



## **American Workers, Families, and Employers Assistance Act**

### **TITLE I – FURTHER RELIEF FOR WORKERS AFFECTED BY CORONAVIRUS**

#### **Section 101 – Improvements to Federal Pandemic Unemployment Compensation to better match lost wages**

The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act provides an additional payment of \$600 per week to individuals receiving unemployment insurance (UI) benefits through July of 2020. This provision would continue supplemental payments of \$200 per week for weeks of unemployment through September. Starting in October, this payment would be replaced with a payment (up to \$500) that, when combined with the state UI payment, would replace 70 percent of lost wages—either via a formula specified in the bill or by a state proposing an alternative method and receiving approval from the Secretary. States that are unable to provide a second payment tied to lost wages by October 5 could apply for a waiver from the Department of Labor to continue paying a fixed dollar amount for up to two months. Starting in October, the additional payment would count as income when determining eligibility for federal low-income programs in the same way as wages and regular state unemployment insurance payments do now.

This provision also requires states, beginning 30 days after enactment, to notify recipients of unemployment insurance and employers about state law regarding return to work and suitable work requirements. Specifically, states are required to notify individuals of the state’s return to work requirements, the individual’s rights to refuse to return to work or to refuse suitable work, and how an individual can contest the denial of a claim as a result of these requirements. This provision would also require states to notify employers of this same information.

#### **Section 102 – Supplemental emergency unemployment relief for governmental entities and nonprofit organizations**

The CARES Act provides payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits. This provision increases the percentage from 50 to 75 percent.

#### **Section 103 – Conforming eligibility for pandemic unemployment assistance to disaster unemployment assistance and accelerating appeal review**

The CARES Act created the Pandemic Unemployment Assistance (PUA) program, modeled after the long-standing Disaster Unemployment Assistance (DUA) program, to provide support to those not traditionally eligible for state unemployment benefits. Under DUA, applicants can receive benefits immediately, but must provide documentation within 21 days of applying to substantiate prior employment or self-employment (or the planned commencement of employment or self-employment). The Department of Labor has determined this DUA provision does not apply to the PUA program, and this provision requires states to follow the same procedures for verifying eligibility for both programs. This provision would also specify that only those who have lost their principal source of income are eligible for the program, following the same requirement currently in place for the disaster unemployment assistance program.

This provision would allow states to handle appeals in the same way they handle appeals for state UI benefits, instead of requiring that these appeals be handled by the regional offices for the Department of Labor.

### **Section 104 – Improvements to State unemployment insurance systems and strengthening program integrity**

This section provides \$2 billion to assist states in upgrading their state unemployment insurance systems to be better prepared to handle a surge in claims, adjust wage replacement levels, adjust earnings disregards, be able to vary benefits over time, as well as automate a number of processes which are currently done manually in many states.

This section also implements a number of provisions to improve the integrity of the program by improving use of the electronic systems states use to detect and prevent fraud and those employers use to communicate with the state unemployment agency, and provides the Department of Labor with additional authority to hold states accountable for their performance.

### **Section 105 – TANF Coronavirus Emergency Fund**

This provision provides funding to states to support individuals with varied economic needs by reimbursing states for 80 percent of their increased costs of providing cash assistance and other short-term help through the TANF program, up to a cap of \$2 billion.

## **TITLE II – ASSISTANCE TO INDIVIDUALS, FAMILIES AND EMPLOYERS TO REOPEN THE ECONOMY**

### **SUBTITLE A – RELIEF FOR INDIVIDUALS AND FAMILIES**

### **Sections 201 & 202 – Additional 2020 recovery rebates for individuals and modifications to recovery rebates made under the CARES Act**

As under the CARES Act, all U.S. citizens and U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible Social Security number, are eligible for a \$1,200 (\$2,400 married) rebate under this section. In addition, they are eligible for an additional \$500 per dependent rebate. Unlike under the CARES Act where the additional \$500 was limited to taxpayers with a dependent child under 17, the additional \$500 will now be provided to taxpayers with dependents of any age. Even individuals who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits, are eligible for the full rebate amount. The amount of the rebate phases-out completely once the income of single filers exceed \$99,000, the income of head of household filers with one child exceed \$146,500, or the income of joint filers with no children exceed \$198,000.

For the vast majority of Americans, no action on their part will be required in order to receive a rebate payment, as the IRS will use a taxpayer's 2019 tax return if filed, or their 2018 return as a secondary alternative. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The provision also explicitly authorizes the Department of the Treasury to work with the Social Security Administration, Railroad Retirement Board, and the Department of Veterans Affairs to automatically determine and pay rebates to benefit recipients.

As under the CARES Act, the additional rebates are generally not subject to administrative offset for past due federal or state debts, with the exception of past due child support payments. In addition, the rebates are protected from bank garnishment or levy by private creditors or debt collectors. This protection from bank garnishment is also applied retroactively to the CARES Act rebates.

The section also makes some clarifications on the eligibility of decedents and prisoners, which apply retroactively to the CARES Act rebate payments. These clarifications explicitly exclude anyone dying prior to January 1, 2020 from eligibility for the advanced rebate or 2020 tax credit. They also prohibit any payment of an advanced rebate to any individual in prison at the time Treasury processes the rebate. Furthermore, any individual in prison for all of 2020 is ineligible to claim the rebate as a 2020 tax credit.

## **SUBTITLE B – JOB CREATION AND EMPLOYMENT**

### **Section 211 – Enhanced employee hiring and retention payroll tax credit**

The CARES Act provided an employee retention tax credit (ERTC) in the form of a refundable payroll tax credit equal to 50 percent of certain wages paid by employers to employees during the COVID-19 crisis. This section increases the applicable percentage of qualified wages reimbursed through the credit to 65 percent.

Under the CARES Act, employers are eligible for the ERTC if their (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. This section lowers the amount of the reduction in gross receipts required to qualify as an eligible employer from a 50-percent decline to a 25-percent decline compared to the same calendar quarter in the previous year. For purposes of determining eligibility in the third quarter or fourth quarter of calendar year 2020, an employer may also satisfy the reduction-in-gross-receipts test if the preceding quarter's gross receipts declined by at least 25 percent when compared to the same calendar quarter in the previous year. The provision also modifies the definition of gross receipts to include gross receipts of tax-exempt organizations.

The credit is based on the amount of qualified wages paid by the employer. The CARES Act limited the amount of qualified wages taken into account per employee to \$10,000 for the year. This section increases the limitation on qualified wages taken into account per employee to \$10,000 per quarter (limited to \$30,000 for the calendar year).

Under the CARES Act, for employers with greater than 100 full-time employees, the credit is based only on the portion of an employee's wages that compensate the employee for not performing services. For employers with 100 full-time employees or less, the credit is based on all wages paid to an employee. This provision increases the 100-employee threshold to 500 employees.

The section enhances coordination between the credit and the Paycheck Protection Program by allowing employers to be eligible for both programs, but with limitations to prevent overlapping benefits. It also clarifies that group health plan expenses are considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance.

This section is generally effective as of the beginning of the calendar quarter during which the provision is enacted. However, the provisions that modify the treatment of health plan expenses and the definition of gross receipts for tax-exempt organizations apply retroactively as if included in Section 2301 of the CARES Act.

## **Section 212 – Temporary expansion of work opportunity tax credit**

The work opportunity tax credit (WOTC) provides an elective tax credit to employers hiring individuals who are in one or more of ten targeted groups. Generally, the maximum credit per employee is \$2,400 (40 percent of the first \$6,000 of qualified first-year wages), but special rules apply for certain targeted groups. To claim the credit, an employer must obtain certification of the employee's eligibility from the appropriate State workforce agency.

This section adds a new WOTC targeted group, 2020 qualified COVID-19 unemployment recipients. A 2020 qualified COVID-19 unemployment recipient is an individual who is certified by the designated local agency as having received (or approved to receive) unemployment

compensation under State or Federal law for the week of or immediately preceding the hiring date and who begins work after the date of enactment and prior to January 1, 2021.

The section also increases the credit amount applicable to the new targeted group to 50 percent of the first \$10,000 of qualified first-year wages.

This section removes the limitation on rehires for 2020 qualified COVID-19 unemployment recipients and also provides regulatory authority to the Secretary of the Treasury to prescribe rules to prevent abuse.

### **Section 213 – Safe and healthy workplace tax credit**

This section establishes a refundable payroll tax credit equal to 50 percent of an employer’s “qualified employee protection expenses,” such as testing for COVID-19, protective personal equipment, cleaning supplies, “qualified workplace reconfiguration expenses,” including modifications to workspaces for the purpose of protecting employees and customers from the spread of COVID-19, and “qualified workplace technology expenses,” including contactless point-of-sale systems and other technology to track employee interactions with customers. Qualified workplace reconfiguration expenses and qualified workplace technology expenses must have a primary purpose of preventing the spread of COVID-19 among other requirements.

An employer’s qualified employee protection expenses, qualified workplace reconfiguration expenses, and qualified workplace technology expenses are limited based on the employer’s average number of employees. In each calendar quarter, qualified expenses cannot exceed a cap based on the average number of employees. The cap is equal to \$1,000 for each of the first 500 employees, plus \$750 for each employee between 500 and 1000, plus \$500 for each employee that exceeds 1,000.

The credit also permits self-employed individuals, including sole proprietors, independent contractors, and farmers, to claim a refundable credit against income taxes for the same types of COVID-19 related expenses. Self-employed individuals are treated as if they are an employer with a single employee for purposes of the credit.

The credit applies to amounts paid or incurred for qualified employee protection expenses after March 12, 2020 and before January 1, 2021.

### **Section 214 – COVID-19 assistance provided to independent contractors**

This section establishes a safe harbor allowing marketplace platform companies to provide certain COVID-19 related assistance to service providers, such as gig-economy workers, without jeopardizing the service provider’s independent contractor status under the Internal Revenue Code. Benefits covered by this section include financial assistance due to lost business, health care expenses, including for COVID-19 testing, or personal protective equipment, and cleaning supplies

or training related to COVID-19. This section also provides that benefits (other than cash payments) received by the service provider will be treated as “qualified disaster relief payments” for purposes of Section 139, which excludes the payments from the service provider’s taxable income.

This section applies to benefits provided after March 12, 2020 and before January 1, 2021.

## **SUBTITLE C – CARES ACT CLARIFICATIONS AND CORRECTIONS**

### **Section 221 – Application of special rules to money purchase pension plans**

The CARES Act temporarily allows individuals to make penalty-free withdrawals from certain retirement plans for coronavirus-related expenses, permits taxpayers to pay the associated tax over three years, allows taxpayers to recontribute withdrawn funds, and increases the allowed limits on retirement plan loans. This section clarifies that money purchase plans are included in the retirement plans qualifying for these temporary rules. The provision applies retroactively as if included in Section 2202 of the CARES Act.

### **Section 222 – Clarification of delay in payment of minimum required contributions**

This section clarifies the due date for single-employer pension plan minimum required contributions, which were delayed for 2020 in the CARES Act. The provision applies retroactively as if included in Section 3608 of the CARES Act.

### **Section 223 – Employee certification as to eligibility for increased CARES Act loan limits from employer plan**

The CARES Act permits eligible retirement plans to rely on an employee’s self-certification that the employee qualifies to receive a coronavirus-related distribution. This section clarifies that plans may also rely on an employee’s self-certification that the employee meets the requirements for the increased limits on retirement plan loans. The provision applies retroactively as if included in Section 2202 of the CARES Act.

### **Section 224 – Election to waive application of certain modifications to farming losses**

This section allows farmers who elected a two-year net operating loss carryback prior to the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. This section also allows farmers who previously waived an election to carry back a net operating loss to revoke the waiver. These clarifications eliminate unnecessary compliance burdens for farmers. The provision applies retroactively as if included in Section 2303 of the CARES Act.

### **Section 225 – Oversight and audit reporting**

The CARES Act authorizes the Comptroller General to conduct monitoring and oversight of federal response efforts related to the Coronavirus 2019 pandemic and its general effects. The Comptroller General is required to provide briefings and reports to “appropriate congressional committees.” The CARES Act omitted the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives in its list of “appropriate congressional committees.” This section includes those two committees in the appropriate-committee list, as the Comptroller General’s monitoring and oversight is expected to cover matters in the committees’ jurisdiction and may involve accessing federal tax data.

### **TITLE III – SUPPORTING PATIENTS, PROVIDERS, OLDER AMERICANS, AND FOSTER YOUTH IN RESPONDING TO COVID–19**

#### **SUBTITLE A – PROMOTING ACCESS TO CARE AND SERVICES**

##### **Section 301 – Maintaining 2021 Medicare part B premium and deductible at 2020 levels consistent with actuarially fair rates**

This section protects Medicare beneficiaries from the expected spike in the Part B premium (and deductible) likely to result from economic conditions related to the COVID-19 public health emergency and Advance Payment program loans to providers made from the Supplemental Medical Insurance (SMI) Trust Fund. Specifically, it holds the 2021 Part B monthly premium at the 2020 amount--\$144.90 for the standard premium and a higher amount for beneficiaries paying income-related premiums. It specifies that beneficiaries pay a small surcharge, \$3 for the vast majority of seniors, on the monthly premium until the shortfall in the SMI Trust Fund from holding premiums constant in 2021 is recouped.

##### **Section 302 – Improvements to the Medicare hospital accelerated and advance payments programs during the COVID–19 public health emergency**

This section delays the date on which hospitals and other providers must start to repay Medicare Accelerated and Advance payment loans until January 1, 2021, and provides additional time until these loans must be repaid in full prior to having to pay interest. This section provides continued relief to frontline health care providers, while also protecting the Medicare Trust Funds.

##### **Section 303 – Authority to extend Medicare telehealth waivers**

This section ensures that the expansion of telehealth in Medicare through flexibilities made available during the public health emergency are maintained through the length of the public health emergency, or December 31, 2021, whichever is later. It guarantees a period of certainty in which beneficiaries have continued access to providers in the safest possible setting. It also requires that the Medicare Payment Advisory Commission provide a report on the impact of telehealth flexibilities on access, quality, and cost by July 1, 2021. In addition, it requires that the Department of Health and Human Services post data on use of telehealth throughout the pandemic and provide

legislative recommendations to Congress. This section ensures that Congress has a full analysis of the impact of expanded telehealth and the opportunity to legislate before flexibilities expire.

### **Section 304 – Extending Medicare telehealth flexibilities for Federally qualified health centers and rural health clinics**

This section specifies that the expansion of telehealth in Medicare for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) provided in the Coronavirus Aid, Relief, and Economic Security (CARES) Act continues for five years beyond the end of the public health emergency. It enables beneficiaries to receive telehealth from FQHC and RHCs serving as a distant site regardless of where they are located, including in the safety of their own home. This section ensures a sustained period of telehealth access for the many in rural and underserved areas that rely on FQHCs and RHCs for care.

### **Section 305 – Temporary carryover for health and dependent care flexible spending arrangements**

This section allows Flexible Spending Account (FSA)/Dependent Care Flexible Spending Account (DCFSA) unused 2020 contribution amounts to be rolled over into the 2021 plan year, recognizing care forgone in 2020 and promoting wellness in 2021.

### **Section 306 – On-site employee clinics**

This section establishes care provided in an employer on-site clinic as a Health Savings Account (HSA) eligible expense through December 31, 2021, helping employees to get care needed to stay healthy in the most convenient setting.

### **Section 307 – Support for older foster youth**

This section provides an additional \$50 million to states to help youth who recently “aged out” of foster care address immediate COVID-19-related challenges, such as housing needs. It also temporarily suspends requirements that youth participate in education and training activities if it is not possible for the youth to do so due to COVID-19.

### **Section 308 – Court improvement program**

This section provides an additional \$10 million for courts to assist them in adapting their practices as a result of COVID-19 so they can continue child welfare hearings via technology when possible. It also helps courts to continue to involve foster parents, birth parents, adoptive parents, and youth in foster care in these proceedings when they are unable to attend in person.

## **SUBTITLE B – EMERGENCY SUPPORT AND COVID-19 PROTECTION FOR NURSING HOMES**



## **Section 311 – Definitions**

This section provides definitions for the terms used in this subtitle, such as “COVID-19,” “COVID-19 public health emergency period,” “nursing facility,” “participating provider,” “skilled nursing facility.”

## **Section 312 – Establishing COVID–19 strike teams for nursing facilities**

This section authorizes the establishment, by the Secretary of Health and Human Services, of Federal strike teams for Medicare- and Medicaid-enrolled nursing facilities. (These teams will supplement, not supplant, response efforts carried out by a State strike team or any technical assistance team launched by HHS during the emergency period.) Such strike teams will be comprised of individuals with relevant skills, qualifications, and experience to respond to COVID–19-related crises in such facilities during the emergency period. They may include assessment, testing, and clinical teams; and each team’s mission may include performing medical examinations, conducting COVID–19 testing, and assisting facilities with the implementation of infection control practices (such as quarantine, isolation, or disinfection procedures). The HHS Secretary, in consultation with the CDC Director, may establish protocols and procedures for requesting the assistance of a strike team and any other procedures deemed necessary for the team’s operation.

## **Section 313 – Promoting COVID–19 testing and infection control in nursing facilities**

This section authorizes the HHS Secretary, in consultation with the Elder Justice Coordinating Council, to enhance efforts to respond to COVID-19 by Medicare- and Medicaid-enrolled nursing facilities COVID–19, including through:

- development of online training courses for such facilities, survey agencies, the long-term care ombudsman of each State, and other individuals;
- enhanced diagnostic testing of visitors to, personnel of, and residents of, any facilities in which COVID–19 measures support more frequent testing;
- development of training materials for personnel of these facilities, the long-term care ombudsman of each State, and other individuals;
- support to such facilities in areas deemed by the Secretary to require additional assistance due to the presence COVID–19 infections.

This section also calls for the Secretary to develop training courses on best practices in infection control and prevention, including cohorting, strategies and use of telehealth to mitigate the transmission of COVID–19 in Medicare- and Medicaid-enrolled nursing facilities during the COVID–19 public health emergency period. The Secretary is authorized to create an interactive website for this purpose and seek input, as appropriate, from the Elder Justice Coordinating Council and the CDC Director on this training.

## **Section 314 – Promoting transparency in COVID–19 reporting by nursing facilities**

This section calls for the HHS Secretary to provide the Governor of each State with a list of all Medicare- and Medicaid-enrolled nursing facilities in which the reported cases of COVID-19 increased during the previous week. (The requirement goes into effect within 10 days of enactment of this Act and lasts for the duration of the national emergency period.)

### **Section 315 – Funding**

This section provides that the HHS Secretary may use amounts appropriated for COVID-19 response and related activities, under the CARES Act and subsequently enacted legislation, to implement this subtitle. (HHS announced in July that it would make an additional \$5 billion in CARES Act funding available to enhance the COVID-19 response to the nursing home sector.)

## **TITLE IV – ADDITIONAL FLEXIBILITY AND ACCOUNTABILITY FOR CORONAVIRUS RELIEF FUND PAYMENTS AND STATE TAX CERTAINTY FOR EMPLOYEES AND EMPLOYERS**

### **Section 401 – Expansion of allowable use of Coronavirus Relief Fund payments by States and Tribal and Local Governments**

*Longer Period Over Which Coronavirus Relief Fund (CRF) Resources Can Be Used to Cover Expenditures:* This provision retains CARES Act provisions for allowable uses of relief payments to state, local, and other governments provided in Title V of the CARES Act, which allows use of relief funds to pay costs incurred by governments that are necessary expenditures incurred due to the public health emergency and were not accounted for in the governments’ most recently approved budgets as of March 27, 2020. Expands the end date for allowable necessary expenditures from December 30, 2020 to 90 days after the last day of a government’s fiscal year 2021.

*Expand Allowable Uses of CRF Funds to Covering Revenue Shortfalls:* This provision expands allowable uses of relief payments to states and local and other governments to also include “revenue shortfalls,” defined as shortfalls of revenue from taxes, fees, or other sources of funds for a state, local, or other government relative to fiscal year 2019 levels. The period over which covering revenue shortfalls incurred during a governments’ fiscal year 2020 and fiscal year 2021 is from March 1, 2020 to 90 days after the last day of a governments’ fiscal year 2021.

- To be able to use relief funds to cover revenue shortfalls, a government must certify that it has distributed at least 25% of CRF funds it received to downstream governments (to ensure downstream distributions, as from a state to a city); and,
- A government can use no more than 25% of relief funds it has received to cover revenue shortfalls (to guard against a government forgoing uses of funds for COVID-19 expenditures in order to allocate funds to more fungible, possibly non-COVID-19 uses).

*Prohibit Use of CRF Funds for Pensions or Postemployment Benefits:* According to this provision, CARES Act relief funds from Title V shall not be used to finance or augment pensions or other

postemployment benefits for current or former employees of a government recipient of relief funds.

*Prohibit Use of CRF Funds for Replenishing Rainy Day Funds:* According to this provision, CARES Act relief funds from Title V shall not be used to rebuild any state, local, or other government’s “rainy day” funds. Rainy day funds (e.g., budget stabilization fund, budget reserve account, or other such fund) were built up during good times to provide a cushion for unexpected spending and revenue shortfalls caused by declining economic conditions or other adversities. Disallowing use of federal relief funds for rebuilding such funds during a severe economic downturn and pandemic reinforces incentives for governments to use such funds in a downturn and then rebuild them when better economic conditions materialize.

*Restrict Uses of CRF Funds for Government Officers:* According to this provision, funds shall not be used by an officer of a state or local government in the officer’s personal capacity; or to influence passage of legislation; or to improve the public image of an officer of the government.

*Maintenance of Efforts:* According to this provision, a recipient of CRF funds shall use funds that it receives to supplement, but not supplant, any non-federal funds that the recipient would otherwise provide, distribute, or use for assistance to other units of government.

*Limits on Additional Conditions:* According to this provision, a recipient of CRF funds shall not impose additional conditions, requirements, or restrictions on downstream governments on how relief funds may be used beyond those specified in the CARES Act and modifications made in this Act.

*Audit Risk Factors:* This provision requires the Department of Treasury’s Office of the Inspector General (Treasury’s IG) in its audit determination to consider prioritizing audits of (1) governments that did not distribute at least 25 percent of the total amount of the payments received under this section to localities within the jurisdiction, if any; or (2) governments that imposed a condition, requirement, or restriction on funds distributed to a locality that do not align with either the CARES Act or the provisions in this Act.

## **Section 402 – Accountability for the disbursement and use of State or government relief payments**

*Reporting and Record-Keeping Requirements:* This section includes provisions for accountability (reports and record keeping) that are in accord with requirements promulgated ([here](#)) by Treasury’s IG. Those requirements are codified in this Act and are expanded to include reporting and record-keeping requirements relevant for expanded allowable uses of CRF funds (e.g., covering revenue shortfalls) contained in this Act.

*Treasury’s IG Periodically Reports to Congress:* This section also requires that Treasury’s IG provide quarterly reports to Congress on state, local, and other government uses of relief funds provided to them under Title V of the CARES Act.

## Section 403 – State tax certainty for employees and employers

This provision creates uniform procedures for assessing state and local income taxes on remote and mobile workers affected by government shutdown orders due to the COVID-19 pandemic and changing work conditions during the economic recovery. Under the provision, through 2024, employees who perform employment duties in multiple states would be subject to income tax only in their state of residence and any states in which they are present and performing employment duties for more than a limited time during the calendar year. To account for the sacrifices of initial frontline health-care and other workers and help prevent surprise tax bills, the provision sets a 90-day threshold for income earned in a state other than the state of residence because of the COVID-19 pandemic. The provision does not apply to professional athletes or entertainers or other types of highly compensated public figures.

To eliminate the tax uncertainty currently facing remote workers due to COVID-19, this provision also would restore the pre-pandemic tax position of employees and employers by allowing employers to treat employees' wages as earned at their normal work location until the earlier of when the employees return to such location or the end of the calendar year.

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