



The Randolph-Sheppard Act

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Summary

The Randolph-Sheppard Act (P.L. 74-732), as amended, was enacted to provide individuals who are blind with remunerative employment and to enhance their economic well-being. Through Randolph-Sheppard Act (R-SA) programs, individuals who are blind and in need of employment are given priority in the operation of vending facilities on federal property. Typically, individuals who are blind and receive R-SA program contracts act as managers of vending facilities, subcontracting with food service organizations that provide meal and/or vending services on a day-to-day basis. Run by a state licensing agency through the U.S. Department of Education's state vocational rehabilitation program, R-SA programs may also be labeled "business enterprise programs" or "vending facilities programs." R-SA programs are not mandatory, though every state except Wyoming chooses to participate.

Since its inception, the R-SA has extended its reach beyond federal locations to include state, county, municipal, and private installations. The 1974 amendments to the R-SA added cafeterias to its list of eligible "vending facilities." Congress, however, did not specify whether military mess halls should be treated as "cafeterias" in the context of the R-SA. This issue raised concerns about conflicts between the programs authorized by R-SA and another program that addresses employment of individuals who are blind, AbilityOne. AbilityOne is a statutorily mandated procurement program developed under the Javits-Wagner-O'Day Act (JWOD Act) that promotes employment opportunities for persons who are blind or severely disabled. Two subsequent federal court of appeals decisions have held that military troop dining facilities are considered "cafeterias" under the R-SA and that the act controlled over the JWOD Act, which also provides employment opportunities for individuals with severe disabilities.

In FY2007, a total of 2,545 individuals who are blind operated 3,031 Randolph-Sheppard vending facilities, generating \$713.2 million in gross income, with average vendor earnings of \$46,963. This report provides a brief history of the R-SA programs and an explanation of how the programs are structured. Then, detailed financial and operational data are provided—including the number of program participants, their overall sales, and their earnings. Finally, the report explores how the R-SA and the JWOD Act intersect, or overlap. It concludes with a discussion of legislation that was introduced in the 110th and 111th Congresses to reform or combine the Randolph Sheppard and AbilityOne programs.

This report will be updated to reflect program data as it becomes available and any legislative or judicial events in the 112th Congress.

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Background

Signed into law in 1936, the Randolph-Sheppard Act¹ (R-SA) provides employment opportunities to qualified individuals who are blind through the operation of vending facilities in federal *buildings*. The R-SA was designed to foster independence and self-sufficiency among individuals with vision impairments. During its early years, however, the programs developed by the R-SA met with little success.² Encouraged by the invention of “vending machines,” legislators revisited the R-SA in 1954 (P.L. 83-565), expanding its applicability to federal *properties*³ (previously *buildings*).

Despite the 1954 expansion, the R-SA vending programs failed to employ large numbers of individuals who are blind—in part because the law continued to provide agency officials with broad discretion when implementing R-SA provisions: vendors who are blind or have a vision impairment were only to be given preference “so far as is feasible.” This feasibility standard was replaced in 1974 (P.L. 93-516) when R-SA amendments clearly established a federal-state relationship and created a process by which priority was given to vendors who are blind and seeking to operate vending facilities on federal property.⁴ The 1974 changes also broadened the reach of the R-SA to include management functions once thought to be beyond the capability of individuals who are blind or have a vision impairment. Finally, these amendments added cafeterias to the R-SA’s list of eligible “vending facilities.”

Vending facilities governed by R-SA regulations are

- “automatic vending machines,
- cafeterias,
- snack bars,
- cart service,
- shelters,
- counters, and
- such auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.”⁵

¹ P.L. 74-732, 49 Stat. 1559. The Randolph-Sheppard Act is named for its two sponsors: Representative Jennings Randolph (WV) and Senator Morris Sheppard (TX).

² Erik L. Christiansen, “The Applicability of the Randolph-Sheppard Act to Military Mess Halls,” *The Army Lawyer*, Department of the Army Pamphlet 27-50-371, April 1, 2004, pp. 1-13.

³ Federal property is any building, land, or other real property owned, leased, or occupied by any agency or department of the United States (20 USC §107e (3)).

⁴ The federal-state relationship allows each state to develop its program; therefore, this report uses the plural term “programs” to encompass all of the states that have R-SA programs.

⁵ 34 CFR §395.1.

Two federal court of appeals decisions, *NISH v. Cohen*⁶ and *NISH v. Rumsfeld*,⁷ held that military troop dining facilities are “cafeterias” under the R-SA and that the act controlled over the Javits-Wagner-O’Day (JWOD) Act,⁸ which provides employment opportunities for individuals who are blind and individuals who are severely disabled.⁹ The R-SA program has also expanded from federal facilities to include some state, county, and private facilities.¹⁰ However, private vending facilities are not subject to R-SA regulations.

Randolph-Sheppard Act Program Description

To implement an R-SA program within a state, a state licensing agency (SLA) is responsible for recruiting, training, and licensing individuals who are blind¹¹ or have a vision impairment to manage vending facilities.¹² SLAs, by definition, are entities that provide vocational rehabilitation services to persons who are blind, such as job counseling or training, information and referral, and job search assistance. Entrepreneurs who are blind and who receive funds from an SLA to manage vending facilities usually subcontract with a food service company to help with operations and/or provide expertise. SLAs administer Randolph-Sheppard programs at the state level, where these programs are most commonly referred to as “business enterprise programs.” In contrast, the U.S. Department of Education refers to them as “vending facility programs” for individuals who are blind.¹³ The R-SA requires that each participating state empower an elected committee to help inform and direct the work of its SLA. As a result, policies for Randolph-Sheppard programs may vary from state to state.

Randolph-Sheppard programs are funded by several sources. These include federal funds allocated through the vocational rehabilitation state grant program under the Rehabilitation Act of 1973, as amended;¹⁴ a portion of net proceeds from vending machines on federal property;¹⁵ a set-

⁶ 247 F.3d 197 (4th Cir. 2001).

⁷ 348 F.3d 1263 (10th Cir. 2003).

⁸ The 1971 Javits-Wagner-O’Day Act (P.L. 92-28) amended the Wagner-O’Day Act (ch. 697, 52 Stat. 1196 (41 §§ 46 to 48)), which was originally passed in 1938.

⁹ For an overview of the judicial decisions regarding the Randolph-Sheppard Act’s provision of services, see CRS Report RS22968, *The Randolph-Sheppard Act: Major Judicial Decisions*, by Emily C. Barbour.

¹⁰ Under the Surface Transportation Assistance Act (P.L. 97-424), as amended, blind vendors are given priority when state governments award contracts for the operation of vending facilities in rest areas along interstate highways.

¹¹ Legal blindness is defined as visual acuity (vision) of 20/200 or less in the better eye with the best correction possible. This means that a legally blind individual would have to stand 20 feet (6.1 m) from an object to see it—with vision correction—with the same degree of clarity as a normally sighted person could from 200 feet (61 m). Approximately 10% of those people deemed legally blind have no vision. The rest have some vision, from light perception alone to relatively good acuity.

¹² To be eligible for operating a Randolph-Sheppard vending facility, an individual must be a U.S. citizen as well as be legally blind.

¹³ For an overview of U.S. Department of Education information about Randolph-Sheppard Act programs, see <http://www.ed.gov/programs/rsarsp/index.html>.

¹⁴ For further information, see CRS Report RL34017, *Vocational Rehabilitation Grants to States and Territories: Overview and Analysis of the Allotment Formula*, by Umar Moulta-Ali, and CRS Report RL31298, *Rehabilitation Act: Summary of 1998 Reauthorization Legislation*, by Carol O’Shaughnessy.

¹⁵ The law allows in certain cases a portion of net proceeds from vending machines on federal property to be set aside for program support.

aside levied by states on vendors;¹⁶ and state appropriations. R-SA programs are administered by the Rehabilitation Services Administration, part of the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education.

Randolph-Sheppard Act Program Data

Table 1 shows the number of contractors who are blind and who received contracts to manage vending operations through the Randolph-Sheppard programs from FY1998 to FY2007, the latest year for which data are available. It also details the number of federal and non-federal facilities that these vendors have served, and the average annual earnings of each vendor.¹⁷ In FY2007, there were 2,545 vendors that oversaw 3,031 vending facilities.¹⁸ There were 1,070 vending facilities (35.3%) located on federal property, whereas 1,961 were located on non-federal property (64.7%). As noted in **Table 1**, average annual earnings for vendors were \$46,753, a 0.4% decrease compared with the prior fiscal year.¹⁹

¹⁶ Not all states levy a set-aside on vendors. However, a reasonable amount of funds could be set aside from the net proceeds generated by the operation of vending facilities for such purposes as maintenance and replacement of equipment, purchase of new equipment, management services, and health insurance contributions, among other things (see 34 CFR 395.9).

¹⁷ U.S. Department of Education, OSERS, RSA-IM-07-05, June 27, 2007. Average annual earnings were calculated by dividing total vendor earnings by vendor person-years. Person years are calculated as the number of vendors in the program by the number of years that the vendor has been in the program.

¹⁸ In addition to these licensed operators who are blind, the Randolph-Sheppard programs employed an additional 500 individuals with disabilities in FY2007.

¹⁹ U.S. Department of Education Form RSA-15: Report of Vending Facility Program Reporting Instructions. Average annual earnings were calculated by dividing the vendors' total earning by the number of vendor person-years. A person-year is one whole year, or fraction thereof, worked by a vendor. It is expressed as a quotient of the time units worked during the year (hours, weeks, or months) divided by the like total time units in a year. For instance, a vendor who worked for 4 months would have worked 0.25 person-years.

Table 1. Randolph-Sheppard Program Vendors, FY1998-FY2007

	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Number of Vendors										
Federal locations	974	925	897	900	912	905	911	895	894	888
Non-federal locations	1,979	1,888	1,819	1,811	1,768	1,726	1,618	1,669	1,681	1,657
Total	2,953	2,716	2,729	2,711	2,680	2,631	2,529	2,564	2,575	2,545
Number of Vending Facilities										
Federal locations	1,135	1,119	1,114	1,111	1,097	1,096	1,110	1,115	1,069	1,070
Non-federal locations	2,256	2,232	2,178	2,083	2,030	2,023	1,994	1,965	1,971	1,961
Total	3,391	3,351	3,292	3,194	3,127	3,119	3,104	3,080	3,040	3,031
Average Annual Earnings^a of Vendors										
Total	\$29,815	\$32,556	\$34,298	\$34,921	\$37,246	\$38,147	\$40,503	\$43,584	\$46,963	\$46,753

Source: Data provided by U.S. Department of Education, Office of Special Education and Rehabilitative Services, June 16, 2008 and is the latest available data.

- a. Average annual earnings were calculated by dividing the vendors' total earnings by the number of vendor person-years. A person-year is one whole year, or fraction thereof, worked by a vendor. It is expressed as a quotient of the time units worked during the year (hours, weeks, or months) divided by the like total time units in a year. For instance, a vendor who worked for 4 months would have worked 0.25 person-years.

Table 2 details gross income and net earnings for Randolph-Sheppard vendors for each year from FY1998 to FY2007. In FY2007, RS-A programs generated \$713.2 million in gross income (overall sales and vending machine income combined), with \$116.3 million in net earnings going to vendors. **Table 2** also shows data on funding sources.

Table 2. Income and Earnings Data and Funding Sources of the Randolph-Sheppard Act Programs, FY1998-FY2007

(\$ in millions)

	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Income and Earnings										
Gross income ^a	\$425.5	\$448.1	\$471.1	\$466.3	\$453.6	\$475.9	\$620.4 ^b	\$661.3	\$692.2	\$713.2
Vendor Earnings ^c	86.4	90.6	93.9	95.0	96.8	98.7	105.2	111.2	115.7	116.3
Funding Sources										
Vending machine income	n/a	15.3	16.0	14.5	16.6	15.2	18.7	17.2	20.0	21.9
Vendor levied set-aside	n/a	15.3	14.2	12.0	11.5	12.5	11.1	12.8	13.1	14.4
State appropriation	n/a	6.6	6.6	5.9	6.2	6.7	6.7	9.2	7.1	7.0
Federal funds ^d	n/a	34.0	38.5	32.3	31.4	27.8	37.5	37.1	35.2	39.3
Total	n/a	71.1	75.3	64.7	65.8	62.2	74.0	76.3	75.4	82.6

Source: Data provided by the U.S. Department of Education, Office of Special Education and Rehabilitative Services, June 16, 2008 and is the latest available data.

- Including gross sales, vending machine income, and fair minimum return. Fair minimum return, which is optional for each state agency, is the amount which may be paid to vendors from set-aside funds in order to provide a uniform minimum income to all vendors under the programs.
- The notable increase in gross income after FY2003 is attributable to a change in reporting procedures related to military dining facility contracts granted to state licensing agencies. Beginning in FY2004, these agencies were advised to report all information about Department of Defense contracts in their reports to the Rehabilitation Services Administration.
- Vendor earnings equal net profit to vendors plus fair minimum return.
- Funds allocated through the Vocational Rehabilitation State Grant program.

AbilityOne (Javits-Wagner-O'Day Act) Program Description

AbilityOne, formerly the JWOD program,²⁰ is a federal program that provides jobs for individuals with disabilities, including, but not limited to individuals who are blind, through federal contracts.

²⁰ In 2006, JWOD Act programs were re-named the AbilityOne program to “give a stronger, more unified identity to the program and to show a connection between the program name and the abilities of those who are blind or have other severe disabilities”. For additional information see Committee for Purchase From People Who Are Blind or Severely Disabled, “AbilityOne Program”, *71 Federal Register* 227, November 27, 2006, at http://www.abilityone.gov/jwod/Documents/FR_11_27_06.pdf.

Signed by President Franklin D. Roosevelt in 1938, the Wagner-O’Day Act²¹ sought to provide employment opportunities for people who were blind by allowing them to manufacture mops and brooms to sell to the federal government. In 1971, Congress amended the Wagner-O’Day Act under the leadership of Senator Jacob Javits.²² The 1971 JWOD Act expanded application of the law to include people with severe disabilities and to enable the program to sell services—not just material goods—to the federal government.²³ The JWOD program was re-named the AbilityOne program in 2006.²⁴ Today, through the products and services it offers to federal entities, the AbilityOne program facilitates employment opportunities for thousands of individuals with disabilities.

The Committee for Purchase From People Who Are Blind or Severely Disabled (hereafter, the Committee) is the federal agency authorized to administer AbilityOne. The Committee is responsible for determining which products and services will be furnished to the government by people who are blind or severely disabled. It also determines the fair market prices to be paid for those items. Two nonprofit agencies, the National Industries for the Blind (NIB) and NISH (formerly the National Institute for the Severely Handicapped), have been designated to assist AbilityOne with program implementation and the production of goods and services.

Intersection Between the Randolph-Sheppard Act and AbilityOne Programs

The 1974 amendments to the R-SA have also raised questions about the scope of the Randolph-Sheppard preference. Specifically, disability rights advocates and various food service contractors have contended that the R-SA’s priority for vendors who are blind conflicts with other set-aside programs, such as AbilityOne. The AbilityOne and the R-SA programs both provide contracting preferences for individuals who are blind. However, AbilityOne typically offers individuals who are blind or have a vision impairment opportunities for employment in “sheltered” work environments, while R-SA provides a somewhat broader array of opportunities, including management positions.²⁵

Table 3 outlines the structural differences between AbilityOne and Randolph-Sheppard. Under the R-SA programs, contracts are typically awarded through direct negotiations or competitive bidding; by contrast, competition is a non-issue with AbilityOne, because goods produced by the AbilityOne program or services provided by AbilityOne are purchased by federal agencies off of a procurement list established by the Committee. Despite the fundamental differences between

²¹ P.L. 75-739.

²² See Javits-Wagner-O’Day, Creating Jobs and Training for People Who Are Blind or Severely Disabled, A Brief History of the AbilityOne Program at http://www.jwod.gov/JWOD/about_us/about_us.html.

²³ P.L. 92-28, 85 Stat.77, 41 U.S.C. §§ 46-48c.

²⁴ See Committee for Purchase From People Who Are Blind or Severely Disabled, “AbilityOne Program”, *71 Federal Register* 227, November 27, 2006, at http://www.abilityone.gov/jwod/Documents/FR_11_27_06.pdf.

²⁵ The AbilityOne employees are paid hourly wages according to federal government rules and regulations; however, R-SA vendors typically receive a percentage of contract profits. The Government Accountability Office estimated that in 2007 the average wage of an AbilityOne employee was \$13.15 per hour, including fringe benefits. For more information See General Accounting Office, *Defense Contracts: Contracting for Military Services under the Randolph-Sheppard and Javit-Wagner-O’Day Programs*, GAO-08-3, October, 2007 available at <http://www.gao.gov/new.items/d083.pdf>.

these two programs, the fact that each provides food services, loosely defined, has led some observers to argue that Randolph-Sheppard and AbilityOne are de facto competitors in certain circumstances.

Table 3. Comparison of Randolph-Sheppard and AbilityOne Programs

	Randolph-Sheppard	AbilityOne
Statute	P.L. 74-732, 49 Stat. 1559, as amended by P.L. 83-565 and P.L. 93-516 20 U.S.C. §§ 107-107f	P.L. 92-28, 85 Stat. 77, 41 U.S.C. §§ 46-48c
Date authority expires	Indefinite	Indefinite
Regulations	34 CFR 395, 41 CFR 101-20.2	41 CFR 51
Program participants or beneficiaries	Vendor who is blind, usually with the assistance of a “teaming partner”	Local nonprofit agency employing workers who are blind or severely disabled
Type of services offered	The R-SA programs provide opportunities for individuals who are legally blind to manage a broad array of food-service operations, including: <ul style="list-style-type: none"> • automatic vending machines, • cafeterias, and • snack bars. 	Many products (e.g., office supplies) are produced or available under the AbilityOne program, as are a wide range of services, including: <ul style="list-style-type: none"> • administrative, janitorial, and laundry services, • commissary shelf stocking, • full food service, and • grounds maintenance.
Administration	Department of Education is responsible for oversight, but programs are operated at the state level by a state licensing agency under the auspices of the state vocational rehabilitation program.	The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) oversees the program at the Federal level. It works with two central nonprofit agencies, NISH and NIB, to coordinate the provision of goods and services to the federal government.
Competitiveness of contracts	The Randolph-Sheppard Act requires that federal government agencies <i>give priority</i> for the operation of vending facilities on federal property to persons who are blind and licensed by a state agency.	There are no competitive contracts as the Javits-Wagner-O’Day Act requires that federal government agencies purchase certain products and services from a procurement list maintained by the Committee and updated in the Federal Register.
Purchasers of services or material goods	Primarily, the Federal government. Two of the largest purchasers are the Department of Defense and the General Services Administration.	Primarily, the Federal government. Once a product or service is on the AbilityOne Procurement List, the Federal government must buy it from a designated nonprofit agency.
Requirements to employ individuals with disabilities	No specific requirement that a manager who is blind is required to hire workers who are blind or have a disability.	The Committee requires that at least 75% of the total number of direct labor hours procured from a participating agency be completed by persons with disabilities.

Source: Adapted by Congressional Research Service from GAO-08-3, *Contracting for Military Services under the Randolph-Sheppard and Javits-Wagner-O’Day Programs*, October 2007.

Issues for the 112th Congress

JWOD, R-SA and the U.S. Court of Appeals Decisions on Military Dining Facilities

A 1974 amendment to R-SA (P.L. 93-516) expanded the program's scope to include state, county, municipal, and private installations as well as adding cafeterias to R-SA's list of eligible vending facilities. However, Congress did not mention whether military dining facilities, specifically, should be included as "cafeterias" within the context of R-SA.

Some have contended that R-SA's priority for vendors who are blind to operate military dining facilities conflicts with the noncompetitive AbilityOne contracting preferences for services from individuals who are blind or severely disabled. Two federal court of appeals decisions, *NISH v. Cohen*²⁶ and *NISH v. Rumsfeld*,²⁷ held that military troop dining facilities are "cafeterias" under the R-SA and that the act controlled over the JWOD Act, which authorizes the AbilityOne program.²⁸

JWOD, R-SA Legislation in the 110th Congress

S. 3112, the Javits-Wagner-O'Day and Randolph-Sheppard Modernization Act of 2008, was introduced in the 110th Congress by Senator Michael Enzi. The bill would have reauthorized and amended both the JWOD and R-SA acts.

Most notably, the bill would have addressed the JWOD/R-SA military dining facility conflict by specifically excluding the operation of full food service military dining facilities from the JWOD procurement list. This exclusion would have allowed open competition for military food service contracts, but with priority given to state licensing agencies under the R-SA and other socially disadvantaged groups. Any dining facilities that were currently on the procurement list would have experienced a five-year sunset period at which point they would permanently removed from the JWOD procurement list.

Among other provisions, S. 3112 would have consolidated oversight functions of both JWOD and R-SA under a newly established committee known as the Committee for the Advancement of Individuals with Disabilities.

JWOD, R-SA Legislation in the 111th Congress

H.R. 5983, the Javits-Wagner-O'Day Act of 2010 introduced in the 111th Congress, would have updated existing law that governed AbilityOne.²⁹ The Committee for Purchase currently consists

²⁶ 247 F.3d 197 (4th Cir. 2001).

²⁷ 348 F.3d 1263 (10th Cir. 2003).

²⁸ For an expanded analysis of the two cases see CRS Report RS22968, *The Randolph-Sheppard Act: Major Judicial Decisions*, by Emily C. Barbour.

²⁹ Portions of this section were adapted from the *Congressional Quarterly* BillAnalysis at <http://www.cq.com/doc/billwatch-3724420>.

of 15 presidentially appointed members, 11 of whom represent governmental departments or agencies. The four nongovernmental members are private citizens knowledgeable about the employment problems of people who are blind or have other severe disabilities, including those employed by nonprofit agencies affiliated with the AbilityOne Program. H.R. 5983 would have expanded the size of the Committee for Purchase from 15 to 17 members to include one representative each from the Departments of Homeland Security and the Interior.

Additionally, H.R. 5983 would have revised the name of the committee to include those with “significant disabilities,” rather than the “severely disabled.” The committee would therefore have been known as the “Committee for Purchase From People Who Are Blind or People With Other Significant Disabilities.”

H.R. 5983 would have also allowed products and services to be added to the committee’s procurement list via an expedited process if the committee determines there is a “compelling need” to do so.

Under current statute, the Comptroller General of the United States is granted access to all books, documents, papers, and other records of the Committee for Purchase. H.R. 5983 contained new oversight and compliance measures, including language to establish an inspector general specifically to ensure that the Committee for Purchase is in compliance with the JWOD Act.

Rules currently governing the eligibility requirements for participating nonprofit agencies require the agencies to provide certified documentation their nonprofit status.³⁰ H.R. 5983 would have called for participating nonprofits to meet certain new eligibility requirements, including the use of nondiscriminatory practices, sound fiscal management and open government and reporting standards.

The bill would have also directed the Committee for Purchase to report on (1) the effect of H.R. 5983 on the small business community, (2) agency compliance with the bill and (3) the number and value of contracts awarded under the bill.

In addition, H.R. 5983 would have established all members of the Committee for Purchase as federal employees for purposes of laws relating to tort claims procedure, ethics, conflicts of interest, corruption and any other statute or regulation governing the conduct of federal employees. The bill would have also established an advisory panel to report to the chairman of the Committee for Purchase on efforts to increase employment of the blind and disabled.

Finally, H.R. 5983 would have adjusted, under certain circumstances, a requirement that participating nonprofits employ blind or disabled individuals for at least 75% of the employment hours needed to produce the applicable products or services. The bill would have lowered the requirement to 51% of employment hours in the case of an emergency or extraordinary circumstance or a significantly complex product or service. The bill would also have lowered the threshold if the nonprofit could employ a substantial number of people with the most significant productivity challenges at wages at or above minimum wage.

H.R. 5983, did not address the conflict between the R-SA and AbilityOne programs on the issue of contract preferences for military dining facilities.

³⁰ 41 C.F.R. §§ 51-4.2.

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