

WASHINGTON UPDATE

JANUARY 2019

House Democrats Elect Scott as Chairman of Education Committee

On January 4, 2019, House Democrats approved a resolution formally appointing Congressman Bobby Scott (D-VA) as Chair of the renamed House Education and Labor Committee. The name of the committee under the Republicans was the House Education and the Workforce Committee. A new website has been rolled out and all content from the Republican-controlled site has been moved.

The new website with Chairman Scott's press release is found at:

<https://edlabor.house.gov/media/press-releases/scott-statement-on-election-as-chairman-of-education-and-labor-committee>.

The Republican content has moved to: <https://republicans-edlabor.house.gov/>.

President Signs GI Bill Legislation to Correct Housing Issue

On January 3, 2019, President Trump signed into law S. 3777, the *Forever GI Bill Housing Payment Fulfillment Act*, which requires the Department of Veterans Affairs (VA) to create a "tiger team" of specialists to develop a detailed plan to address the GI Bill housing benefits problem that has plagued the VA over the last few months. The bipartisan bill would also require the VA to reimburse student veterans for missed or underpaid GI Bill housing benefits.

President Trump Signs Veterans Benefits Legislation into Law

On December 30, 2018, President Trump signed into law S. 2248, the *Veterans Benefits and Transition Act of 2018*, which contains provisions designed to help veterans. The bill ensures that veterans are held harmless from any penalties that their school may impose due to potential delays in the processing of tuition payments. Congressman Bilirakis said: "Veterans should never experience financial harm or delays in education due to bureaucratic red tape in processing paperwork at the VA or school."

On January 18, 2018, Congressman Gus Bilirakis (R-FL) introduced H.R. 4830, the *Servicemembers Improved Transition through Reforms for Ensuring Progress (SIT-REP) Act*. On June 25, 2018, Senators Elizabeth Warren (D-MA) and John Boozman (R-AK) introduced Congressman Bilirakis' bill as part of Senator Jon Tester's (D-MT) bill, S. 2248.

A copy of Congressman Bilirakis' press release, which was made available when the bill was introduced, is found at: <https://bilirakis.house.gov/media/press-releases/bilirakis-bill-enhances-educational-benefit-veterans>.

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Democratic Lawmakers Open Investigation of ECA

On December 21, 2018, Senator Elizabeth Warren (D-MA), Ranking Member of the House Committee on Oversight and Government Reform Elijah L. Cummings (D-MD), and Vice Ranking Member of the House Committee on Education and the Workforce sent a letter to Education Corporation of America's (ECA) Chief Executive Officer Stu Reed and John F. Kennedy, Receiver, James Bates Brannan Groover, L.L.P., expressing their concern that the company did not properly tell students and regulators about its financial problems. They also wondered if ECA had taken adequate steps to pursue "teach-out agreements" that would have protected the students' credits and investments in the event the school closed. The lawmakers' letter included a series of questions of ECA in order to better understand ECA's operations and actions up to its closure.

A copy of the letter to ECA is found at:

<https://www.warren.senate.gov/imo/media/doc/Letter%20to%20ECA.pdf>.

Another letter sent by lawmakers was sent to Accrediting Council for Independent Colleges and Schools' (ACICS) President and Chief Executive Officer Michelle Edwards, which sought information on the due diligence measures ACICS took or should have taken to protect the 18,000 students affected by the ECA school closures. They expressed concern as to why ACICS extended the accreditation of ECA schools in 2016 when there were warning signs of the company's documented financial instability. A list of questions were asked of ACICS, which seeks an explanation as to why ACICS did not use its authority to require formal teach-out agreements from ECA before its collapse.

A copy of the letter to ACICS is found at:

<https://www.warren.senate.gov/imo/media/doc/Letter%20to%20ACICS.pdf>.

A third letter was sent by eight Democratic Senators, led by Elizabeth Warren (D-MA), to Secretary of Education Betsy DeVos, which expressed concern about the abrupt closing of the ECA schools and demanded that the Department take immediate steps to protect students, veterans, and taxpayers. "Despite the Department's long-standing knowledge of ECA's financial instability in the months leading up to the ultimate collapse, the Department appears to have taken little action to protect students and taxpayers." The Senators stated that the ECA collapse is a reminder that the Department's actions to prevent accountability of risky for-profit schools create a "higher education landscape that is far more vulnerable to sudden meltdown and predatory behavior." The Senators urged the Department to take actions to protect the ECA students including providing students all relevant information related to their financial aid, extending the window for a closed-school discharge back to May 8, 2018, when Virginia College was initially sanctioned by ACICS, requiring state agencies to approve transfer options so students may complete their programs, and holding owners and investors of ECA financially liable for closed school and borrower defense discharges.

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A copy of the letter from the Senate Democrats is found at:

<https://www.warren.senate.gov/imo/media/doc/Letter%20to%20ED%20re%20ECA.pdf>.

Senate Unanimously Passes the *Faster Access to Federal Student Aid (FAFSA) Act*

On December 20, 2018, the U.S. Senate passed, by unanimous consent, S. 3611, the *Faster Access to Federal Student Aid (FAFSA) Act*, which would allow students to have the Internal Revenue Service (IRS) securely send the Department of Education their federal tax information with one click. The bill, which was introduced by Chairman of the Health, Education, Labor and Pensions (HELP) Committee Lamar Alexander (R-TN), Ranking Member of the HELP Committee Patty Murray (D-WA), Senator Sheldon Whitehouse (D-RI), and Senator Cory Gardner (R-CO), would allow about 20 million students that complete the FAFSA each year to answer at least 11 and up to 22 questions with one click. [Currently, the Internal Revenue Code (IRC) does not allow the IRS to share taxpayer data with ED. The IRS Data Retrieval Tool (DRT) is designed as a way to work around the lack of data-sharing authority by instead having the applicant obtain his/her own tax information from the IRS, and then import that information onto the FAFSA.]

The bill would also permit taxpayer data-sharing between IRS and ED for the purpose of verifying income for applicants requesting or renewing eligibility for the income-driven loan repayment plans as well as for the 3-year monitoring period after a borrower has received a discharge for total and permanent disability. In addition to providing a less burdensome process for students and families, the bill would also create a more secure data-sharing experience, reduce applicant errors in reported income, and reduce improper payments.

A copy of Chairman Alexander's press release following Senate passage is found at:

<https://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=EBCF94C7-16E3-4DC6-A79A-BF66DB8A8A2F>.

Senator Brown Introduces Bill that Would Restrict Institutions from Using Revenues Derived from Federal Educational Assistance; Congressman Grijalva Introduces Companion Bill

On December 18, 2018, Senator Sherrod Brown (D-OH) introduced S. 3762, which would amend the *Higher Education Opportunity Act* to restrict institutions of higher education from using revenues derived from federal educational assistance for advertising, marketing, or recruiting purposes. It was referred to the Senate Health, Education, Labor and Pensions Committee.

On December 13, 2018, Congressman Raúl Grijalva (D-AZ) introduced H.R. 7303, *Protecting Financial Aid for Students and Taxpayers Act*, as the companion bill.

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Alexander Will Not Seek Re-Election in 2020

On December 17, 2018, Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, announced that he will not seek re-election in 2020. “The people of Tennessee have been very generous, electing me to serve more combined years as governor and senator than anyone else from our state. I am deeply grateful, but now it is time for someone else to have that privilege.” His decision will likely have consequences for a reauthorization of the *Higher Education Act*. Senator Alexander has always been known as a bipartisan legislator with an intense interest in the higher education system. He is one of a handful of congressmen with experience as a college president, and he also served as a Tennessee governor and U.S. Secretary of Education under President George H.W. Bush.

A copy of Senator Alexander’s press release announcing his retirement is found at:
<https://www.alexander.senate.gov/public/index.cfm/pressreleases?ID=D00D0EED-BC1F-439E-9E5C-B9210FCB5DF2>.

Ranking Members of the Senate and House Education Committees Ask the IG to Investigate the Decision to Reinstate ACICS

An article in *Politico* stated that on December 17, 2018, Ranking Member of the Senate Health, Education, Labor and Pensions Committee Patty Murray (D-WA) and Ranking Member of the House Education and the Workforce Committee Bobby Scott (D-VA) sent a letter to the Deputy Inspector General Sandra Bruce of the Department of Education regarding Secretary of Education Betsy DeVos’ decision to reinstate the Accrediting Council for Independent Colleges and Schools (ACICS). The letter stated that given the recent closure of the Education Corporation of America, “it appears the Department neglected to examine the accreditor’s statutory and regulatory responsibility to assess its institutions’ fiscal and administrative capabilities, as well as their records of compliance with Title IV program responsibilities.” The Ranking Members urged the IG to audit the Secretary’s decision not only in light of the recent closure but because of the recent evidence obtained by another group of Democratic Senators, which showed that a series of letters supposedly supporting ACICS sent from other accrediting agencies included “substantial erroneous and misleading information.”

A copy of the press release regarding the letter, including the text of the letter, is found at:
<https://democrats-edworkforce.house.gov/media/press-releases/top-democrats-call-for-investigation-into-education-departments-decision-to-re-recognize-for-profit-accreditor-acics>.

California Senators Feinstein and Harris Send a Letter to Secretary DeVos Urging her to Ensure that Students at Campuses Owned by ECA May Have Their Loans Canceled

On December 11, 2018, Senators Dianne Feinstein (D-CA) and Kamala Harris (D-CA) urged Secretary of Education Betsy DeVos to ensure that 4,000 students in California affected by the

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closure of the Education Corporation of America schools are informed about their choices and are able to transfer credits to similar programs. “[W]e request more information be provided to us as soon as possible about the U.S. Department of Education’s outreach efforts to those students affected by the abrupt closure.”

A copy of the press release, which includes the text of the letter, is found at: <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=91C97D64-D1CF-4030-A0A1-56829BA8384F>.

House and Senate Democrats Send a Letter to ED Urging Release of 90/10 Data

On December 10, 2018, Senate and House Democrats, led by Senator Dick Durbin (D-IL), sent a letter to Secretary of Education Betsy DeVos urging the Department to protect military and student veterans by publishing, as part of the federal 90/10 rule, the amount and percentage of revenue received by for-profit colleges from all federal educational programs. Since only federal student aid funds are counted as federal revenue, the loophole in the law “creates a powerful incentive for for-profit colleges to use high-pressure and often deceptive and misleading marketing tactic to aggressively recruit service members and veterans.”

A copy of the press release, which includes the text of the letter, is found at: <https://www.durbin.senate.gov/newsroom/press-releases/durbin-takano-carper-cohen-call-on-department-of-education-to-protect-military-and-veteran-students->.

Department Releases List of More than Two Dozen New Hires

On January 8, 2019, the Department of Education announced more than two dozen new hires. Many of the new staff will be focused on career and adult education, but some will be focused on postsecondary education.

The list is included in the press release found at: <https://www.ed.gov/news/press-releases/us-department-education-announces-new-hires>.

ED Releases List of Negotiators and Drafts of Proposed Rules in Advance of Neg Reg Session on Accreditation and Innovation

On January 7, 2019, the Department of Education released the list of negotiators who will participate in the rulemaking on accreditation and innovation. In addition, the Department provided materials in preparation for negotiated rulemaking session 1, including the agenda, the protocols and the proposed changes to the rules. The proposed rules would reduce the level of federal oversight for accrediting agencies, would give accrediting agencies more flexibility in accrediting colleges and programs, and are designed to encourage colleges to develop more innovative models for educating students. The Department is also proposing to eliminate the

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federal definition of “credit hour” and limit the definition of “regular and substantive interaction” between faculty and students in distance education courses.

The proposals received mixed reviews. Many applaud the efforts to give accrediting agencies more flexibility. However, many see the proposals as undermining the accountability for taxpayer dollars.

The link to the list and the Department’s proposals is found at:
<https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html>.

ED Publishes Notice of Location of Negotiations on Accreditation and Innovation and Subcommittee Meetings

On December 26, 2018, the Department of Education published a Notice of the locations for the negotiations on accreditation and innovation and the subcommittee meetings in the *Federal Register*. The accreditation and innovation sessions will be held on January 14-16, 2019, February 19-22, 2019, and March 25-28, 2019. Sessions will run from 9:00 a.m. to 5:00 p.m. The distance learning and educational innovation subcommittee will be held on January 17-18, 2019, February 12-13, 2019, and March 11-12, 2019. Sessions will run from 9:00 a.m. to 5:00 p.m. There will also be subcommittee sessions on faith-based entities and another on the TEACH Grant.

A copy of the Notice is found at:
<https://ifap.ed.gov/fregisters/attachments/FR122618AccreditationInnovation.pdf>.

ED Publishes Notice of Membership on NACIQI

On December 26, 2018, the Department of Education published a Notice of membership for the National Advisory Committee on Institutional Quality and Integrity (NACIQI) in the *Federal Register*. The term expiration dates are also included.

A copy of the Notice is found at:
<https://ifap.ed.gov/fregisters/attachments/FR122618NACIQQuality.pdf>.

Secretary DeVos Meets with Leaders of ACE

On December 19, 2018, the Secretary of Education met with leaders of the American Council of Education (ACE) to discuss higher education policy. The Secretary’s prepared remarks outlined her goals to overhaul the *Higher Education Act* and to rethink how higher education could be improved. She said that everyone should question everything to ensure “nothing limits students from being prepared for what comes next.” Secretary DeVos used accreditation as an example of how to approach the current system. She asked people to rethink which parts of the

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Department's accreditation regulations and guidance are directly related to educational quality and student experience and which parts are ambiguous, repetitious, or unnecessarily burdensome. Secretary DeVos also asked how the Department could clarify the roles and responsibilities of each entity within the higher education "triad."

Secretary DeVos released two documents in conjunction with her remarks. The first document was "Rethinking Higher Education," which identifies the following goals that require rethinking higher education:

- It is time to challenge our past practices, assumptions, and expectations about what "college" is, what it should be, and how it should operate;
- It is time to restore institutional autonomy and respect for an institution's unique mission;
- It is time to value the unique goals and challenges that each student brings to the postsecondary experience;
- It is time to include in our assessment of institutions the contributions that each school makes to help its students success;
- It is time to streamline regulations so as to avoid government intrusion;
- It is time to promote innovation; and
- It is time to allow new entrants to educational delivery and reject efforts to maintain the status quo.

The second paper released was "Rethinking Higher Education: Accreditation Reform," which outlines the goals and offers recommendations for accreditation reform:

- Restore "substantial compliance" as the standard for recognition;
- Restore the regulatory triad by more clearly defining the roles and responsibilities of accreditors, the states, and the Department in oversight of Title IV participating institutions of higher education;
- Increase academic and career mobility for students by eliminating artificial boundaries between institutions due to credential levels an institution offers or the agency that accredits the institution or its programs;
- Provide greater flexibility for institutions to engage in innovative educational practices and meet local and national workforce needs;
- Within the confines of law, protect institutional autonomy, honor individual campus missions, and afford schools the opportunity to build campus communities based on shared values;
- Reward institutional value added, not student selectivity;
- Modify "substantive change" requirements to provide greater flexibility to institutions to innovate and respond to the needs of students and employers;
- Streamline and clarify the Department's accreditor recognition process; and

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- Encourage and enable accreditors to support innovative practices, grant limited accreditation to experimental pedagogies, provide support to accreditors when they take adverse actions, and allow sanctions that do not mandate “all or nothing” access to Title IV.

A copy of the Secretary’s remarks at ACE is found at:

<https://www.ed.gov/news/speeches/prepared-remarks-secretary-devos-american-council-education>.

A copy of “Rethinking Higher Education” is found at:

https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/Rethinking_12-18.pdf.

A copy of “Rethinking Higher Education: Accreditation Reform” is found at:

https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/accreditation_12-18.pdf.

FSA Releases Data on the Federal Direct Loan Program, including Borrower Defense to Repayment Claims

On December 20, 2018, Federal Student Aid (FSA) released its quarterly series of updates on the Direct Loan portfolio to include data through September 30, 2018. According to FSA, the outstanding federal student loan portfolio currently totals \$1.44 trillion, with Direct Loans encompassing 80 percent of the portfolio.

The report also showed that the Department received almost 35,000 new student loan fraud claims under the borrower defense to repayment rule between the end of June and end of September. However, the Department did not adjudicate any of the claims during that time period.

On December 20, 2018, Senate Democrats led by Dick Durbin (D-IL) sent a letter to Secretary of Education Betsy DeVos urging her to take action on the tens of thousands of outstanding claims by students who attended ITT Tech, which closed in 2016.

A copy of the FSA announcement is found at:

<https://ifap.ed.gov/eannouncements/122018FSAPostsNewReportsToFSADataCenter.html>.

A copy of the Senate Democrats’ letter is found at:

<https://www.durbin.senate.gov/imo/media/doc/12.20.2018%20ITT%20Tech%20BD%20Letter%20to%20DeVos.pdf>.

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Department Announces Plans to Cancel \$150 Million in Student Loan Debt for Students who Attended Closed Schools

On December 13, 2018, the Department of Education announced that it would begin implementing the closed-school discharge provisions included in the borrower defense to repayment rule published on November 1, 2016 in the *Federal Register*. This announcement comes about two months after Judge Randolph Rudolph ordered the Department to immediately implement the rule, which had been delayed in order for the Department to rewrite the rule. As a result, the Department will be automatically cancelling \$150 million in federal student loans. About half of the students attended Corinthian Colleges, Inc. On December 14, 2018, borrowers began to receive emails informing them that their loans will be discharged.

Ranking Member of the Senate Health, Education, Labor and Pensions Committee Patty Murray (D-WA) released a statement saying:

“It’s disappointing that it took a court order to get Secretary DeVos to begin providing debt relief to students left in the lurch by predatory for-profit colleges, but I am pleased the Department has finally started implementing this rule and that some of the borrowers who attended schools like Corinthian Colleges and ITT Tech are finally getting their loans cancelled. This is a good first step, but it’s not good enough—and I call on Secretary DeVos to abandon her attempts to rewrite the borrower defense rule to let for-profit colleges off the hook and instead fully implement the current rule and provide relief to more than 100,000–borrowers who were cheated out of their education and savings.”

An electronic announcement describing the process is found at:
<https://ifap.ed.gov/eannouncements/121318ClosedSchoolDischargeChanges.html>.

A copy of Senator Murray’s press release is found at:
<https://www.help.senate.gov/ranking/newsroom/press/murray-statement-on-department-of-education-finally-providing-relief-to-students-left-in-the-lurch-by-for-profit-colleges>.

FSA Describes Content of 2019 Gainful Employment Disclosure at FSA Conference

During a session at the 2018 FSA Training Conference held at the end of November 2018, Cynthia Hammond, Assistant Director, Policy Liaison and Implementation, Federal Student Aid, announced that the new gainful employment template would be available in 2019 after all of the comments to the request for comments are reviewed. The template is currently open for public comment and the due date for the submission of comments is on or before January 7, 2019. After the template is finalized, ED will announce when institutions need to implement it. Ms. Hammond explained that while ED is continuing to call it a “template,” it will not be a template like those that have been provided in the past. Instead, ED will provide a list of the required

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disclosures and each institution must provide the required disclosures on program web pages in “a clearly-labeled and conspicuous location.”

The required disclosures include the following:

- Program name;
- Program cost if completed in normal time as published in the catalog (including tuition, fees, books, supplies, and equipment);
- Information about licensure requirements;
- The link for the College Scorecard is <https://collegescorecard.ed.gov/>; and
- Warning language only if the program’s final, official debt-to-earnings rate failed the standards.

Ms. Hammond also commented that the Department is not planning on producing any new gainful employment debt-to-earnings rates any time soon. The reason given was that the Social Security Administration (SSA) was no longer cooperating with the Department of Education with respect to sharing earnings information. The information-sharing agreement between the SSA and the Department of Education lapsed in May. The Democrats in Congress believe that the SSA is reluctant to share earnings data following a federal court decision made on May 25, 2018 that ruled that the tiered relief system to calculate partial loan relief for students who had attended closed schools based on earnings data used by the Department violated the *Privacy Act*.

A copy of the proposed gainful employment disclosure is found at:
<https://ifap.ed.gov/fregisters/attachments/FR110818.pdf>.

A copy of the decision made by U.S. Magistrate Judge Sallie Kim of the Northern District of California is found at: https://predatorystudentlending.org/wp-content/uploads/2018/05/show_temp.pl-2.pdf.

VA Announces that it Will Assist Veterans Impacted by Closure of ECA Campuses

On December 20, 2018, the Department of Veterans Affairs (VA) announced that it will assist student veterans whose education was interrupted due to the closure of the Education Corporation campuses. “The VA is in the process of identifying GI Bill beneficiaries currently enrolled at ECA and informing them of follow-on options,” according to the announcement. On December 19, 2018, Senate Democrats wrote to Secretary of the VA Robert Wilkie stating that “school closures continue to disproportionately harm student veterans” and urging the VA to provide to student veterans accurate information about their option so that they are not further harmed.

A copy of the VA announcement is found at:
<https://www.va.gov/opa/pressrel/includes/viewPDF.cfm?id=5168>.

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A copy of the Senate Democrats letter is found at:

https://www.carper.senate.gov/public/_cache/files/7/5/75d8002d-f84a-4b1b-a443-d2fb9f647bde/B6F76B064C16C5CDC9C21A953F1F2391.letter-to-secretary-wilkie.-eca-closure.-12.20.18.pdf.

CAPPS Files Motion to Narrow Legal Challenge on Borrower Defense to Repayment Rule

On December 28, 2018, the California Association of Private Postsecondary Schools (CAPPS) filed a motion in the U.S. District Court for the District of Columbia to amend its lawsuit against Secretary of Education Betsy DeVos regarding the borrower defense to repayment rules. CAPPS is now focusing its legal challenge on the rule's ban on colleges using mandatory arbitration agreements. CAPPS is arguing that the Department does not have the legal authority to prohibit the use of mandatory arbitration.

A copy of the motion is found at:

<https://www.courtlistener.com/recap/gov.uscourts.dcd.186760/gov.uscourts.dcd.186760.82.0.pdf>.

Report Makes Recommendations for New Framework to Increase Accountability and Transparency in Higher Education

On December 18, 2018, two Washington-based groups, Higher Learning Advocates, a higher education policy advocacy group, and the Center for American Progress, a think tank, released a report titled, "Gatekeeping and Continuous Improvement: A Framework for Federal Oversight and Improvement of Higher Education." The framework outlines a set of principles for rethinking the federal government's system for ensuring quality in higher education and providing students with the skills, knowledge, and credentials needed to fully participate in our economy and society.

The overarching principles include:

- While states and accreditation play a role in assuring quality and providing oversight, these principles apply to the role of the federal government and how it relates to federal financial aid;
- Federal policy should aim to improve student outcomes;
- The federal role should include a gatekeeping function and a continuous improvement function that creates incentives for improving the quality of educational and other student outcomes at participating institutions;
- Measures to address gatekeeping and continuous improvement cannot be one-size fits all; and
- Gatekeeping and continuous improvement effects must consider the possibility of unintended consequences, particularly to ensure that institutions do not deny access to traditionally underserved students.

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A copy of the report is found at: https://higherlearningadvocates.org/wp-content/uploads/2018/12/Gatekeeping-and-Continuous-Improvement_v.F.pdf.

A copy of the press release is found at: <https://higherlearningadvocates.org/news/new-policy-framework-shift-quality-assurance-from-compliance-to-continuous-improvement/>.

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