



4000-01-U

DEPARTMENT OF EDUCATION

**Notice of Waivers Granted Under Section 9401 of the
Elementary and Secondary Education Act of 1965, as Amended**

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2015 under the waiver authority in section 9401 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibilities granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the *Federal Register*, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is

intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during each calendar year.

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If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: In 2015, the Department granted waivers under ESEA flexibility to 43 States under the waiver authority in section 9401 of the ESEA, in exchange for rigorous and comprehensive State-developed plans designed to improve student academic achievement and increase the quality of instruction. An additional 93 waivers that were not part of ESEA flexibility also were granted under the waiver authority in section 9401 of the ESEA. We granted:

a. Ten waivers under ESEA flexibility to each of 43 States granting flexibility from ESEA requirements to improve student academic achievement and increase the quality of instruction:

1. Allowing SEAs flexibility to select one of three options for setting new ambitious, but achievable annual measurable objectives (AMOs);

2. Allowing flexibility in implementation of school improvement requirements to relieve local educational agencies (LEAs) of the requirement to identify schools for improvement, corrective action, or restructuring, as appropriate, and to take certain improvement actions in identified schools;

3. Allowing flexibility in implementation of LEA improvement requirements to relieve SEAs of the requirement to identify LEAs for improvement or corrective action, as appropriate, and to take certain improvement actions for identified LEAs;

4. Granting flexibility for rural LEAs;

5. Permitting LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the 40 percent poverty threshold and is implementing a schoolwide intervention;

6. Allowing SEAs flexibility to distribute school improvement funds to LEAs for use in priority and focus schools;

7. Allowing funds reserved for State awards program to go to any reward school;

8. Relating to highly qualified teacher (HQT) improvement plan requirements;

9. Relating to limitations on the transferability of certain funds; and

10. Permitting SEAs flexibility to award School Improvement Grant (SIG) funds to an LEA to implement one of the four SIG models in any priority school.

In addition to waiving the 10 provisions listed above, the Department granted three optional waivers to 43 States under ESEA flexibility related to the following:

1. 21st Century Community Learning Centers (21st CCLC) requirements, allowing SEAs flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session;

2. Requirements to make adequate yearly progress (AYP) determinations; and

3. Requirements pertaining to Title I, Part A within-district allocations;

b. Forty-five waivers extending the period in which funds were available for obligation: 40 waivers for school improvement activities, one waiver for Consolidated Grant funds for Insular Areas, one waiver for State assessment activities, and three waivers extending the period for SIG carryover funds;

c. One waiver granting LEAs additional time to meet teacher and principal evaluation requirements for cohort 5 SIG schools;

d. Five waivers allowing SEAs to approve schools or LEAs identified as in need of improvement to become supplemental educational services (SES) providers;

e. Ten waivers of requirements pertaining to State academic standards or assessments: four waivers allowing substitution of standards or assessments and six waivers exempting SEAs or LEAs from reporting assessment or accountability determinations;

f. Fourteen waivers of the third of three annual measureable achievement objectives (AMAOs 3) under Title III, due to lack of assessment data in the 2014-2015 school year;

- g. Two waivers allowing SEAs flexibility to distribute section 1003(a) funds to LEAs for use in priority and focus schools;
- h. Five waivers of the requirement to make AYP determinations;
- i. Six waivers allowing LEAs to carry out significant education reforms to improve student achievement;
- j. Two waivers authorizing an SEA to waive the carryover limitation for an LEA that needs an additional waiver;
- k. One waiver of the requirement to provide parents notice of public school choice options at least 14 days before the start of the school year;
- l. One waiver pertaining to school support and recognition allowing flexibility in the use of funds reserved for State awards program to go to any reward school; and
- m. One waiver enabling LEAs to use the term "highly qualified teacher" to refer to a teacher who received a summative rating of "effective," "highly effective," or "exemplary" and earned at least 50 percent of the possible

student achievement measures in the State's teacher evaluation and support system.

Waiver Data

I. ESEA Flexibility Renewals to Continue to Improve Student Academic Achievement and Increase the Quality of Instruction

A. *Flexibility regarding the 2013-14 timeline for setting AMOs*

Allowed SEAs flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that will be used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

Provisions waived: Section 1111(b)(2)(E) through (H) of the ESEA.

B. *Flexibility in implementation of school improvement requirements*

1. Granted flexibility relating to the requirement for LEAs to identify schools for improvement, corrective action, or restructuring and corresponding requirements.

Section 1116(b)(13), which requires LEAs to permit a child who has transferred to remain in the choice school through the highest grade in the school, was not waived.

Provision waived: Section 1116(b) of the ESEA (except (b)(13)).

2. Waivers granting flexibility of the requirement for SEAs and LEAs to take a variety of actions to offer SES to eligible students in schools identified for improvement, corrective action, or restructuring.

Provision waived: Section 1116(e) of the ESEA.

C. Flexibility in implementation of LEA improvement requirements

Granted flexibility with respect to the requirement that SEAs identify LEAs for improvement and corrective action and take certain action in those LEAs.

Provisions waived: Section 1116(c)(3) and (5)-(11) of the ESEA.

D. Flexibility for rural LEAs

1. Allowed flexibility to use Small, Rural School Achievement Program (SRSA) funds regardless of the AYP status of the LEA so that LEAs receiving SRSA funds that fail to make AYP may continue to use these funds.

Provision waived: Section 6213(b) of the ESEA.

2. Allowed SEAs flexibility to permit an LEA to continue to receive a Rural and Low-Income School program (RLIS) grant even if the LEA fails to make AYP.

Provision waived: Section 6224(e) of the ESEA.

E. Flexibility for schoolwide programs

Waivers permitted LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the schoolwide poverty threshold of 40 percent and is implementing a schoolwide intervention.

Provision waived: Section 1114(a) (1) of the ESEA.

F. Flexibility to support school improvement

Waivers regarding the State-level reservations to support school improvement, allowing SEAs flexibility to distribute reserved funds to LEAs for use in priority and focus schools. The required reservation was not waived; the waiver merely permitted an SEA to distribute the funds to schools that were not identified for improvement, corrective action, or restructuring.

Provision waived: Section 1003(a) of the ESEA.

G. Flexibility in the use of funds reserved for State award programs

Allowed funds reserved for State awards programs to go to any reward school.

Provision waived: Section 1117(b) (1) (B) of the ESEA.

H. Waivers regarding HQT improvement plans

Waived the requirements regarding HQT improvement plans and related technical assistance and provided flexibility with respect to the use of Title I, Part A funds for paraprofessionals.

Provisions waived: Section 2141(a)-(c) of the ESEA.

I. Flexibility to transfer certain funds

1. Permitted the SEA to transfer up to 100 percent of the amount from a covered program into another covered program or into Title I, Part A.

Provision waived: Section 6123(a) of the ESEA.

2. Permitted LEAs flexibility in percentage limitations as well as in the use of transferred funds.

Provision waived: Section 6123(b)(1) of the ESEA.

3. Waivers of the requirements relating to modification of plans and notice of transfer.

Provision waived: Section 6123(d) of the ESEA.

4. Permitted LEAs flexibility to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages.

Provision waived: Section 6123(e)(1) of the ESEA.

J. Flexibility to use SIG Funds to Support Priority Schools

Permitted SEAs to award SIG funds to an LEA to implement one of the four SIG models (Turnaround, Restart, Closure, Transformation) in any priority school.

Provisions waived: Section 1003(g)(4) of the ESEA and section I.A.3 of the notice of final requirements for SIG Grants, published in the *Federal Register* on October 28, 2010 (74 FR 65618).

K. Flexibility in the use of 21st CCLC program funds

Permitted an eligible entity that received funds under the 21st CCLC program to use those funds to support expanded learning time during the school day, week, or year in addition to activities during non-school hours or periods when school is not in session.

Provisions waived: Sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA.

L. Flexibility regarding making AYP determinations

Waived the requirements to make AYP determinations. Instead, an SEA and its LEAs would report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and would use performance against the AMOs to support continuous improvement in Title I schools.

Provisions waived: Section 1116(a)(1)(A)-(B) and (c)(1)(A) of the ESEA.

M. Flexibility regarding within-district Title I allocations

Permitted an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school's poverty rate.

Provisions waived: Section 1113(a)(3)-(4) and (c)(1) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early

Development

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- District of Columbia Office of the State

Superintendent of Education

- Florida Department of Education

- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and

Secondary Education

- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary

Education

- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education

- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- West Virginia Department of Education
- Wisconsin Department of Public Instruction

II. Extensions of the Obligation Period

A. *Forty waivers to extend the period of availability of SIG funds*

1. Extended the period of availability of fiscal year (FY) 2010 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver Applicants:

- Illinois State Board of Education
- Tennessee Department of Education

2. Extended the period of availability of FY 2011 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Illinois State Board of Education
- Minnesota Department of Education

3. Extended the period of availability of FY 2012 SIG funds awarded to seven States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- California Department of Education
- Minnesota Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- Ohio Department of Education
- Tennessee Department of Education
- Virginia Department of Education

4. Extended the period of availability of FY 2013 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Rhode Island Department of Education
- South Carolina Department of Education

5. Extended the period of availability of FY 2014 SIG funds awarded to 25 States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alaska Department of Education and Early Development
- California Department of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Louisiana Department of Education

- Maryland State Department of Education
- Michigan Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education

- Montana Office of Public Instruction
- New Jersey Department of Education
- New Mexico Public Education Department
- North Carolina Department of Public Instruction
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Utah State Office of Education
- Virginia Department of Education
- West Virginia Department of Education
- Wisconsin Department of Public Instruction

B. One waiver to extend the period of availability of funds received under section 1003(g) of the ESEA and included in the Consolidated Grant funds for Insular Areas

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- Virgin Islands Department of Education

C. One waiver to extend the period of availability of funds for State assessments and related activities awarded under section 6113(b) of the ESEA

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- North Dakota Department of Public Instruction

D. Three waivers to carry over SIG funds to allow States to award funds to LEAs through a competition to be conducted during the 2015-2016 school year

Provision waived: Section 1003(g) of the ESEA.

Waiver Applicants:

- Alaska Department of Education and Early Development

- Rhode Island Department of Elementary and Secondary Education

- Utah State Office of Education

III. Waiver of SIG Requirements

One waiver granting an LEA additional time to meet teacher and principal evaluation requirements

Provision waived: Section I.A.2(d)(1)(i)(B) of the SIG final requirements (75 FR 66363).

Waiver Applicant:

- Washington Office of the Superintendent of Public Instruction

Description of Waiver: Allowed the State to permit an LEA that was implementing the transformation model during the 2013-2014 school year with SIG funds, which required development and implementation of a teacher and principal evaluation system, to have additional time to meet the teacher and principal evaluation requirement in a school that was not able to do so that year.

IV. Waivers Allowing SEAs to Approve Schools or LEAs Identified as in Need of Improvement to Become SES Providers

Five waivers to permit SEAs to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider

Provisions waived: 34 CFR 200.47(b)(1)(iv)(A) and (B).

Waiver Applicants:

- Iowa Department of Education
- Montana Office of Public Instruction
- North Dakota Office of Public Instruction

- Washington Office of the Superintendent of Public Instruction

- Wyoming Department of Education

Description of Waiver: To permit State to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider for the 2015-2016 school years.

V. Waivers of Requirements Related to State Academic Standards and Assessments

A. *Four waivers allowing substitution of standards or assessments*

Provisions waived: Section 1111(b)(1)(B) and (3)(C)(i) of the ESEA.

Waiver Applicants:

- Hawaii State Department of Education
- New Mexico Public Education Department

Description of Waiver: One-year waiver for the 2014-2015 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to apply the same academic achievement standards, and used the same academic assessments, for all public school children in the State.

Waiver Applicant:

- New Jersey Department of Education

Description of Waiver: One-year waiver for the 2014-2015 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA so that New Jersey could use, with respect to a student who was not yet enrolled in high school but who took advanced, high school level mathematics coursework and the corresponding advanced, high school level assessment, the student's score on that assessment for Federal accountability purposes for the grade in which the student was enrolled.

Waiver Applicant:

- Oklahoma State Department of Education

Description of Waiver: One-year waiver for the 2014-2015 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA so that Oklahoma could use, with respect to a student who was not yet enrolled in high school but who took advanced, high school level mathematics coursework and the corresponding advanced, high school level assessment, that student's score on that assessment for Federal accountability purposes for the grade in which the student was enrolled.

B. Six waivers of requirements related to reporting assessment results or accountability determinations

Provision waived: Section 1111(b)(2)(C)(v)(II)(cc) of the ESEA.

Waiver Applicant:

- California Department of Education

Description of Waiver: Allowed California to exclude the achievement of students with the most significant cognitive disabilities who participated in the field tests in the 2014-2015 school year from the calculation of performance against AMOs for a school or LEA in which such students were enrolled.

Provision waived: Section 1111(b)(3)(C)(xii) of the ESEA.

Waiver Applicant:

- California Department of Education

Description of Waiver:

The waiver permitted California and its LEAs to refrain from producing or providing individual student interpretive, descriptive, and diagnostic reports that included information regarding achievement on State assessments for students with the most significant cognitive disabilities who participated in the field tests in the 2014-2015 school year.

Provision waived: Section 1111(b)(3)(C)(xii) of the ESEA.

Waiver Applicant:

- Hawaii State Department of Education

Description of Waiver: Waived the requirement to provide individual student interpretive, descriptive, and diagnostic reports that included information regarding achievement on State assessments to parents, teachers, and principals as soon as it was practically possible after an assessment was given.

Provisions waived: Section 1111(h) and (b)(2)(C)(v)(II) of the ESEA.

Waiver Applicant:

- Mississippi Department of Education

Description of Waiver: Waiver approved accountability flexibility under ESEA flexibility with respect to Armstrong Middle School and Starkville High School.

Provisions waived: Section 1111(h)(1)(C)(i) and (2)(B) of the ESEA.

Waiver Applicant:

- California Department of Education

Description of Waiver: Permitted California and its LEAs to refrain from including the results of students with the most significant cognitive disabilities who participated in

the field tests in the 2014-2015 school year in reporting student achievement on State and local report cards.

VI. AMAO 3 Determinations--AMAO Determinations

Fourteen waivers of the requirement to make AMAO 3 determinations

One-year waiver of the achievement component of AMAO 3 to permit LEAs receiving Title III subgrants that did not have assessment data to demonstrate they met the AMO component of AMAO 3 for the 2014-2015 school year due to the transition to new assessments to continue the same Title III interventions in the 2015-2016 school year that they implemented in the 2014-2015 school year.

Provision waived: Section 3122(a)(3)(A)(iii) of the ESEA.

Waiver Applicants:

- Arizona Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- Florida Department of Education
- Georgia Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Montana Office of Public Instruction
- Oregon Department of Education

- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Utah State Office of Education
- Washington Office of the Superintendent of Public

Instruction

VII. Waivers Allowing Flexibility to Support School Improvement

Two waivers of State-level reservations to support school improvement

Waivers related to State-level reservations to support school improvement, allowing SEAs flexibility to distribute funds to LEAs for use in priority and focus schools. The required reservation was not waived; the waiver merely permitted an SEA to distribute the funds to schools that were not identified for improvement, corrective action, or restructuring.

Provision waived: Section 1003(a) of the ESEA.

Waiver Applicants:

- Texas Education Agency
- Virginia Department of Education

VIII. Waivers of the Requirement to Make AYP Determinations

Five waivers of the requirement to make AYP determinations based on assessment results

One-year waiver of the statutory and regulatory requirements under Title I, Part A of the ESEA that required an LEA and an SEA, respectively, to use the results from the State's academic assessments to make AYP determinations for schools and LEAs.

Provisions waived: Section 1116(a)(1)(A) and (c)(1)(A) of the ESEA.

Waiver Applicants:

- California Department of Education
- Montana Office of Public Instruction
- North Dakota Department of Public Instructions
- Vermont Agency of Education
- Washington Office of the Superintendent of Public

Instruction

IX. Waivers Allowing SEAs to Carry Out Significant Education Reforms

Six waivers allowing LEAs to carry out significant education reforms to improve student achievement

Waivers to carry out significant education reforms to improve student achievement for school year 2015-2016.

Provisions waived: Sections 1113(a)(3)-(4) and (c)(1), 1114(a)(1), 1116(b) (except (b)(13)) and (c)(7), 2141(a), and 6123(b)(1), (d)(2), and (e)(1) of the ESEA.

Waiver Applicants:

- Fresno Unified School District - California Office of Reform Education (CORE)
- Los Angeles Unified School District - CORE
- Long Beach Unified School District - CORE
- Oakland Unified School District - CORE
- Santa Ana Unified School District - CORE
- San Francisco Unified School District - CORE

X. Waivers Authorizing SEAs to Waive the Carryover Limitation

Two waivers authorizing SEAs to waive the carryover limitation for LEAs

Waivers authorizing SEAs to waive the carryover limitation for an LEA that needed an additional waiver beyond what the SEA was otherwise authorized to grant.

Provision waived: Section 1127(b) of the ESEA.

Waiver Applicant:

- Michigan Department of Education

Description of Waiver: One-year waiver allowed Michigan to grant five LEAs a waiver of the carryover limitation with

respect to FY 2013 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2011 or FY 2012 Title I, Part A funds from the State.

Waiver Applicant:

- Washington Office of the Superintendent of Public Instruction

Description of Waiver: One-year waiver allowed Washington to grant specific LEAs a waiver of the carryover limitation with respect to unexpended FY 2014 Title I, Part A funds even if an LEA received a carryover waiver of either its FY 2012 or FY 2013 Title I, Part A funds from the State.

XI. Waiver Regarding Public School Choice Notice

One waiver regarding notification of public school choice

Waived the requirement for an LEA to provide parents of eligible students with notice as to their public school choice options at least 14 days before the start of the school year. This waiver applied only to the notice required for parents of children attending the three Title I schools that either were newly identified for improvement for the 2015-2016 school year or that could have exited improvement, corrective action, or restructuring based on the assessments administered in the 2014-2015 school year, but did not.

Provisions waived: Section 1116(b) (1) (E) (i) of the ESEA and 34 CFR 200.37(b) (4) (iv).

Waiver Applicant:

- Wyoming Department of Education

XII. Waiver Allowing Flexibility in the Use of Funds

Reserved for State Award Programs

One waiver allowing flexibility in the use of funds reserved for State award programs

Waiver allowed funds reserved for State awards programs to go to any reward school and extended the period of availability of Wisconsin's FY 2013 Title I school rewards programs allocation until September 30, 2016.

Provision waived: Section 1117(b) (1) (B) of the ESEA.

Waiver Applicant:

- Wisconsin Department of Public Instruction

XIII. Waiver Relating to Highly Qualified Teachers

A. *One waiver allowing flexibility regarding the definition of "highly qualified teacher"*

A waiver allowing, through the 2018-2019 school year, New Mexico's LEAs to apply to use the term "highly qualified teacher" to refer to a teacher who received a summative rating of "effective," "highly effective," or "exemplary" and, accordingly, has earned at least 50 percent of the

possible student achievement measures in New Mexico's teacher evaluation and support system, in lieu of meeting requirements in section 9101(23)(C)(ii) of the ESEA regarding subject-matter expertise.

Provision waived: Section 9101(23)(C)(ii) of the ESEA.

Waiver Applicant:

- New Mexico Public Education Department

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Dated: October 3, 2017.

Jason Botel,
Acting Assistant Secretary for
Elementary and Secondary
Education.

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