

# What You Need to Know

**Beneficial Ownership Information  
Reporting Requirements  
Established by  
Financial Crimes Enforcement Network  
of the  
U.S. Department of the Treasury**



A Special Educational Presentation for  
**Clients and Friends**



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**IMPORTANT UPDATE**  
A nationwide injunction was issued on  
December 3, 2024, prohibiting the U.S.  
Government from enforcing the BOIRR  
statute and regulations.  
Please go to <https://ezkovichlaw.com/boi> for  
updates.



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**DISCLAIMER:** This presentation is intended for informational purposes only, and is not legal advice. If you find yourself confronting any of the issues discussed in this tract, you should consult qualified legal counsel to discuss the facts and circumstances of your particular situation.

**FOR FURTHER INFORMATION:** Please contact Alan D. Ezkovich at [Alan.Ezkovich@EzkovichLaw.com](mailto:Alan.Ezkovich@EzkovichLaw.com) or (504) 593-9899.

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# I

## Introduction

The United States Congress passed a law requiring the United States Treasury, through its Financial Crimes Enforcement Network, to gather ownership information for all formally-organized businesses in the country. Under rules issued by the Treasury pursuant to that law, the identities of all owners and controlling officers and employees of a company need to be identified and reported to the Treasury. Formal proof of the identities of these people also is required. The failure to abide by this rule can result in substantial financial penalties and imprisonment. The rule, known as the Beneficial Ownership Information Reporting Requirements, or BOIRR, is published at [31 C.F.R. § 1010.380](#), and the statute underlying this rule can be found at [31 U.S.C. § 5336](#).

Because the consequences for non-compliance can be so severe, it is essential for every corporation, limited liability company, and all other government-chartered private entities to review the rules and fulfill the requirements established by the law in a timely and accurate manner.

These requirements are not directly related to taxes or your tax-filing status. They are related to the structure under which your company operates. If you do not have a formal structure, but are a sole proprietorship or a jointly-owned venture (operating without the benefit of a formal corporate or limited liability entity), this law does not apply to you.

This presentation is a brief outline of what the new rules may mean for you. The enabling statute and the formal rules may be accessed, as well as additional materials, may be accessed at <https://ezkovichlaw.com/boi>.

Importantly, there are legal challenges to BOIRR percolating through the legal system. One district court opinion has declared BOIRR unconstitutional, but that ruling is restricted to the parties in that case.<sup>1</sup> There are other lawsuits, and there are efforts within Congress to repeal the reporting requirements.<sup>2</sup> For now, though, BOIRR is the law, and failure to honor it may have dire consequences.

***It is highly recommended that every business consult with its attorneys, business advisors, accountants, or other appropriate professional.***

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<sup>1</sup> *National Small Business United v. Yellen*, No. 22-cv-1448 (N.D. Ala. 3/1/24). The United States has appealed that ruling. *National Small Business United, et al v. U.S. Department of the Treasury*, No. 24-10736 (U.S 11th Cir.)

<sup>2</sup> See H.R. 8147, introduced in the House of Representatives April 29, 2024; and S. 4297, introduced in the Senate May 9, 2024. GovTrack.US gives these bills respectively a 2% and 1% chance of passage. <https://www.govtrack.us/congress/bills/118/hr8147> (as viewed December 1, 2024); <https://www.govtrack.us/congress/bills/118/s4297> (as viewed December 1, 2024). In light of the 2024 elections, the odds of an amendment or repeal of the law may have changed. Keep in mind that any such change could be passed by the new Congress only after you are required to file your initial report by January 1, 2025.

## II

### Why is this Happening?

There have been numerous reports from around the world about criminals, politicians, oligarchs, and tax evaders hiding behind corporate façades. Using such business structures provided layers of anonymity that allowed people to act in ways that were effectively out of the sight of law enforcement and taxing agencies and public scrutiny. In short, people got away with unlawful or unethical behavior.

Using a very simple example, assume that the United States has imposed a ban on doing business with a certain Russian oligarch. A large income stream will be lost by that oligarch, and business associates will no longer get whatever it is that the oligarch offered. While the United States government sees this as good public policy, the oligarch's associates are losing money or access to power. Imagine if the oligarch could form a company and never have his name publically attached to that company. The buyers could then avoid the government's ban because they are dealing with a company that has no publicly known or apparent connection to the oligarch. This provides protection to the associates through plausible deniability and makes them all happy. At the same time, it completely frustrates the government because it facilitates and obscures unlawful activity.

It helps to understand that this new requirement is under the same part of the law and the Treasury's regulations that apply to money laundering and funding terrorist activity, and was enacted as part of the national defense bill for 2021. The government takes this very seriously, so you should, too.

While there is no suggestion that all, or even most, small businesses are corrupt, the national government found a need to be able to identify all of the important actors and owners of companies so that it can enforce the bans imposed by the government, or collect taxes, or prove that money is being laundered, or, or, or.... The potential uses and abuses by the government are without imaginable limit. Likewise, evil wrongdoers will, no doubt, seek to hack into the Treasury's computers and maliciously use or sell the stolen data that companies have been forced to supply, or just lie about ownership of their companies, which would be its own punishable act.<sup>3</sup> The odd thing is that biggish private companies (those with more than \$5 million in annual receipts and at least 20 employees) get a free pass, but if your company is smallish and only makes \$4.9 million with just one employee, you are in the government's cross-hairs. But these are issues and discussions for another day. Right now, there are things you must do to stay on the right side of the authorities.

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<sup>3</sup> 31 U.S.C. § 5336(h)(A).



### III

#### What Does This Mean To Me?

The Treasury Department makes it sound easy to comply with the Beneficial Ownership Information Reporting Requirements, more commonly known by the easy-to-remember acronym, BOIRR, established within its Financial Crimes Enforcement Network, with its own acronym, FinCEN. The official 57 pages of instructions are here: [Small Entity Compliance Guide](#).<sup>4</sup>

Let us break it down to some key points.

#### ▲ Why should I care?

Penalties. Big Penalties.

The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in a [*sic*] civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.

[Small Entity Compliance Guide](#), p.13; *see also* 31 U.S.C. § 5336(h)(1) & (3); and 31 C.F.R. § 1010.380.

It is not the Treasury that is to blame here. Congress passed the law mandating the reporting of information and imposing civil and criminal penalties when it enacted the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 (eff. Jan. 1, 2021). Both houses of Congress overrode the veto of the President by a more-than-two-thirds bipartisan vote.

Did you catch that? It is part of the National Defense Authorization Act. Both parties supported it. This is not a matter of taxation. This is a serious matter for the United States government. Please do not try gaming the system.

#### ▲ Who must comply?

The short answer: any company formed by filing documents with the Secretary of State of any state of the United States, or is a foreign company that has become authorized to do business in any state by filing documents with a Secretary of State. But there is a cornucopia of exemptions, 23 in fact, none of which affect most small companies. Indeed, the exemptions

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<sup>4</sup> [https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf).

apply primarily to entities that are otherwise highly regulated with other mandatory reporting requirements (banks, various types of investment companies, insurance companies, or publically-traded companies, for example). Certain accounting firms are exempt (those that are registered under the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7212)), whereas law firms as such are not exempt.

If you are a “large” operating company, you do not need to do anything under this law. A large operating company means you employ at least 20 full time employees in the United States, **and** have a physical operating presence in the United States, **and** file a tax return or information return (for example, an IRS Form 1120 or 1065) demonstrating more than \$5 million in gross receipts or sales. Good on you if you meet this definition.

If your company is “inactive,” you do not need to do anything. “Inactive” means:

1. Existed before January 1, 2020; **and**
2. Not engaged in active business; **and**
3. Not owned by a foreign person (lots of sub-definitions there, folks); **and**
4. Has not experienced a change of ownership in the preceding 12-month period; **and**
5. Has not sent or received more than \$1,000 through any financial account during the preceding 12-month period; **and**
6. Does not hold any kind or type of assets anywhere in the world, including interests in other corporations or entities.

In other words, if you have not done any business for over a year and the company is just a shell without any assets, keep it that way. Otherwise, you need to file a report.

If you have any questions about whether you need to report information to the Treasury under BOIRR, please ask your legal or other professional advisor. The price can be pretty steep if you do not abide.

## IV

### What Do I Need to Do?

Assuming you are not exempt, the information to be reported really is very simple: name, date of birth, address and a drivers license, passport, military ID, or similar proof of identity. The process is pretty simply, too.

You must report the following information to the Treasury, via an online portal, all persons owning at least 25% of a company or otherwise exercising control the company:

(2) REQUIRED INFORMATION.—

(A) IN GENERAL.—In accordance with regulations prescribed by the Secretary of the Treasury, a report delivered under paragraph (1) shall, except as provided in subparagraph (B), identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company by—

(I) full legal name;

(ii) date of birth;

(iii) current, as of the date on which the report is delivered, residential or business street address; and

(iv)(I) unique identifying number from an acceptable identification document; or

(II) FinCEN identifier in accordance with requirements in paragraph (3).

That is the statutory law. 31 U.S.C. § 5336(b)(2). Treasury's regulation also requires "an image" of the identity document that bears the identifying number. 31 CFR § 1010.380(b)(1)(ii)(E).

You are required to electronically input the data. Just go to the [FinCEN reporting website](#).<sup>5</sup> And best of all, IT'S FREE!

The fact that reporting is free is important. It has caused FinCEN to warn that it

has learned of fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the Corporate Transparency Act.

These fraudulent scams may include:

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<sup>5</sup> <https://boiefiling.fincen.gov/fileboir> (as viewed December 1, 2024).

Correspondence requesting payment. There is NO fee to file BOI directly with FinCEN. FinCEN does NOT send correspondence requesting payment to file BOI. Do not send money in response to any mailing that claims to be from FinCEN or another government agency.<sup>6</sup>

If you have a wage or salary job in the U.S., you gave this information and your picture ID to your employer. Remember that Form I-9 you had to fill out for your new employer? If you opened a checking account in the past 20 years, the bank probably required this same information.

## ▲ Who exercises “substantial control” over the company?

### 1. Generally

The most common hitch we can envision is determining who exercises substantial control over the company. The statute defines a beneficial owner to include

an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

(I) exercises substantial control over the entity....

31 U.S.C. § 5336(a)(3)(A)(I). “Substantial control” can be exercised by people who may not own 25% of a company; indeed, they need not own any interest in the company. Since the scope of who exercises substantial control over a company can be very broad, Treasury provides guidance and explains thusly:

An individual can exercise substantial control over a reporting company in four different ways. If the individual falls into any of the categories below, the individual is exercising substantial control:

- The individual is a senior officer (the company’s president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function).
- The individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company.
- The individual is an important decision-maker for the reporting company. See Question D.3 for more information.
- The individual has any other form of substantial control over the reporting company as explained further in FinCEN’s Small Entity Compliance Guide (see Chapter 2.1, “What

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<sup>6</sup> <https://www.fincen.gov/boi> (as viewed December 1, 2024).

is substantial control?”).<sup>7</sup>

Treasury then says, “Important decisions include decisions about a reporting company’s business, finances, and structure. An individual that directs, determines, or has substantial influence over these important decisions exercises substantial control over a reporting company,” and refers the reader to its [Small Entity Compliance Guide](#).<sup>8</sup>

What seems clear is that certain senior executives are assumed by Treasury to be substantial decision-makers (the president, chief financial officer, general counsel, chief executive officer, and chief operating officer), and any non-senior officer that can remove an officer or members of the board (presumably without the need for additional votes by others, but that is not made clear). After that, Treasury gets tautological with its definition (“important decision-maker” and “other form of substantial control”) and provides no help whatsoever. Check with your professional advisor if you have any questions, but be forewarned: you may find your professional advisors being overly cautious or including footnotes in any opinions they may render until Treasury issues real guidance on this point or the courts have imposed their views.

There are some exemptions as to whose identity needs to be reported (such as for minors who may be owners; and nominees, intermediaries, custodians, and agents; and outside professional consultants). Check with your professional advisor to see if any of the exemptions apply to any particular individual.

## 2. Spouses

A question that has arisen is whether the spouse of a beneficial owner is also a beneficial owner. The answer, as you may have guessed, is “it depends.”

Remember that there are functionally two types of beneficial owners. The first are actual owners of the company that own more than 25% of the company. The second are those who exercise “substantial control” over the company.

The second question is perhaps easier to answer: if both spouses exercise substantial control, then both need to be identified. If only one spouse exercises substantial control, then only that spouse needs to be identified. As an example, Mary is employed as the CFO of a reporting company, and so she needs to be identified. Mary’s husband, John, has nothing whatsoever to do with the company; he has his own job with another, completely unrelated company. Mary needs to be identified, whereas John does not.

The first question could be more complicated. Mary owns 30% of a reporting company and is the CFO. Her husband, John, has no shares or membership interests in his own name, and

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<sup>7</sup> [https://www.fincen.gov/boi-faqs#D\\_2](https://www.fincen.gov/boi-faqs#D_2) (as viewed December 1, 2024).

<sup>8</sup> [https://www.fincen.gov/boi-faqs#D\\_3](https://www.fincen.gov/boi-faqs#D_3) (as viewed December 1, 2024).

does no work for the company. However, Mary and John live in a community property state.<sup>9</sup> As such, Mary and John together may legally own Mary's 30% interest in the company. Each state has its own rules about what is community property and what is separate property, and whether a couple can have a pre- or post-nuptial agreement that can modify the default status of property.

Treasury provides its usual clear guidance on this point by starting its answer with a single word: "possibly." It then punts the issue with a lack of clarity:

Possibly. Whether State community property laws affect a beneficial ownership determination will depend upon the specific consequences of applying applicable State law. If, applying community property State law, both spouses own or control at least 25 percent of the ownership interests of a reporting company, then both spouses should be reported to FinCEN as beneficial owners unless an exception applies.<sup>10</sup>

Several questions persist. For example, if Mary's state considers the "community" to own the shares, then Mary and John together own the full 30%, rather than 15% each. Both Mary and John should then be identified. If Mary's state considers each spouse to own one-half of the total shares, then they both legally own only 15%, and, it seems, neither meet the 25% ownership threshold for identification as actual owners. Mary still would need to be identified since she is the CFO of the company.

This an area where getting solid legal advice from an attorney licensed in your state could be useful. When in doubt regarding who legally owns the shares in a reporting company, it is probably better to err on the side of identifying both spouses. But again, please contact your own attorney who can address your personal situation.

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<sup>9</sup> Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Couples living in Alaska, South Dakota, and Tennessee can opt-in to make give the marriages community property status. Likewise, spouses can opt-out of community property status in the community property states.

<sup>10</sup> [https://www.fincen.gov/boi-faqs#D\\_18](https://www.fincen.gov/boi-faqs#D_18) (as viewed December 1, 2024).

### When Do I Need to File My Report?

Since this is a new requirement, there is a staggered implementation process. The latest deadlines for existing companies or those formed on 2024, though, are approaching quickly.

1. **If the company was established before January 1, 2024**, your initial report must be filed no later than January 1, 2025.
2. **If the company is established during calendar year 2024**, your initial report is due 90 calendar days after you receive actual or public notice that your company's registration is active, such as a certificate issued by the Secretary of State.
3. **If the company is established on or after January 1, 2025**, your initial report must be filed within 30 calendar days after you receive actual or public notice that your company's registration is active, such as a certificate issued by the Secretary of State.

By January 1, 2025, the law pretty much assumes everyone will be familiar with both the requirement and the process for filing initial BOIRR reports. You might as well plan on filing it right after the Secretary of State issues your certificate for any company you form. Too many things can happen if you wait, and the price for missing the deadline can be high.

## VI

### **What Do I Need to Do if Any Information Changes?**

The ownership and management of companies change all the time. New owners are added, others sell out, and others die. Headquarters move. The process for reporting these changes is as simple as filing your initial reports. Just do not forget to do it.

#### **What:**

This may be the most burdensome part of the new requirements. Whenever a beneficial owner moves, dies, sells its interest, or gets a new driver's license or passport number, or whenever the company moves, you must file an amended report. The same is true if the percentage interests of the owners changes, such that a person who had 25% or more ownership now has less than 25%, or, conversely, another person breaks the 25% threshold, you must file an amended report.

Although not specifically stated in Treasury's literature, the system seems designed to allow changes to transfer when an individual with a FinCEN Identifier (discussed in the next chapter) amends its personal FinCEN file. That personal amendment should transfer to all of the companies associated with that person without any further ado. That, along with allowing attorneys, accountants and others to provide a FinCEN Identifier rather than so much personal information to strangers, is the primary reason for obtaining and using a FinCEN Identifier.

#### **When:**

All reportable changes must be reported within 30 calendar days.

With respect to the death of an beneficial owner, the 30 day deadline begins to run from the date the decedent's estate is settled, and, if appropriate, identify any new beneficial owners. For example, if the decedent owned 30% of the company, and has two equal heirs, then they each would own 15% of the company, and neither would meet the definition of a beneficial owner solely by virtue of their inheritances.

#### **How:**

To report the changes, you will need to use Treasury's online portal.

#### **Any Suggestions on How to Keep Current?**

Of course, we have suggestions. The simplest way to approach keeping your reports updated is to review your last report every time you file anything with the Secretary of State, and any time you add, change, or lose an owner or reportable officer. If your corporate secretary is



discharged and replaced, you should already be reporting that change to the Secretary of State. If you move your headquarters, you already should be reporting that to the Secretary of State. Add this task to your standard corporate resolution or motion to elect a new officer, and add it to your act of sale of shares or interests if it adds or removes someone from the 25%-owner category.

For example, “It is further moved that the Secretary be authorized and directed to report this change to the United States Treasury as may be required by law,” or “Upon execution of this agreement to sell membership interests, the Secretary of the Company shall be notified and requested to report this sale to the United States Treasury as may be required by law.” This sort of verbiage serves as a reminder to do what you are required to do: report the change.

Of course, too, there are situations where no reporting to the Secretary of State is required, but you get the idea: if there are changes in your major officers, you move, or you change owners, make updating your BOIRR data part of your standard checklist of things to do.

## VII

### **What if I Am Involved with Lots of Companies?**

To keep things streamlined and consistent, the Treasury has established a method whereby an individual can obtain a unique FinCEN Identifier. The person provides the same four pieces of information that are required of the reporting company, along with the image of the identification document. In return, the person receives a unique FinCEN Identifier. From that point onward, any reporting company that must identify that individual only needs to provide that person's FinCEN Identifier instead of all of the personal information and the identification document.

This accomplishes several things. First, it means the individual does not have to give private information to others, which provides a level of security and comfort. Imagine giving your picture ID, and all of your private data, to someone with no assurance at all of privacy protection. Second, it makes reporting much easier: just put the FinCEN Identifier in your report, and job done. Third, if you are a person who regularly files new organizational documents (such as lawyers and accountants), do you really want to give all of your clients your personal information and a copy of your drivers license? I didn't think so.

If you are an owner of multiple companies, or if you are an agent or professional that helps others start their companies, it makes good sense to get your own FinCEN Identifier and provide that whenever your name needs to be included in any report for any reason.

## VIII

### A Special Note for Attorneys, Accountants, and Other Document Filers

There is provision in the rules that requires the reporting of “company applicants.” Company applicants are the people who actually file the organizational documents with the Secretary of State. While it is easy for anyone to establish a new company, many people use the professional services of attorneys, accountants, or others who regularly assist in the preparation and filing of company paperwork. **The reporting company *must* report these filers.** In its brochure, Treasury includes the example of a paralegal doing the filing. If the paralegal or other assistant does not want to be identified all over the Treasury’s records, then please let the task rise to the top and do the filing yourself. It also would serve you well to get your own FinCEN Identifier to make everyone’s life a bit easier and more secure.

In addition, the company’s representative that authorized or directed the filing also must be reported. The Treasury requires at least one, but no more than two names. If an attorney files the paperwork, then only one client representative can be listed. If the client does the filing, then no more than two of the company applicants can be listed. Treasury expects at least one person to be identified, just as it expects at least one person identified as a beneficial owner for every company.

One final comment before leaving this topic. For companies that existed prior to January 1, 2024, only the fact of a company applicant (that is, the name of the person who filed the paperwork with the Secretary of State) has to be reported, but none of the more detailed and personal information needs to be reported. § 1010.380(b)(2)(iv).

## IX

### Conclusion

Let's face it, for the vast, vast, vast majority of Americans, the government already has all of the information it is compelling you to provide. Uncle Sam issues your passport, so it has already verified your name, date of birth and even your photograph. If you have any dealings with the Internal Revenue Service, or the Social Security Administration, or Medicare, or the Veterans Administration, or any of the myriad other parts of the government that provide you with services, all of this is already at hand, except, perhaps, for your photograph. Even for folks without passports, if you ever want to fly again or enter a federal building, you will need a state-issued "REAL ID" drivers license or identification card. Anyone who has gotten a REAL ID drivers license knows that the federal government already has, or at least has access to, your picture, driver's license number, birth date and a relatively recent address.

The catch here is that you now must tie together your identity with your businesses. Whether or not that is wise or whether or not you want to do it, filing the BOIRR report is what you now must do if you own or run a government-chartered business in the United States of America.

Simply put, the federal government wants basic identifying information for the owners and decision-makers of all companies operating in the United States. It has exercised its power by imposing civil and criminal penalties on those who fail to comply with its mandate.

While BOIRR is being challenged in the courts and in Congress, it remains in effect and, according to Treasury, it will be enforced against everyone except the parties to the *National Small Business United v. Yellen*, lawsuit:

[r]eporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations.<sup>11</sup>

For now, you should plan on complying with BOIRR's requirements, but can safely do so within the time limits established by Treasury. For companies established before 2024, that means doing it before the end of 2024. For companies established in 2024, that means 90 days from the date your company's paperwork is approved by your Secretary of State. For companies established in 2025 and thereafter, that means within 30 days from the date your company's paperwork is approved by your Secretary of State.

Liking this law and its regulations is not required; compliance is. Unless the law is changed or repealed, your company may need to report the information required by Treasury. Fortunately, the process is easy and the amount of information for each person is small and should be readily available.

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<sup>11</sup> <https://www.fincen.gov/boi>, "Alert: Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)," updated March 11, 2024 (as viewed December 1, 2024).

As easy as Treasury makes it sound, it may be daunting for many small businesses. Even if you file your reports yourself—which is, quite honestly, a straightforward process—if you have any questions or need any assistance, please remember to consult with the attorney, accountant, or other professional advisor of your choice.

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