days from the date of the letter to review HUD's listing of the numbers of units and to notify HUD of any errors:

1. The PHA's notification must at a minimum specify the increment(s) in error, state that the PHA believes that HUD has made an error in determining the number of units, indicate the correct number of units, include documentary evidence demonstrating that the unit count is in error and provide a narrative explanation of how the documentation shows that HUD's baseline unit exhibit is in error.
2. The notification must be received by the FMC no later than 90 days from date of the letter at the following address: ATTN: Baseline Unit Review, Denise Rock, 2345 Grand Blvd., Suite 1150, Kansas City, MO 64108–2603;
3. If the FMC does not receive a notification of errors within the prescribed time frame, HUD will consider the renewal units number and the other listed unit numbers established and will not consider later requests for adjustments to the unit count based on error except in extraordinary circumstances.

C. FMC Review of Error Notifications

The FMC will review any error notifications submitted by PHAs within a reasonable time period in light of the number of error notifications received [3] (while the error notification is under review, HUD will not change the allocation of renewal funding to compensate for the asserted error):

1. If the FMC determines that an error has occurred, it will make an adjustment to the PHA's renewal unit count; however, in making its determination, the FMC will review and revise any element in calculation of the initial baseline and the number of renewal units.

a. If HUD determines there is sufficient funding available, HUD will make appropriate adjustments to the applicable PHA's renewal unit count for the calendar year in which it makes the determination, otherwise the adjustment will be applied to the following calendar year (it will not be retroactive).

b. The FMC will send the PHA a revised unit exhibit with a description of when and how the adjustment to compensate for the error will be made (with a copy to the Section 8 Finance Division in PIH Headquarters).

2. If the FMC determines that there is no error, it will send a letter to the notifying PHA indicating that it does not believe that there is an error with an explanation of its reasoning.

3. If a PHA disagrees with the FMC's determination (either concluding that there is no error or disagreeing with the number of units in error), it can ask for the Assistant Secretary of Public and Indian Housing to reconsider the

[3] The FMC will attempt to complete its reviews within 60 days.

determination of the FMC in accordance with the following procedure:

a. Its request for reconsideration must be sent to the FMC and received no later than 30 days after the date of the FMC's reply to the PHA's notification.

b. The request for reconsideration must clearly state the nature of the disagreement and the reason that the determination of the FMC is incorrect.

c. The FMC will forward the request to the Section 8 Finance Division in PIH Headquarters.

d. The Assistant Secretary shall have the same ability to respond to the PHA's error notification that the FMC has in III.C.1 and III.C.2 above.

e. The Assistant Secretary for Public and Indian Housing will reply to the request for reconsideration within a reasonable time period (generally within 30 days).

i. If the Assistant Secretary agrees with all or part of the PHA's request for reconsideration, the Assistant Secretary will issue an appropriate directive to the FMC and will also provide a written response to the applicable PHA.

ii. If the Assistant Secretary disagrees with the PHA's request for reconsideration, the Assistant Secretary will provide the PHA with a written response explaining why the PHA's request will not be further considered.

iii. The decision of the Assistant Secretary shall be final.

IV. Annual Contributions Contract (ACC) Reserve Account

A. General

HUD continues to maintain local program reserves (ACC reserve accounts) for each PHA's program in the amount determined by HUD in accordance with the PHA's Consolidated Annual Contributions Contract. In accordance with the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the Public Housing Reform Act), HUD revised its methodology for allocating funding for the renewal of expiring contracts in the tenant-based Section 8 program. HUD anticipates that some PHAs may not receive adequate budget authority to support the adjusted baseline number of units under the revised allocation system. Some PHAs may experience increases in the cost per unit of tenant-based assistance that exceed the per unit costs predicted by the revised renewal allocation methodology and would therefore not have sufficient funds to support the adjusted baseline. In order to provide reasonable assurance that there will be adequate funding to support families assisted in the tenant-based Section 8 program, HUD believes that PHAs should have access to an Annual Contributions Contract (ACC) Reserve Account. The approved reserve level is 1/6th of the current year projected expenditures from the PHA's approved budget for a given year.

There are separate ACC Reserve Accounts for both the certificate and voucher programs. The amounts in each program reserve (certificate or voucher) are fungible and can be budgeted and requisitioned, as needed, from the ACC Reserve Account for either program. Amounts accumulated by a PHA in the ACC Reserve Account above the approved reserve level are considered excess reserves.

B. Procedures for Accessing ACC Reserve Account

A PHA will be permitted to access up to 50% of its approved reserve level under the circumstances noted below if the PHA is not designated as troubled under the Section 8 Management Assessment Program (SEMAP) and is not in breach of its ACC. To access balances in the ACC Reserve Account, the PHA must submit a budget or budget revision to the FMC.

In order for a non-troubled PHA that has not breached its ACC to access ACC Reserve Account balances in excess of 50% of the approved reserve level, it must submit the following to the FMC:

1. A budget or budget revision.

2. A narrative justification that clearly outlines the circumstances that cause the PHA to need to access reserves in the ACC Reserve Account.

3. A plan that describes:

a. The appropriate steps that it is taking to ensure that it will not exceed its budget authority, including balances in the ACC Reserve Account, in the current fiscal year;

b. How it will reduce (and ultimately eliminate) its reliance on reserve funding over the subsequent 2 years; and

c. In instances in which the PHA is obligated to restore reserves, its plan for restoring reserves.

PHAs designated as troubled under SEMAP may access reserves only after the FMC has approved the request. The FMC shall inform the applicable Troubled Agency Recovery Center (TARC) in the event a troubled PHA requests access to its reserves and shall also inform the TARC of the proposed decision on the request. A troubled PHA may be required by the FMC and/or the TARC to provide documentation and/or justification to substantiate its request to access reserve funds.

C. Permissible Uses of ACC Reserves

1. *Supporting the Reserved Number of Units.* A PHA must compare the budget authority assigned to the PHA by HUD pursuant to the allocation of renewal funding with the actual per unit costs the PHA is incurring. If at any time the PHA determines that the overall cost of maintaining assistance for the number of families assisted under the PHA's program (but not exceeding the number of units reserved to the PHA) has increased to a level that will not be supported within the budget authority that HUD has assigned to the PHA, the PHA may request authorization to use a portion of its ACC Reserve Account. In this instance HUD will restore depleted reserves in accordance with Section IV.D. below subject to the availability of funds.

2. *Supporting Units Above the Reserved Number of Units.* a. A PHA may issue as many vouchers as can be prudently supported within the PHA's allocated annual budget authority even if the number of vouchers exceeds the number of units reserved for the PHA. PHAs that exercise this flexibility are engaging in "maximized leasing." "Maximum leased units" means the number of leased units in excess of the number reserved. *It is important for PHAs that take advantage of maximized leasing to examine the long term impact of maximized leasing to ensure that it does not jeopardize adequate support for the reserved number of units in subsequent years.*

The units supported above the PHA's reserved number of units (maximized leased units) will not be supported by HUD's calculation of the allocation of renewal funding. The PHA may not receive sufficient budget authority in subsequent years to be able to maintain maximized leased units exceeding the number of units reserved. The PHA may use the ACC Reserve Account to maintain assistance for maximized leased units on a temporary basis while the PHA takes steps to reduce the size of its program through attrition back to its reserved number of units or the number of units that can be supported by its allocated budget authority on a long term basis. The PHA may not use the ACC Reserve Account to support units beyond the number of units supported by annual budget authority (apart from the ACC Reserve Account) for more than a year except under exceptional circumstances. A PHA that uses the ACC Reserve Account in this situation must restore the amount of reserves depleted to support maximized leased units by using less than its full annual budget authority in subsequent years.

b. A PHA that is close to leasing all of the units that can be supported within annual budget authority may issue more vouchers than the PHA can actually support with annual budget authority (without using its ACC Reserve Account) on the assumption that not all issued units will ultimately be used. PHAs that are close to leasing a number of units that fully utilizes their available annual budget authority can be expected to occasionally exceed their annual budget authority based on more families than predicted leasing units; in such instances the PHA is permitted to support units not supported by annual budget authority through use of the ACC Reserve Account. PHAs are to manage their lease-up and turnover rates to attempt to achieve full utilization of their annual budget authority without relying on the ACC Reserve Account. PHAs that use the ACC Reserve Account in this situation must restore the amount of ACC Reserve Account funds used to temporarily support lease-up that exceeds annual budget authority by using less than their full annual budget authority in subsequent years.

c. A PHA that has had to use the ACC Reserve Account to support units beyond its reserved number of units must not admit families on its waiting list until the number of families in its program is reduced below the reserved number of units through attrition [4] or it is able to support families from the waiting list within its annual budget authority apart without using funds in the ACC Reserve Account.

D. Restoration of Depleted Reserves.

Subject to the availability of appropriated funds, HUD will restore ACC Reserve Account amounts to the ⅙th level in accordance with the following:

1. HUD will determine the amount by which the ACC Reserve Account is depleted below the approved reserve level based on the ACC Reserve Account level recorded in HUDCAPS from the most recent year end statement approved and processed by the FMC compared to the approved budget for the current year at the time that the Department calculates the amounts to be restored.

2. HUD will determine if a PHA has leased more than its reserved number of units based on its most recent HUD approved Year End Statement; if the PHA has leased more than its reserved number of units, HUD will not restore any depleted ACC Reserve Account for such an agency during the PHA's current fiscal year. However, HUD may grant an exception to this policy on a case by case basis where a PHA has substantially depleted the ACC Reserve Account and HUD has determined that the PHA is not providing long term support for units not supported by annual budget authority.

3. HUD shall determine the schedule for restoration of depleted ACC Reserves in instances where a PHA has not leased more than its reserved number of units or HUD has determined that the housing agency is not providing long term support for units not supported by annual budget authority apart from the funds in the ACC Reserve Account.

V. Excess ACC Reserve Amounts

At its discretion, HUD may recapture ACC Reserve Account amounts in excess of the approved reserve level.

VI. Reduction of Adjusted Baseline Number of Units and Budget Authority

A. Beginning with PHA Fiscal Years December 31, 1999 and thereafter, HUD will assess the leasing rate and use of budget authority of each PHA on an annual basis when HUD processes the PHA's year end statement (Approximately six months after the end of the PHA's fiscal year) to determine if HUD will transfer some or all of the PHA's unexpended annual budget authority to another PHA.

B. In performing the assessment, HUD will exclude units (and their associated budget authority) awarded to the PHA for: litigation purposes; on schedule replacement/relocation purposes; as well as budget authority for a funding increment whose effective date is less than 8 months prior to the end of the PHA's fiscal year in which such funds are reallocated.

For example for calendar year 2000 the Main Street Housing Authority has an adjusted baseline of 130 units. In 1999, HUD awarded 10 units to the PHA to provide for relocation of 10 families living in 10 units of public housing approved for demolition. The demolition is not scheduled to take place until the end of calendar year 2000 and the 10 units are being held by the PHA until they are needed to support the demolition. For the purposes of assessing the PHA's lease-up rate, HUD would exclude the 10 units and only perform the assessment on the 120 units remaining. It would take the 10 units and multiply them by the adjusted per unit cost for the housing authority ($4,800) and subtract the result from the housing authority's overall budget authority ($48,000) in performing the assessment below.

C. If the assessment reveals that the PHA's lease rate is less than 90% of the reserved number of units (''90% unit threshold'') and the PHA has expended less than 90% of its annual budget authority (90% annual budget authority threshold''), HUD will issue a warning to the PHA, the applicable PHA governing board and the chief executive officer of the unit of local or state government. The warning will state that if the PHA fails to increase its lease rate to 95% of the number of reserved units by the time that it submits its 2nd budget after the warning (approximately 16 months after the warning), then it's unexpended baseline authority would be subject to reallocation by HUD to another PHA.

For example, the Main Street Housing Authority has a fiscal year that ends on December 31, 1999. At the time that it submits its year end statement (around February of 2000), it reports that the number of units months leased for its 1999 fiscal year was 1020 (the equivalent of 85 units out of the possible 130) and that it expended $408,000 out of a total annual budget authority of $611,000. When HUD performs its assessment in conjunction with approving the year end statement (around June of 2000), it will perform the following steps:

1. HUD will subtract the 10 relocation units from 130 adjusted baseline number of units.

2. For the remaining 120 units available for lease-up, HUD will compare the possible units months leased (120×12 or 1,440) with the number of actual units months leased (1020) to derive the lease-up percentage (71%).

3. Since the lease-up percentage falls below the 90% threshold, HUD will determine the percentage use of annual budget authority as follows:

a. HUD will first subtract the annual budget authority for the 10 excluded relocation units ($48,000) from the total annual budget authority for the PHA ($611,000) to determine the available annual budget authority ($611,000 − $48,000=$563,000).

b. HUD will then divide the amount expended ($408,000) by the amount of the available budget authority ($563,000) to determine the percentage of budget authority utilization ($408,000/$563,000=72%).

In this instance the assessment would indicate that the housing authority should be issued a warning based on the

[4] In this instance, the PHA cannot simply return to 100% leasing of its reserved number of units before it can start issuing new vouchers because if it does it will again become overextended. It must drop at least one unit below the reserved number of units to be in a position to issue new vouchers.

fact that its lease up rate is 71% and its budget authority utilization rate is 72%—both below the 90% thresholds.

D. When the PHA submits its second budget after receipt of the warning, the PHA will provide a status report on its lease-up rate to the FMC. If the PHA has failed to achieve a lease up rate of 95% of its total number of reserved number of units minus any special category units (e.g., units reserved for relocation purposes or due to litigation), the FMC will reduce both the PHA's annual budget authority and its adjusted baseline number of units.

1. In this instance, the FMC will require that budget authority not required to support currently assisted families through the end of contract increment(s) terms(s) will be deleted from the PHA's budget so as to bring its budget authority utilization rate to 95%. Budgetary authority amounts deleted from the PHA's budget will be made available for reallocation.

2. HUD will calculate the number of units the deleted budget authority under section D.1. above would have supported based on the PHA's adjusted per unit cost.

3. HUD will delete the number of units calculated under section D.2. for the purpose of calculating future renewal funding for the PHA.

For example, the Main Street Housing Authority will process its first budget about 4 months after having received the warning in October of 2000. At the time that it processes its second budget after the warning in October of 2001, it would provide a report on its status in terms of its lease-up rate. At that time, it reports that its lease up rate has improved from the equivalent of 85 units to 105 units. The lease-up percentage would have increased from 71% to 88%. It would also report that its budget authority utilization rate increased from 72% to 85% (from $408,000 to $478,550). In this instance HUD would calculate the amount of budget authority that would bring the PHA to 95% utilization of its budget authority ($478,550/.95=$503,157). HUD would then delete the remaining budget authority ($563,000 −$503,157=$59,842) from the PHA's annual budget authority. HUD would also calculate the number of units that the subtracted budget authority represents ($59,842 divided by $4,800 per unit cost = 12 units) and subtract those units from the PHA's adjusted baseline for the purpose of calculating future renewals.

E. Each year HUD will issue a PIH Notice (and subsequent **Federal Register**) notice outlining the criteria for determining the PHAs to be recipients of reallocated budget authority. The notice will outline the process for implementing the transfer as well as the number of units and the priority for reallocating budget authority.

Dated: April 12, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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