FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **10443**
April 2, 1991]

ACCRUAL STATUS OF CERTAIN LOANS

Comments Requested on Proposed Guidelines by May 2

To All State Member Banks, and Others
Concerned, in the Second Federal Reserve District:

Following is the text of statement issued by the Federal Financial Institutions Examination Council (Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision):

The Examination Council has announced its issuance of a Request for Public Comment on Returning a Loan With a Partial Charge-off to Accrual Status. The comment period extends 45 days from the date of publication in the *Federal Register.*

On March 1, 1991, the four federal regulators of banks and thrift institutions issued joint statements and guidelines to clarify certain regulatory and reporting policies. These joint statements announced that the regulators and the Securities and Exchange Commission would both request public comment on a proposed accounting change for returning a partially charged off loan that has been on nonaccrual status to accrual status. The document released today requests comments on those proposed guidelines. The guidelines would involve an amendment to the Examination Council's instructions for the banking regulators' Reports of Condition and Income and the Office of Thrift Supervision's instructions for the Thrift Financial Reports.

The regulators are seeking comment on a number of issues. The more significant issues are whether the proposal is consistent with generally accepted accounting principles (GAAP) and whether it should apply only to certain loans on a selective basis.

Comments from the public will assist the regulators in developing, to the extent practical, comprehensive reporting guidelines consistent with generally accepted accounting principles for banks and thrift institutions that wish to return certain nonaccrual loans to accrual status.

Printed on the following pages is the text of the proposal, as published in the *Federal Register* of March 18. Comments thereon should be submitted by May 2, 1991, and may be sent to the Examination Council, as indicated in the notice. Questions may be directed to Albert Toss, Assistant Chief Examiner, Domestic Banking Department of this Bank (Tel. No. 212-720-5895).

E. GERALD CORRIGAN,
President.

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Reporting Standard Concerning the Return of a Loan With a Partial Charge-Off to Accrual Status

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of request for comment.

SUMMARY: Under the auspices of the Task Forces on Supervision and Reports of the Federal Financial Institutions Examination Council (FFIEC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), and the Office of Thrift Supervision (OTS) (referred to as the "agencies"), propose to establish criteria under which a federally supervised bank or savings association ("depository institution"), for purposes of the Reports of Condition and Income (Call Reports) or Thrift Financial Reports (TFR), may return nonaccrual loans with partial charge-offs of principal to accrual status without first recovering the partial charge-off or becoming fully current in accordance with the contractual loan terms. These proposed Call Report and TFR instructions and reporting requirements would implement one aspect of the agencies' joint program to clarify certain regulatory policies.

DATES: Comments requested must be received by May 2, 1991.

ADDRESSES: Comments should be directed to: Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., suite 850B, Washington, DC 20006. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: At the OCC: Zane D. Blackburn, Chief Accountant, or William J. Lewis, Accounting Fellow (202) 447–0471. At the FDIC: Robert F. Storch, Chief, or Doris L. Marsh, Examination Specialist, Accounting Section, Division of Supervision (202) 898–8914. At the FRB: Rhoger H. Pugh, Manger (202) 728–5883, or Gerald A. Edwards, Project Manager (202) 452–2741, Policy Development Section, Division of Banking Supervision and Regulation. At the OTS: David H. Martens, Chief Accountant (202) 906–5646 or Robert J. Fishman, Program Manager (202) 906–5672.

SUPPLEMENTARY INFORMATION:

I. Introduction

National banks and federally insured state-chartered member banks and nonmember banks are required to file quarterly Call Reports with the OCC, FRB, and FDIC, respectively. Savings associations are required to file Thrift Financial Reports with the OTS.

The agencies have been reviewing requests for clarification of the regulatory guidelines regarding nonaccrual status of loans. Currently, the bank Call Report instructions provide certain requirements for a nonaccrual loan to be returned to accrual status. These instructions state that a nonaccrual asset may be returned to an accrual when: (1) *None of its principal and interest* is due and unpaid *or* (2) when it otherwise becomes well secured and in the process of collection (emphasis added). These instructions also require that repayment of principal and interest must be expected before an asset can be restored to accrual status. For savings associations, the TFR instructions state that, in order for interest to be accrued on a loan, its collection must be probable.

In applying these requirements, amounts due and expected have been based on the loan's *contractual* amounts. Some have questioned whether the remaining book balance (after any partial loan charge-offs) should be the basis for applying these requirements in certain circumstances. If a suitable charge-off is taken and the expectation of full collection of the remaining book value of the loan at a market rate of interest is supportable, it may be appropriate to return the loan to an accrual status under certain circumstances.

II. Proposed Call Report Glossary Entry and TFR Instructions for Partially Charged-Off Loans Accruing Interest at a Market Rate

General Instruction

The reporting treatment discussed herein is contemplated principally for collateral dependent loans that have been placed on nonaccrual status. However, other loans for which the primary source of repayment is a dedicated and readily determinable stream of cash flows may qualify for this reporting treatment. Application of this reporting treatment to any such loans would be subject to supervisory review during the examination process.

Qualifying Criteria

Qualifying nonaccrual loans that have demonstrated substantial, but less than required, contractual repayment performance may be returned to accrual status when all of the following criteria are met. These loans are hereafter referred to as "Partially charged-off loans accruing interest at a market rate."

(1) The borrower continues to retain control of any associated collateral and the loan is not an insubstance foreclosure.

(2) The loan has been reduced through a charge-off to a balance that will have the characteristics of a good loan paying interest at a market rate (i.e., that rate which the depository institution would require for a new loan of the same type with comparable terms and credit risk). Indicators of a good loan would include prudent loan-to-value ratios and adequate cash flow support similar to that which would be required by the depository institution for a new loan under its normal underwriting standards. Consequently, the book value of the loan following the charge-off will be less than the present value of the total expected cash flows, in order to provide cash flow support consistent with prudent underwriting standards. For purposes of the determination of adequate cash flow support, cash receipts must not include any interest reserves or other amounts funded indirectly or directly by the depository institution. Furthermore, designation of the loan as "other assets especially mentioned" by banking or thrift regulators for technical reasons not reflecting the assessment of the adequacy of the cash flow support would not preclude this reporting treatment, provided the loan otherwise meets all four of these criteria.

(3) The amount and timing of collections must be reasonably estimable. Further, the amount and timing of anticipated cash flow must be sufficient to cover the expected lower level of debt service (i.e., the reduced principal and interest payments) on the remaining recorded loan balance. The estimated cash flow must be probable and demonstrate that the borrower will be able to fully repay the reduced loan balance plus interest over a reasonable period of time. Probability should be based on long term lease contracts, third

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party commitments or similar arrangements. If commitments from third parties are relied upon, the ability of those parties to perform must be thoroughly assessed and documented.

(4) The borrower must have performed for a sustained period at the level necessary to service the reduced principal and interest payments on the remaining loan balance. A sustained period is that which, under the specific circumstances, is sufficient to reasonably demonstrate the ability of the borrower to continue required performance. In making this determination, existing sustained performance which began prior to the date of the adoption of this reporting treatment should be considered.

Only once during the life of a loan relationship may a nonaccrual loan be reduced through a charge-off to a balance that may be returned to accrual status. If there is a further charge-off due to renewed doubt as to collectibility on a nonaccrual loan that has been returned to accrual status by means of this reporting treatment, the accrual of interest should be discontinued, unless and until the loan subsequently meets the existing reporting requirements for return to accrual status based on its contractual terms.

Income Accrual

For a loan which has been returned to accrual status through this reporting treatment, interest income must be accrued at the market interest rate used in the second criterion, above. Cash receipts in excess of that required to amortize the recorded loan balance at this market rate may occur. Interest income in excess of that accrued at the market rate on the reduced loan balance cannot be recognized until all prior charge-offs have been recovered. Recoveries of partial charge-offs can only be recorded when realized as cash is received.

Continuing Performance

Once a loan has been returned to accrual status under this reporting treatment, the required evaluation of cash flows and payment performance should be updated at each report date to determine whether the loan continues to meet the criteria for remaining on accrual status.

If a loan fails to perform in accordance with the criteria for adoption of this reporting treatment, but no further charge-off is necessary, the loan must again be placed on nonaccrual status. Also, when a loan meets the existing Call Report or TFR nonaccrual criteria applied to the remaining book balance and related debt service, the loan must be placed on nonaccrual status. In either event, the return of a partially charged-off loan to nonaccrual status may be indicative of an insubstance foreclosure.

A loan that has been placed on accrual status through this reporting treatment but that later has been placed on nonaccrual status (other than following a further charge-off due to renewed doubt as to collectibility) may be restored to accrual status only when the loan meets the existing reporting requirements for restoration to accrual status based on the lower required debt service. Additionally, the loan must again meet the four criteria previously set forth. In this case the loan would be returned to the category of "Partially Charged-Off Loans Accruing Interest at a Market Rate." Of course, any loan that meets the existing reporting requirements for restoration to accrual status, based on its contractual terms may be returned to accrual status. In this case the loan would not be included in the category of "Partially Charged-Off Loans Accruing Interest at a Market Rate."

Other Matters

This reporting treatment will require depository institutions to charge a loan down to a point where the remaining principal balance will be repaid at a market rate of interest and the reduced loan balance will have collateral and cash flow support equivalent to that expected under prudent underwriting standards. Thus, the adoption of this reporting treatment may require greater charges against the allowance for loan and lease losses (ALLL) than were contemplated for the loans in question when the ALLL was last evaluated. Depository institutions must ensure that the adoption of this reporting treatment does not diminish the adequacy of the ALLL.

Appraisals of collateral values should be performed in accordance with existing regulatory standards.

Information on loans to which this reporting treatment has been applied is to be reported in the Call Report or TFR.

III. Proposed Information To Be Collected in the Call Report and TFR

The following information is to be collected in regulatory report forms regarding partially charged-off loans accruing interest at a market rate:

[Dollar amounts in thousands]

1. Partially charged-off loans accruing interest at a market rate:
   a. Book value at the end of the prior quarter of partially charged-off loans accruing interest at a market rate. $ ____
   b. Book value of partially charged-off loans returned to accrual status at a market rate since the end of the prior quarter. ____
      b.1. Charge-offs taken in order to return the partially charged-off loans reported in item 1.b. to accrual status at a market rate. $ ____
   c. LESS: payments applied during the quarter to reduce the recorded balance of partially charged-off loans accruing interest at a market rate. ____
   d. LESS: all other changes and adjustments since the end of the prior quarter, net, to partially charged-off loans accruing interest at a market rate. ____
   e. Book value at the end of the current quarter of partially charged-off loans accruing interest at a market rate. $ ____
      e.1. Book value of loans in 1.e. that are not collateral dependent. $ ____
2. Interest income accrued on loans that have been partially charged-off and are accruing interest at a market rate. $ ____
3. Recoveries on charged-off portions of loans that have been returned to accrual status at a market rate. $ ____

IV. Instructions for Preparation of Disclosure for "Partially Charged-Off Loans Accruing Interest at a Market Rate"

General Instructions

Information on loans meeting the criteria set forth in the bank Call Report glossary entry and TFR instructions for "Partially Charged-off Loans Accruing Interest at a Market Rate" must be reported in the bank Call Report and TFR. The remaining book balance of any such loan should be included in item 1 until:

(a) It is redesignated as a nonaccrual loan under existing reporting requirements (that determination being based, however, on the recorded and not the contractual balance due),

(b) It becomes classified substandard or worse by examiners or the institution's internal credit review process,

(c) The level of cash flows falls below that level required when the loan was determined as qualifying for this reporting treatment,

(d) The loan to value ratio falls below a prudent level,

(e) Additional charge-offs are taken,

(f) It becomes current based on its contractual terms, or,

(g) It is repaid or otherwise satisfied (including through formal restructuring, foreclosure or insubstance foreclosure).

Item Instructions

Item No., Caption and Instructions

1 *Partially charged-off loans accruing interest at a market rate.* Report in subitems 1.a through 1.e, below, a reconciliation of the changes since the prior quarter in the book balance of loans restored to accrual status after being partially charged-off in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate." For loans returned to accrual status in the current quarter, also report in subitem 1.b.1 the amount of charge-offs taken in order to qualify the remaining balance of the loan for return to accrual status in accordance with this reporting treatment. (See Call Report glossary entry or TFR instruction entitled "Partially Charged-off Loans Accruing Interest at a Market Rate.")

1(a) *Book value at the end of the prior quarter of partially charged-off loans accruing interest at a market rate.* Report the book balance of all loans (net of unearned income and prior charge-offs) at the end of the prior quarter which were accruing interest in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate."

1(b) *Book value of partially charged-off loans returned to accrual status at a market rate since the end of the prior quarter.* Report the book balance of loans returned to accrual status since the end of the prior quarter in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate." The book balance reported in this item shall be as of the date the loan was returned to accrual status after deduction of any charge-off necessary to qualify the loan for this reporting treatment. Payments of principal applied subsequent to that date, but prior to the quarter end, should be reported in item 1.c.

1(b.1) *Charge-offs taken in order to return the partially charged-off loans reported in item 1.b to accrual status at a market rate.* Report the amount of charge-offs taken in order to return the loans reported in subitem 1.b to accrual status in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate." Include any charge-offs taken to return the loans in item 1.b to accrual status under this reporting treatment, regardless of whether such charge-offs were taken in this quarter or prior quarters.

1(c) *LESS: payments applied during the quarter to reduce the recorded balance of partially charged-off loans accruing interest at a market rate.* Report in this item the amount of payments received during the quarter that were applied to reduce the book balance of loans which were reported in this category at the prior quarter end and which were continuously included in such category through this quarter end. For loans which were returned to accrual status in accordance with this reporting treatment during the quarter, report payments applied during the quarter after the date of return to this category or initial adoption of this reporting treatment, respectively. For loans which were removed from this accrual category during the quarter, report only payments applied to the book balance while the loan was in this category during the quarter. This would also hold true for any loans which were both removed from and returned to this category during the quarter. Payments, as that term is used, are not limited to expected periodic payments, but would also include payment in full of the obligation (other than through Formal restructuring, foreclosure or insubstance foreclosure).

1(d) *LESS: all other changes and adjustments since the end of the prior quarter, net, to partially charged-off loans accruing interest at a market rate.* Report the net effect of all other changes and adjustments, including additional advances, if any; loans removed from this category because they were placed back in nonaccrual status or because they became current in accordance with their contractual terms or due to formal restructuring, foreclosure, including insubstance foreclosure; or loans returned to this category from nonaccrual status after payment deficiencies had been cured (see Call Report glossary or TFR instruction entitled "Partially Charged-off Loans Accruing Interest at a Market Rate" for details). In rare circumstances, the amount reported in the aggregate of loans subject to this reporting treatment. In such instances the amount reported in this item could represent a net increase in this item should be enclosed with parentheses to indicate that it must be added to, rather than subtracted from, the total of items 1.a, 1.b and 1.c in order to arrive at the current quarter end balance for all loans for which interest income is being accrued after partial charge-off in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate", as reported in item 1.e below.

1(e) *Book value at the end of the current quarter of partially charged-off loans accruing interest at a market rate.* Report in this item the book balance as of the report date of all partially charge-off loans which were accruing interest in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate." The item must equal the sum of items 1.a through 1.d.

1(e.1) *Book value of loans in 1.e. that are not collateral dependent.* Report the book value as of the report date of loans included in item 1.e which do not rely on cash flow support from collateral for repayment but rather are supported by other dedicated and readily determinable cash flow streams, in accordance with Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate."

2 *Interest income accrued on loans that have been partially charged-off and are accruing interest at a market rate.* Report the amount of interest income accrued in the current period on all loans for which interest income was being accrued after a partial charge-off in accordance with Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accruing Interest at a Market Rate."

3 *Recoveries on charged-off portions of loans that have been returned to accural status at a market rate.* Report in this item all recoveries during the current quarter on the charged-off portion of any loan during that portion of the current quarter that interest was accrued on the loan in accordance with the Call Report glossary entry or TFR instruction "Partially Charged-off Loans Accuring Interest at a Market Rate."

V. Issues for Comment

Background

Introduction

The agencies have assessed the requirements for this reporting treatment in light of existing supervisory policy and regulatory reporting requirements. The agencies believe that it may be an acceptable practice under those policies and requirements.

This belief is based on the assumption that the proposed reporting treatment can lead to more conservative regulatory reporting. The loss recognized for those loans to which the proposed method is applied may be greater than would otherwise result under current acceptable methods. This situation arises because under current regulatory and accounting standards, depository institutions are required to charge off all elements of known loss. This typically results in all or a portion of the remaining balance of the loan subject to partial charge-off being adversely classified. On the other hand, the proposed treatment would require depository institutions to charge a loan down to an amount that is characteristic of a good loan, i.e., no portion of the remaining loan balance would warrant adverse classification.

The reporting treatment may also provide financial institutions with more flexibility in dealing with problem loans. Finally, the adoption of this proposed method may enhance the quality of information provided to existing and potential depositors, borrowers and shareholders of depository institutions. However, before the agencies are able to issue a final instruction, there are several areas where public comment is sought.

The agencies strive, whenever possible, to maintain conformity between generally accepted accounting principles (GAAP) and regulatory reporting requirements. While the agencies believe that the proposed reporting standard may be a step in the direction of improved regulatory reporting, there is not definitive evidence that it is in accordance with GAAP.

Additionally, it is uncertain whether the new method is "preferable" (as that term is used under GAAP) for all institutions.

Concurrent Studies

There has been considerable debate within the rulemaking bodies of the accounting profession on issues which the proposed reporting standard addresses. The Accounting Standards Executive Committee of the American Institute of Certified Public Accountants (AICPA) has been considering various issues related to the accrual of income. The Financial Accounting Standards Board (FASB) is also studying the recognition and measurement of financial instruments. The FASB also has separate projects assessment the questions of the impairment of loans and long-lived assets.

Accounting Changes

The agencies believe that the adoption of this reporting treatment may be a change in accounting principle. Accounting Principles Board Opinion No. 20, "Accounting Changes" (APB 20) states that a change in the method used in applying an accounting principle is a change in an accounting principle. There may be differing opinions as to whether implementation of the proposed reporting treatment is an accounting principle change.

In order for an entity to adopt a change in accounting principle, GAAP requires that the principle being implemented be preferable to the one currently being followed. The agencies recognize the obligation under APB 20, in making an accounting change, to justify this accounting method as a preferable method under GAAP and provide guidance as to its implementation. However, as a precondition to concluding that implementation of this proposal would be a change to a preferable accounting principle, it may be necessary to:

(1) Expand the scope of this proposed reporting treatment to certain other loans or all loans, and/or,

(2) Make the adoption of this treatment mandatory for all depository institutions or for all qualifying loans within an institution.

This request for comment seeks to determine whether the proposed reporting treatment can be deemed preferable or if a definitive conclusion can be reached

Insubstance Foreclosures

The first criterion for application of this reporting treatment requires that the loan not be an insubstance foreclosure. The agencies believe that the determination of whether a loan is an insubstance foreclosure should be made prior to any charge-offs planned to return the loan to accrual status under this reporting treatment. More specifically, charge-offs which represent the recognition of uncollectible amounts under the guidance of Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies" (FAS 5) are relevant in making a determination of the existence of an insubstance foreclosure. However, the portion of a partial charge-off taken when applying this reporting treatment to a loan that is in excess of that required under FAS 5 (i.e., to recognize the time value of money and to provide a degree of excess cash flow support), should not impact the determination of whether a loan is an insubstance foreclosure. Responses regarding this issue will be important in assessing whether the accounting treatment can be practicably and consistently applied.

Applicability

Finally, the agencies seek to determine whether this reporting treatment should be required for all depository institutions, or whether it should or could be adopted at an institution's option. The agencies request comment on this issue as well as on whether the reporting treatment should be prescribed for all qualifying loans. Or, rather, should adoption be required for all troubled loans, for all nonaccrual loans or for all of some other category of loans held by a depository institution.

Responses regarding whether the application of this proposal should be at the option of individual depository institutions should provide sufficient reference to precedent or cite other bases in accounting practice or the accounting literature.

Considerations regarding selective application include:

(1) For the assets affected, a more conservative accounting practice in comparison to the existing method may result.

(2) For loans which do not have a dedicated and readily determinable stream of cash flows, the determination of value may be more difficult and inherently subjective.

Questions

Accordingly, to facilitate an understanding of this proposed reporting treatment (which, in its proposed form, would not be required to be adopted by a depository institution and could be selectively applied to qualifying loans) relative to GAAP, the agencies request comment specifically on the following questions:

(1) Is the method permitted under this proposed reporting treatment an acceptable interpretation under existing GAAP? Specifically, commentators should consider addressing whether the proposed reporting treatment is consistent with the analogous literature:

(a) Under FAS 5 and the AICPA Industry Audit Guides, "Audits of Banks" and "Audits of Savings and Loan Associations", is it acceptable for an institution to utilize both discounted and undiscounted techniques to measure probable losses on loans? Is the use of both methods acceptable, particularly if the less conservative method is used for lower-quality loans that do not qualify for application of the proposed method?

(b) Is the use of a market discount rate an acceptable interpretation of the AICPA Savings and Loan Audit Guide which requires the reduction of proceeds at a rate equivalent to the cost of capital in determination of net realizable value? Can an institution use two discount rates for similar loans?

(c) Is the proposed method consistent with Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings" (FAS 15), in which the gain or loss on restructuring is measured on an undiscounted basis?

(d) Is the proposed method consistent with AICPA Practice Bulletin 5, which prohibits accrual of income on certain loans unless, among other things, the loan becomes current as to principal and interest payments?

(2) Should the proposed reporting treatment be limited only to collateral dependent loans? If not, are the proposed limitations set forth in this document (i.e., loans where the primary source of repayment is a dedicated and readily determinable stream of cash flows) sufficiently clear and appropriate, or are other criteria for applicability necessary? For example, should the proposed reporting treatment be required for a broader subset of loans or for other assets such as leases?

(3) Is it reasonable to believe that loans meeting the requirements for the proposed reporting treatment will not also meet the criteria requiring insubstance foreclosure accounting?

(4) Can existing GAAP be interpreted to permit selective or discretionary application of the proposed reporting treatment by a depository institution to only certain of the loans within the defined scope? Further, would existing GAAP permit an institution to elect to adopt or forego this proposed reporting treatment entirely? Do the proposed bank Call Report and TFR items alleviate the concerns inherent in selective application, or is the collection of additional information in regulatory reports necessary to alleviate these concerns? If so, what additional information would be needed?

(5) Would the adoption of this proposed reporting treatment represent a change to a preferable accounting principle under APB 20? Does the discretionary application aspect preclude, or make more difficult or otherwise impact the determination of whether the change is preferable?

(6) If a loan to which this reporting treatment were applied subsequently became contractually current, should it be excluded from being reported in the bank Call Report and TFR items for partially charged-off loans returned to accrual status? If so, should it happen immediately, or after one year-end reporting, similar to the requirements for FAS 15 disclosure?

Dated: March 14, 1991.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

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