

GAO

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AMERICAN RECOVERY AND REINVESTMENT ACT

GAO's Role in Helping to Ensure Accountability and Transparency

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Why GAO Did This Study

This testimony discusses GAO's plans to carry out its oversight role related to the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act funds are provided for purposes including: preserving and creating jobs and promoting economic recovery; assisting those most impacted by the recession; investing in transportation, environmental protection, and other infrastructure to provide long-term economic benefits; and stabilizing state and local government budgets.

The Recovery Act assigns GAO a range of responsibilities to help promote accountability and transparency. Some are recurring requirements such as providing bimonthly reviews of the use of funds by selected states and localities. Others include targeted studies in several areas such as small business lending, education, and trade adjustment assistance.

This statement discusses (1) GAO's plans to carry out its responsibilities under the Recovery Act, (2) how GAO's responsibilities relate to other oversight authorities, such as the Inspectors General (IG) and the Recovery Accountability and Transparency Board (Board), and (3) the challenges posed in ensuring accountability over the use of funds and associated lessons learned and best practices that can be helpful in addressing those challenges.

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What GAO Found

The Recovery Act delineates an important set of responsibilities for GAO and others in the accountability community. GAO's bimonthly reviews of selected states' and localities' uses of the Recovery Act funds will examine how funds are being used and achieving the stated purposes of the Recovery Act. GAO has selected a core group of 16 states to follow over the next few years to provide an ongoing longitudinal analysis of the use of funds under the Recovery Act. These states contain about 65 percent of the U.S. population and are estimated to receive about two-thirds of the intergovernmental grants funds available through the Recovery Act. In addition, GAO will sample localities within these states to provide a perspective on the use of funds at the local level. In addition to reporting on the core group of 16 states, GAO will be reviewing the recipient reports from all 50 states as part of its responsibilities to review these filings. Depending on those assessments and other risk-based analyses, GAO's reviews may include additional states, localities, or other recipients as implementation proceeds.

GAO is charged with reviewing the use of funds by selected states and localities. IGs across government are expected to audit the efforts of federal agencies' operations and programs related to the Recovery Act, both individually within their particular entities and collectively, as many of them are members of the Board. Because funding streams for the Recovery Act will flow to states and localities from different federal agencies, it is important for GAO to coordinate with the IGs and the Board, which is charged with coordinating and conducting oversight of Recovery Act funds in order to prevent fraud, waste, and abuse. Among other things, the Board is to review contracts and grants to ensure they meet applicable standards. It is also important for GAO to coordinate with the Office of Management and Budget, especially with regard to reporting requirements and other guidance to fund recipients and on what information should be collected in order to adequately evaluate how well the Recovery Act achieves its objectives.

There are many implementation challenges to ensuring adequate accountability and efficient and effective implementation of the Recovery Act. Experience tells us that the risk for fraud and abuse grows when billions of dollars are going out quickly, eligibility requirements are being established or changed, and new programs are being created. This suggests the need for a risk-based approach for targeting attention on specific programs and funding structures early on based on known strengths, vulnerabilities, and weaknesses such as a track record of improper payments or contracting problems. In that regard, the accountability community has, in recent years, produced a wide variety of best practices and related guides, which are available to agencies to assist them in ensuring they have the needed internal controls in place from the outset. These best practices and related guides cover such areas as fraud prevention, contract management, and grants accountability.

Chairman Lieberman, Ranking Member Collins, and Members of the Committee:

I am pleased to be here today to discuss how GAO plans to carry out its oversight role related to the American Recovery and Reinvestment Act of 2009 (Recovery Act).¹ Congress and the administration have fashioned a significant response to what is generally reported to be the Nation's most serious economic crisis since the Great Depression. The Congressional Budget Office (CBO) estimates that the Recovery Act's combined spending and tax provisions will cost \$787 billion, of which over \$580 billion will be in additional spending.

The Recovery Act assigns GAO a range of responsibilities to help promote accountability and transparency.² Some are recurring requirements such as, most prominently, conducting bimonthly reviews of the use by selected states and localities of funds made available under the act and commenting on the estimates of the number of jobs created and the number of jobs retained in the quarterly reports filed by recipients of funds under the Recovery Act. Others relate to specific areas including trade adjustment assistance, new education incentive grants, and efforts by the head of the Small Business Administration (SBA) to, among other things, increase the liquidity in the secondary market for small business loans. Still others include performing longer-term studies of the new health care tax credits and of the effects of national economic downturns on states over the past several decades—especially in the Medicaid area—leading to recommendations to help address those effects in the future.

As I will outline today, we have already begun the work of meeting these responsibilities and have reached out to the broader accountability community to start coordinating our respective roles, planned approaches, and timelines. This includes the Inspectors General (IG), state auditors, and local government auditors as well as the Chair of the Recovery Accountability and Transparency Board (Board). Collectively, the accountability community will play important roles in helping to ensure that Recovery Act funds are spent properly and meeting their intended purposes, as well as in identifying management or funding issues that need attention.

¹Pub. L. No. 111-5 (February 17, 2009).

²Appendix I to this statement lists the responsibilities assigned to GAO in the Recovery Act.

My statement today discusses (1) GAO's plans to carry out its responsibilities under the Recovery Act, (2) how GAO's responsibilities relate to other oversight authorities, such as the IGs and the Board, and (3) the challenges posed in ensuring accountability and transparency of funds and the associated lessons learned and best practices that can be helpful in addressing those challenges.

GAO's Plans to Carry Out Its Recovery Act Responsibilities

Our bimonthly reviews of selected states' and localities' will examine how Recovery Act funds are being used and whether they are achieving the stated purposes of the act. These purposes include:

- to preserve and create jobs and promote economic recovery;
- to assist those most impacted by the recession;
- to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and
- to stabilize state and local government budgets in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

We have selected a core group of 16 states that we will follow over the next few years to provide an ongoing longitudinal analysis of the use of funds under the Recovery Act. The states are Arizona, California, Colorado, Florida, Georgia, Iowa, Illinois, Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Texas. These states contain about 65 percent of the U.S. population and are estimated to receive about two-thirds of the intergovernmental grants funds available through the Recovery Act. We selected these states on the basis of outlay projections, percentage of the U.S. population represented, unemployment rates and changes, and a mix of states' poverty levels, geographic coverage and representation of both urban and rural areas. In addition, we will sample localities within these states to provide a perspective on the use of Recovery Act funds at a local level.³

GAO will be reaching out to the respective governors' and state auditors' offices to begin the work needed for our first bimonthly review to be completed this April. In addition to reporting on the core group of 16

³We will also include Washington D.C. in our selection of localities.

states, we will be reviewing the recipient reports from all 50 states as part of our responsibilities to review these filings. These recipient reports are to include information on funds received, the amount of recovery funds obligated or expended to projects or activities, and the projects or activities for which funds were obligated or expended. Depending on our assessments, we may visit states other than the 16 core group to review targeted areas. Finally, our Forensic Audits and Special Investigations unit (FSI) will be undertaking ongoing risk assessments to identify specific programs and funding streams that are especially vulnerable to fraud, and it will conduct targeted investigations based on its assessments.

In addition to our bimonthly reviews of selected states and localities, we also have efforts underway to meet two other short-term requirements. Specifically, within 45 days after the Recovery Act was signed—by April 3, 2009—we must make 13 appointments to the Health Information Technology (HIT) Policy Committee, which is to recommend a policy framework for development and adoption of a nationwide health information infrastructure to permit the electronic exchange and use of health information. On February 25, 2009, we placed a notice in the Federal Register to solicit nominations to the HIT Policy Committee. Also, within 60 days, we must report on the Small Business Administration's efforts to, among other things, increase liquidity in the secondary market for SBA loans, and our work on this review is well underway.

How GAO's Responsibilities Relate to Other Oversight Authorities

The Recovery Act delineates an important set of responsibilities for the accountability community. GAO is charged with reviewing the use of funds by selected states and localities. IGs across government are expected to audit the efforts of federal agencies' operations and programs related to the Recovery Act, both individually within their particular entities and collectively, as many of them are members of the Board. The Recovery Act established the Board to help prevent waste, fraud, and abuse. The Board is to review contracts and grants to ensure they meet applicable standards, follow competition requirements, and are overseen by sufficient numbers of trained acquisition and grants personnel. The Board has a range of authorities and is charged with reporting to the President and Congress any potential problems requiring immediate attention in addition to reporting quarterly and annually.

Because funding streams of the Recovery Act will flow to the states and localities from different federal agencies, it is important for us to coordinate with the IGs and the Board. Consequently, soon after the act was passed, I reached out to the IG community and, with Ms. Phyllis Fong,

the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE), hosted an initial coordination meeting on February 25, 2009, with Inspectors General or their representatives from 17 agencies. It was a very productive discussion in which we outlined coordination approaches going forward.

Soon after the President appointed him as Chair of the Board on February 23, 2009, I talked with Mr. Earl Devaney, former Inspector General at the Department of the Interior. I am confident that we will coordinate our respective efforts well, both with the IG community and the Board. We work well together on other large coordination efforts such as the audit of the U.S. government's consolidated financial statements whereby GAO relies on the individual efforts of the IG's financial audits of their departments and entities across government.

We also have already reached out to the state and local audit community to have initial discussions and establish coordination approaches. On February 26, 2009, we participated in a conference call arranged by the National Association of State Auditors, Comptrollers and Treasurers with state auditors or their representatives from 46 states and the District of Columbia. On February 27, 2009, we held a similar discussion with local auditors from many localities throughout the country. State and local auditors perform very important oversight functions in their jurisdictions and have unique knowledge about their governments; we plan to coordinate with them closely in carrying out our responsibilities.

It is also important for us to coordinate with the Office of Management and Budget (OMB), especially in regard to reporting requirements and other guidance to fund recipients and on what information is to be collected in order to adequately evaluate how well the Recovery Act achieves its objectives. For example, OMB Director Peter Orszag and I have received a letter from the National Association of State Auditors, Comptrollers and Treasurers; the National Association of State Budget Officers; the National Association of State Chief Information Officers; and the National Association of State Procurement Officials. This letter expresses their strong interest in coordinating reporting and compliance aspects of the Recovery Act. I have been in contact with OMB and these groups, and we and OMB are undertaking discussions with them.

While there are many reporting and other implementation issues that lie ahead, we are encouraged by OMB's initial implementation guidance. In its guidance, OMB points out the need to balance the desire to get funds out

quickly to help turn the economy around with the equally important need to make sure funds are spent properly, efficiently, and effectively.

One particular area that also needs attention is identifying the data to be collected concerning the use and results of the Recovery Act's various tax provisions. Accountability and transparency are perhaps easier to envision for the outlay portions of the stimulus package, but the billions of dollars in tax provisions in the Recovery Act are considerably different than outlay programs in their implementation, privacy protections, and oversight. Most tax benefits are entirely administered by the Internal Revenue Service (IRS), and all taxpayer information, including the identity of those using the benefits, is protected by law from disclosure. Further, unlike for most outlay programs, IRS does not know who makes use of the tax benefit until after the fact, if then.

In general, IRS does not collect information on who claims tax benefits and to what extent, unless it determines such information is necessary for tax administration. In part because of the Paperwork Reduction Act, IRS generally avoids collecting information not directly needed for tax administration because both taxpayers and IRS incur costs and other burdens associated with any information-reporting requirements. As a result, in the past, information often has not been available to help Congress determine the effectiveness of some tax provisions or even identify the numbers of taxpayers using some provisions.

For example, information was not available to Congress to determine the effect of the Empowerment Zone and Enterprise Community program on poverty, unemployment, and economic growth.⁴ IRS did not collect information on who used some of the tax benefits or the communities where benefits were used, or both. The lack of data on the use of the Empowerment Zone and Enterprise Community tax benefits was of particular concern because the estimated amount of the tax benefits was greater than the amount of grant funds dedicated to the program. For instance, in the first round of the program, recipients received about \$1 billion in grants; the Joint Committee on Taxation had estimated that tax benefits would reduce federal revenues by \$2.5 billion between 1994 and 1998.

⁴GAO, *Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities, but the Effect of the Program Is Unclear*, [GAO-06-727](#) (Washington, D.C.: Sept. 22, 2006).

Absent direction from the Department of the Treasury (Treasury) or OMB, IRS is unlikely to collect sufficient information to support congressional oversight of the act's tax provisions because some provisions have characteristics similar to existing provisions in other laws where we found insufficient information was collected to enable congressional oversight. Accordingly, we have reached out to both OMB and Treasury about their plans to collect and report data on the Recovery Act tax provisions. Both OMB and Treasury indicated they initially focused on the spending programs and not the tax provisions in the Recovery Act. They acknowledged that additional data beyond what IRS would normally collect may be needed and that they would consider the tax-data needs as they proceed.

Lessons Learned and Best Practices That Can Be Helpful in Addressing Challenges to Implementing the Recovery Act

There are many implementation challenges to ensuring adequate accountability and efficient and effective implementation of the Recovery Act. Experience tells us that the risk for fraud and abuse grows when billions of dollars are going out quickly, eligibility requirements are being established or changed, new programs are being created, or a mix of these characteristics. This suggests the need for a risk-based approach to target for attention specific programs and funding structures based on known strengths, vulnerabilities, and weaknesses, such as a track record of improper payments or contracting problems. In that regard, the accountability community has, in recent years, produced a wide variety of best practice and related guides, which are available to agencies to assist them in ensuring they have the needed internal controls in place from the outset. These best practice and related guides cover such areas as:

Fraud Prevention: By establishing an effective fraud prevention program, agencies can provide reasonable assurance that Recovery Act funds benefit intended recipients. A well-designed fraud prevention program—which can also minimize waste and abuse—should consist of preventive controls, detection and monitoring, and investigations and prosecutions. Our work has shown that building internal controls in up front is of the utmost importance and that fraud prevention is the most efficient and effective means to minimize fraud, waste, and abuse. Once federal dollars are disbursed fraudulently or improperly, the government is only likely to recover a few pennies on the dollar. Thus, preventive controls are the most important component of a fraud prevention system. These controls prevent ineligible individuals and questionable firms from gaining access to government funds in the first place.

Our work across the government shows that agencies sometimes do not focus on the importance of preventive controls. Examples of preventive controls, based in part on our body of work that was focused on disaster relief after Hurricanes Katrina and Rita⁵ include the following:

- validating data used in decision making against other government or third-party sources;
- inspecting whenever possible to confirm information prior to payment;
- conducting system edit checks to identify problems before payments are made; and
- training staff on fraud awareness.

In addition, we testified last week that businesses and individuals that have been excluded for egregious offenses ranging from national security violations to tax fraud are improperly receiving federal contracts and other funds.⁶ Most recently, in February 2009, the National Procurement Fraud Task Force (NPFTF)⁷ published a white paper⁸ that identified best practices and made recommendations for agencies to consider in preventing fraud, waste, and abuse in grants they administer. These recommendations included enhanced certifications, increased training, improved communications with grant recipients, increased information sharing concerning potential fraud, and rigorous oversight of how grant dollars are spent after they are awarded.

⁵GAO, *Individual Disaster Assistance Programs: Framework for Fraud Prevention, Detection, and Prosecution*, [GAO-06-954T](#) (Washington, D.C.: July 12, 2006); and GAO, *Hurricanes Katrina and Rita Disaster Relief: Prevention Is the Key to Minimizing Fraud, Waste and Abuse in Recovery Efforts*, [GAO-07-418T](#) (Washington, D.C.: Jan. 29, 2007).

⁶GAO, *Excluded Parties List System: Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds*, [GAO-09-419T](#) (Washington, D.C.: February 26, 2009).

⁷The NPFTF includes 58 prosecutorial and investigative agencies, including 35 Offices of Inspectors General. It is chaired by the Department of Justice's Assistant Attorney General of the Criminal Division and its goal is to detect, investigate, and prosecute procurement fraud, grant fraud, and associated corruption.

⁸National Procurement Fraud Task Force, Grant Fraud Committee, *A Guide to Grant Oversight and Best Practices for Combating Grant Fraud* (Washington, D.C.: February 2009).

Contract Management: Agencies that administer the Recovery Act funds will be expected to minimize fraud, waste, and abuse in contracting. Their procurement offices will need to be able to report data and statistics on the use of noncompetitive contract awards, contract types, the recipients of contracts, amounts of awards and the type of projects for which government funds are awarded. We have also learned from our body of work examining contracting after Hurricanes Katrina and Rita that best practices include developing knowledge of contracting capabilities before they are needed, establishing scalable operations plans that can adjust to the level of capacity required to effectively respond to the need, and providing sufficient numbers of field-level staff with the authority needed to meet mission requirements.⁹ To prevent some of the problems that have affected previous federal contract spending such as for the Iraq war and recovery operations related to Hurricane Katrina, we have developed the following basic principles:

- Have transparent lines of procurement responsibility, authority, and oversight defined and in place.
- Ensure contracts are well structured by establishing clear requirements prior to award.
- Award contracts competitively.
- Use fixed-price contracts to the maximum extent possible.
- Ensure adherence to high ethical standards, including appropriately limiting state and local officials' employment by firms they supervised as government employees.
- Appoint contract surveillance personnel as early on as possible—preferably prior to or as soon as contracts are awarded—and ensure that these personnel have clear guidance and training as to their role and responsibilities and that there is clear responsibility for approving payments.
- Enforce penalties for companies and individuals that commit severe ethics violations or fail to demonstrate acceptable performance and refer suspected fraud to the appropriate agency promptly.
- Coordinate with state and local program officials and auditors in the planning and execution of contracts, agreements, and audits and other reviews.

In addition, we recently issued the GAO Cost Estimating and Assessment Guide as a helpful resource to agencies.¹⁰ It will be especially helpful to agencies that will be administering large project contracts stemming from the use of Recovery Act funds. Congress, agencies, and the American

⁹GAO, *Hurricane Katrina: Improving Federal Contracting Practices in Disaster Recovery Operations*, [GAO-06-714T](#) (Washington, D.C.: May 4, 2006).

¹⁰GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, [GAO-09-3SP](#) (Washington, D.C.: March 2009).

public want to know whether government programs are achieving their goals and what their costs are. To make those evaluations, reliable cost information is required. We developed the Cost Guide in order to establish a consistent methodology that is based on best practices and that can be used across the federal government for developing, managing, and evaluating capital program cost estimates.

Grants Accountability: In 2005, the Domestic Working Group, made up of federal, state, and local audit organizations and chaired by the Comptroller General, developed a set of suggestions for improving grant accountability. In its report,¹¹ the Domestic Working Group highlighted what it called “promising practices” in the areas of internal control systems, performance measures, managing performance, the preaward process, and assessing and using results. Some specific examples of these practices included:

- assessing applicant capability to account for funds,
- including clear terms and conditions in grant award documents,
- providing grant-management training to staff and grantees,
- consolidating information systems to assist in managing grants,
- coordinating programs with similar goals and purposes,
- linking activities with program goals and working with grantees to develop performance measures, and
- monitoring the financial status of grants and monitoring subrecipients as a critical element of grant success.

In summary, GAO welcomes the responsibility that Congress has placed on us to assist it in the oversight, accountability, and transparency of the Recovery Act. We will continue to coordinate closely with the rest of the accountability community. We also are committed to completing our Recovery Act work on the timetable envisioned by the act and will keep the Congress fully informed as our plans evolve.

¹¹Domestic Working Group, Grant Accountability Project, *Guide to Opportunities for Improving Grant Accountability* (Washington, D.C.: October 2005).

Mr. Chairman, Senator Collins, and Members of the Committee this concludes my statement. I would be pleased to respond to any questions you may have.

Appendix I: GAO Mandates in the American Recovery and Reinvestment Act of 2009

Review or reporting date	Title	Section of the Recovery Act	Summary
April 3, 2009	Health IT Policy Committee Appointments	Division A, title XII, § 13101	The Comptroller General is required to appoint 13 members of the Health Information Technology (HIT) Policy Committee. The HIT Policy Committee is to make policy recommendations to the National Coordinator of Health Information Technology relating to the implementation of a nationwide health information technology infrastructure, including implementation of a strategic plan.
Bimonthly starting in April 2009	State and Local Use of Funds	Division A, title IX, § 901	GAO is required to conduct bimonthly reviews and prepare reports on such reviews on the use by selected states and localities of funds made available in the Recovery Act. The Recovery Act does not specify the criteria by which the states and localities will be selected. The reports are to be available online.
April 20, 2009	SBA Report	Division A, title V, § 507	GAO is required to report on the actions of the Small Business Administration (SBA) in implementing the authorities established in certain provisions of the Recovery Act. The report is to include a summary of the activity of SBA under these provisions and an analysis of whether SBA is increasing liquidity in the secondary market for SBA loans.
Each calendar quarter starting on August 25, 2009	Comments on Recipient Reports	Division A, title XV, § 1512	GAO, along with the Congressional Budget Office, is to comment on estimates of the numbers of jobs created and retained by projects and activities as reported by recipients of federal funds appropriated by the Recovery Act.
February 18, 2010	Treatment Disclosures	Division A, title XIII, § 13424	GAO is required to report on the best practices related to the disclosure among health care providers of protected health information of individuals for purposes of treatment. The report is to include an examination of the best practices implemented by states and other entities; the extent to which these best practices improve the quality of the health care provided to individuals; the ability of health care providers to manage the best practices; and the use of electronic informed consent for disclosing protected health information for treatment, payment, and health care operations.

Review or reporting date	Title	Section of the Recovery Act	Summary
March 1, 2010	Health Tax Credit	Division B, title I, § 1899L	GAO is required to perform a study regarding the health care credit allowed under section 35 of the Internal Revenue Code, and report on the results of the study and include in the report an analysis of the administrative costs of the federal government and qualified health insurance providers; the health status and relative risk status of individuals covered under by qualified health insurance; the participation in the health care credit any advance payments under the credit; and the extent to which covered individuals obtained health insurance other than qualifying health insurance or went without health insurance.
Each year starting between March 15 and April 15, 2010, until the minimum wage in the respective territory is \$7.25 per hour	Minimum Wage	Division A, title VIII, § 802	GAO is required to study and report on the impact of 2007 and 2008 increases in the minimum wage in American Samoa and the Commonwealth of the Northern Mariana Islands on the rates of employment and the living standards of workers, and estimate the impact of any further wage increases on rates of employment and the living standards of workers in those territories, with full consideration of other factors that may impact the rates of employment and the living standards of workers, including how the profitability of major private sector firms may be impacted by wage increases in comparison to other factors such as energy costs and the value of tax benefits.
August 18, 2010	HIPPA Enforcement	Division A, title XIII, § 13410	GAO is required to submit a report including a recommendation of a methodology under which an individual who is harmed by certain offenses under HIPPA relating to privacy or security may receive a percentage of any civil monetary penalty or monetary settlement.
April 1, 2011	Economic Downturn	Division B, title V, § 5008	GAO is to study and report on periods of national economic downturn since 1974, including the current one, for the purpose of developing recommendations for addressing the needs of states during such periods. The study is to include an analysis of the past and projected effects of temporary increases in the federal medical assistance percentage under the Medicare program with respect to such periods. The report is to include, among other things, recommendations for modifying the national economic downturn assistance formula for temporary adjustment of the federal medical assistance percentage under Medicaid to improve the effectiveness of the application of such percentage in addressing the needs of states.
September 30, 2012	Trade Report	Division B, title I, § 1894	GAO is to comprehensively report on the operation and effectiveness of certain amendments made by the Recovery Act to the Trade Act of 1974.

Review or reporting date	Title	Section of the Recovery Act	Summary
February 18, 2014	Health Report	Division A, title XIII, § 13424	GAO is to report on the impact of the Recovery Act on health insurance premiums, overall health care costs, adoption of electronic health records by providers, and reduction in medical errors and other quality improvements.
No deadline specified in the Recovery Act	Education Grants	Division A, title XIV, § 14009	GAO is to evaluate certain programs related to education. The evaluation is to include the criteria used for the awards made, the states selected for awards, award amounts, how each state used the award received, and the impact of this funding on progress made toward closing achievement gaps.

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