

The background features a stylized world map composed of blue dots on the left. To the right, there is a bar chart with orange bars and a line graph with a wavy orange line. The overall color palette is dominated by blue, orange, and white.

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HOT TOPICS IN EMPLOYEE BENEFITS

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Agenda

- Executive Compensation Update
- IRA Legislative and Regulatory Update
- Transparency in Coverage: Machine-Readable Files

Executive Compensation Update

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ESG Scrutiny and Incentive Compensation

- Public companies are working to keep up with a shifting regulatory environment that increasingly prioritizes ESG standards.
- In response, many boards of directors and compensation committees are tying executive pay to corporate performance on a variety of ESG metrics.
- Recently proposed regulations from the SEC and DOL highlight the potential impact of ESG factors on corporate financial performance.

SEC	DOL
In March of this year, the SEC released a proposed rule that, if adopted in its current form, would require public companies to disclose a broad range of ESG-related information.	<ol style="list-style-type: none">1) A proposed rule published in October 2021 would likely make it easier for retirement plan fiduciaries to consider ESG factors when making investment decisions.2) A request for information released in February 2022 sought input from industry stakeholders on whether there is more that the DOL can do to address the potential risks that climate change poses to retirement-plan savings.

ESG Scrutiny and ESG Incentive Compensation

- The actions of the SEC and the DOL are part of a larger political and social trend pushing corporations to focus on ESG matters.
- As companies face stricter regulations and scrutiny surrounding ESG disclosure and impact, it is understandable that public-company compensation committees have increasingly linked executive pay to performance in these areas.

Of the \$6.96 billion in compensation paid to S&P 500 CEOs in 2021, 8.6% of that, or \$600 million, was tied to corporate ESG performance.

In 2019, 16% of US companies included ESG considerations in their executive incentive plans; that figure rose to 21% in 2020 and 25% in 2021.

Certain ESG Pay Metrics Are More Popular

- Successful performance-based pay plans closely align executive performance metrics with overall corporate purpose and strategy.
- As such, the ESG metrics included in incentive-pay programs should (and do) differ based on industry and company culture.
 - A specific company's degree of involvement in environmentally or socially sensitive and labor-intensive industries influences the degree to which the overall corporate strategy weighs such ESG concerns.
- The ESG metrics most commonly selected by boards and compensation committees include those related to **environmental issues**, **diversity** and **human capital management**.
 - These areas are more quantifiable than some other ESG metrics, which makes them easier to track for incentive-based pay purposes.
 - They are also increasingly important to investors and other stakeholders due to their correlation with liability risk.

Shift from Subjective to Objective Measurements

We have seen a shift in ESG-related performance goals from more general or subjective goals to more clearly disclosed objective and measurable goals.

Generic / Subjective	Measurable / Objective
<p>A large transportation company phrased a short-term incentive-plan performance goal for 2021 as follows:</p> <ul style="list-style-type: none">• “Implement and document <u>good faith efforts</u> designed to ensure <u>inclusion of female and minorities</u> in the pool of qualified applicants for open positions and promotional opportunities...”	<p>An industrial machinery company decided to include in its 2022 short-term incentive plan a <u>multiplier to the payout opportunity directly tied to measurable corporate progress</u> toward achieving two longer-term goals:</p> <ul style="list-style-type: none">• “a 50% reduction in Scope 1 and Scope 2 greenhouse gas emissions for 2030 and progress toward achieving gender parity among our executive leadership by 2030.” <p>In other words, the short-term incentive-payout factor would increase or decrease by a multiplier of 1.1 to 0.9 based on measured achievement toward those specific and measurable long-term goals.</p>
<p>A retail company included “goals relating to <u>environmental, social and governance criteria</u>” at the end of a laundry list of other financial metrics to be listed as performance metrics in its 2020 stock incentive plan.</p>	<p>An aerospace company’s compensation committee factored its <u>6.2% decrease in greenhouse gas emissions (as compared to 2020) into determining payout</u> under its short-term cash-incentive program.</p>

Our Takeaways

01

As regulatory and social factors continue to place pressure on companies to be more transparent with respect to their global impact and sustainability efforts, we expect that an increasing number of companies will tie executive pay to corporate ESG performance.

02

We predict that companies will shift toward more specific and measurable ESG-related goals in an effort to incentivize executives to focus more heavily on these areas.

03

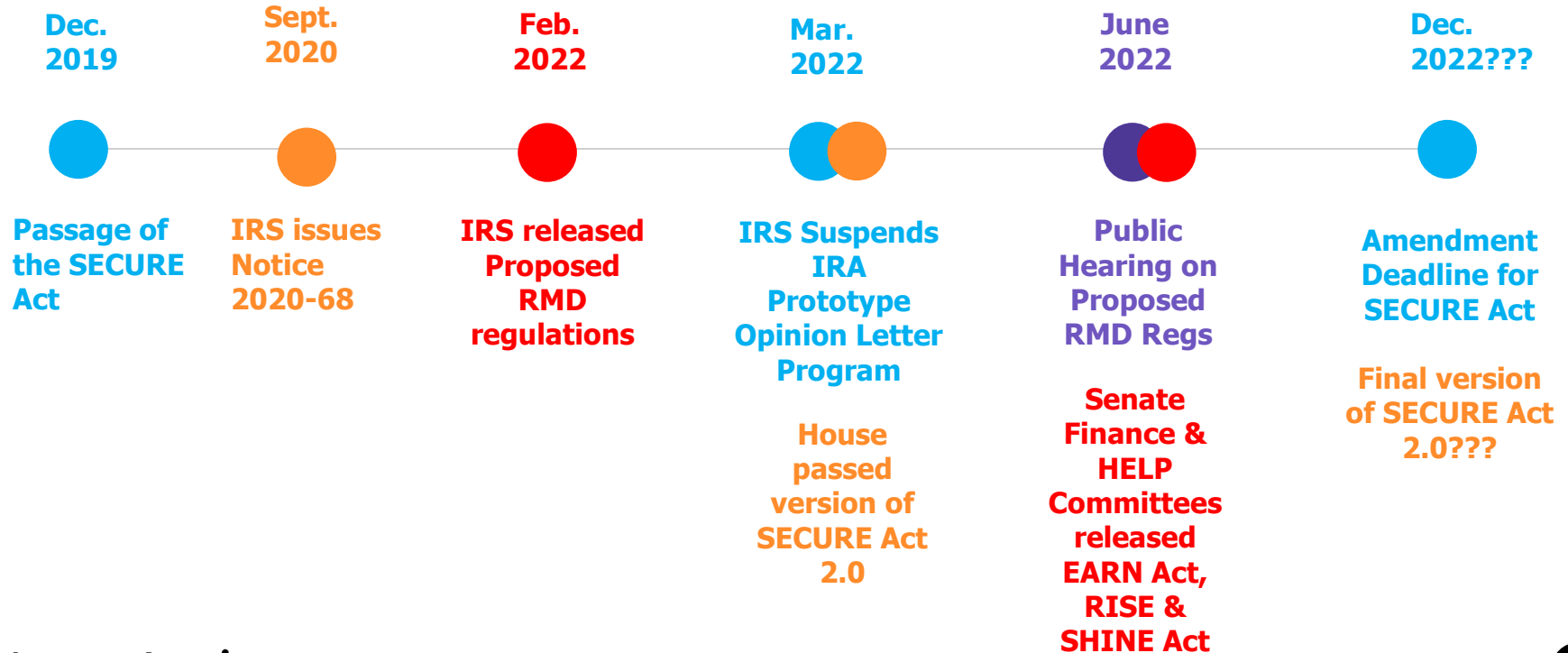
We also predict that companies will continue to disclose their ESG-related pay structures as a public display of corporate commitment to and focus on ESG.



IRA Legislative and Regulatory Update

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Post-SECURE Act Guidance – Where Are We Now?



SECURE Act

- Setting Every Community Up for Retirement Enhancement Act (SECURE Act) was signed into law on December 20, 2019
- Most significant retirement plan legislation since Pension Protection Act of 2006
- Many changes designed to expand retirement savings affect IRAs:
 - Repealed the 70½ maximum age for traditional IRA contributions
 - Increased the required beginning date when RMDs must begin to age 72
 - Included certain nontuition fellowship and stipend payments as compensation for IRA contributions
 - Included tax-exempt “difficulty of care” payments to home healthcare providers as compensation for nondeductible IRA contribution limit purposes
 - Allowed penalty-free early withdrawals of up to \$5,000 for qualifying births and adoptions
 - Changed distribution rules for inherited IRAs (notably, eliminating the stretch for individuals who are not “eligible designated beneficiaries” and requiring most beneficiaries to take RMDs under the new 10-year rule)

SECURE Act Amendments & IRS Notice 2020-68

- Section 601 of the **SECURE Act** generally provides that plan amendments to reflect the SECURE Act changes must be adopted by the last day of the first plan year beginning on or after January 1, 2022 (2024 for governmental plans), including anti-cutback relief.
 - This means that IRA providers have to amend their documents by **December 31, 2022 (unless the deadline is extended)**.
- IRS **Notice 2020-68** requires an IRA provider that accepts post-age 70½ Traditional IRA contributions to amend its IRA trust/custodial agreement or annuity contract endorsement, as applicable, by December 31, 2022 (or such later date as prescribed by the Secretary).
 - The Notice indicates the IRS expects to issue revised model IRA forms and prototype language.
 - Per the Notice, IRA providers are required to deliver/mail copies of the SECURE Act amendment and an updated disclosure statement to the last known address of each IRA owner no later than 30 days after the later of the adoption date or the effective date of the amendment.
- Despite several questions regarding the interpretation and implementation of some of the SECURE Act provisions, some IRA providers (particularly those using prototype documents) started the amendment process back in 2020 and 2021.

IRS Announcement 2022-6

- IRS released Announcement 2022-6 clarifying some questions from IRA providers regarding IRA documentation:
 - Temporary suspension of the IRS Prototype Opinion Letter Program for IRAs effective March 14, 2022 until further notice to allow the IRS to revise the program
 - IRS will announce when applications for opinion letters on prototype IRAs may be submitted under the revised program
 - IRA providers that have already received a favorable opinion letter for a prototype IRA can continue to rely on the existing letter
 - An IRA provider may, but is not required to, update its IRA documents for the SECURE Act and other recent legislation without affecting the IRA provider's reliance on a previously received favorable opinion letter
 - IRA providers may use the existing IRS model forms for current IRAs and plans or to establish new IRAs and plans until the IRS issues revised model forms

SECURE Act Amendments

- To date:
 - the Secretary has not extended the amendment deadline
 - no revised model IRA forms or prototype language have been provided
 - IRS has confirmed that it is in the process of updating the List of Requirement Modifications (LRMs) for prototype custodial/trust agreements and endorsements to reflect the SECURE Act, and that the project is a high priority, however, no updates to LRMs are available yet
- Waiting for final RMD regulations and pending legislation (Secure Act 2.0)???
- House and Senate versions of SECURE Act 2.0 would further extend the amendment deadline for the SECURE Act to December 31, 2024

Proposed RMD Regulations

- On February 23, 2022, the IRS released proposed regulations related to the RMDs from IRAs and qualified plans
- Amends the income tax regulations under IRC Section 401(a)(9), which are adopted by reference in IRC Section 408(a)(6) and (b)(3) for IRAs
- A few highlights:
 - Age of majority for IRA RMD purposes is age 21
 - Determination of disability safe harbor
 - Disability of beneficiary determined at the time of the IRA owner's death
 - Documentation requirements for disabled or chronically ill status
 - Multiple EDBs – one non-EDB blows up the stretch (IRA owner is treated as having NO EDBs)

Proposed RMD Regulations

- Comments on the proposed regulations were due by May 25, 2022 and a public hearing was held on June 15, 2022
- Highlights from the comments and public hearing:
 - Most pressing topic relates to deadlines and the need for an extension
 - Extend amendment deadline by at least one year after the final regulations are issued
 - Delay implementation deadlines
 - Need clarity on when the 10-year rule kicks in (request for delayed implementation) and confirmation that distributions are not required during the 10-year period
 - Eliminate trust documentation requirement for trust beneficiaries
 - Allow pass through to trust beneficiaries
 - Allow IRA providers to rely on certifications to determine whether a beneficiary is disabled or chronically ill
 - Need clarity on various provisions affecting IRA (annuities)

Securing a Strong Retirement Act (SECURE Act 2.0)

- Some practitioners thought the SECURE Act could have gone further to help a greater number of workers successfully save for a secure retirement by expanding coverage and increasing retirement savings and further improving workers' long-term financial wellbeing.
- Building on the changes made by the SECURE Act, the Securing a Strong Retirement Act of 2021 (H.R. 2954), was introduced on May 4, 2021 and reported out of the House Ways and Means Committee on May 5, 2021 with bipartisan support.
- On March 29, 2022, the House passed Securing a Strong Retirement Act of 2022 (i.e., Secure Act. 2.0) by a 414-5 vote.

Securing a Strong Retirement Act

- Key changes affecting IRAs:
 - Increases age for required beginning date for mandatory distributions from age 72 to an “applicable age” (age 73, 74 or 75)
 - SIMPLE and SEP Roth IRAs
 - Indexes IRA catch-up limit for cost of living
 - Increases SIMPLE Plan catch-up limit and indexes limit for cost of living
 - Allows treatment of qualified student loan payments as elective deferrals for purposes of matching contributions up to an applicable dollar limit for SIMPLE IRA Plans
 - Limits cessation of IRA treatment to portion of IRA involved in a prohibited transaction
 - Creates a new penalty-free withdrawal option for domestic abuse victims
 - Reduces excise tax for taking late RMDs (with further reduction during correction window)

Securing a Strong Retirement Act

- Key changes affecting IRAs:
 - Statute of limitations for excise tax on excess contributions and certain accumulations
 - Expansion of Employee Plans Compliance Resolution System (EPCRS) to correct eligible inadvertent failures with respect to IRAs
 - Limits timing for repaying birth/adoption distributions
 - Retirement Savings Lost and Found
 - Charitable distributions changes
 - Simplification and increase in Saver's Credit

RISE & SHINE Act

- On June 7, 2022, the Senate Health, Education, Labor and Pensions (HELP) Committee introduced the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg Act of 2022 (i.e., the “RISE & SHINE Act”)
- Primary provision affecting IRAs:
 - Under current law, employers may transfer former employees’ retirement accounts from a workplace retirement plan into an individual retirement account (IRA) if their balances are between \$1,000 and \$5,000. Section 101 of the RISE Act increases the limit from \$5,000 to \$7,000.

EARN Act

HOT OFF THE PRESS

- On June 17, 2022, Senate Finance Committee released a summary of the Enhancing American Retirement Now (EARN) Act
- Senate Finance Committee held an open executive session to consider the EARN Act today, June 22
- Many of the EARN Act provisions (including those provisions that affect IRAs) are similar to the House version of SECURE Act 2.0, but there are some differences
- The next steps will be for the EARN Act and the RISE & SHINE Act to be reconciled and then for the final Senate version to be reconciled with the House version of SECURE Act 2.0
- Some suspect that the final SECURE Act 2.0 package will be considered later this year after the mid-term elections

Transparency in Coverage: Machine-Readable Files

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Transparency in Coverage – Final Rule

- Establishes two requirements for the disclosure of cost-sharing and pricing information:
 - Public disclosure requirements via machine-readable files (MRFs)
 - Required disclosures to participants and beneficiaries via an internet self-service tool
- Applicability
 - Applies to nongrandfathered health plans
 - Does NOT apply to grandfathered plans, HRAs, Health FSAs, excepted benefits, and short-term, limited-duration insurance
 - Operates in tandem with (and does not supersede or alter plan's and issuer's responsibilities under) existing federal and state laws governing data privacy, security, and accessibility (e.g., HIPAA/HITECH)

Public Disclosure of Pricing Information – MRFs

- Plans and insurers are required to publish the following three MRFs:
 - In-network rate file
 - Out-of-network allowed amount file (with associated billed charges)
 - Prescription drug pricing file*
- MRFs must be publicly available
 - Posted on an internet website in a standardized format
 - Provided free of charge and without any restrictions (e.g., no password protection)
 - Updated monthly (plans should clearly indicate the date that the files were most recently updated)

Implementation Timeline

- The requirement to publish machine-readable files that disclose in-network rates, out-of-network allowed amounts, and billed charges was set to go into effect for plan years beginning on or after 1/1/2022, but has been delayed until 7/1/2022.
 - There is no impact on non-calendar year plans beginning on or after 7/1/2022 (such plans must post the machine-readable files in the month in which the plan year begins)
- The requirement to publish machine-readable files relating to prescription drug pricing was set go into effect for plan years beginning on or after 1/1/2022, but has been delayed indefinitely (pending further rulemaking)
 - This delay is, in part, due to a No Surprises Act reporting requirement that implicated the same prescription drug pricing information. Enforcement of that requirement has also been delayed (pending the issuance of regulations or further guidance). However, the departments indicated that plans should work toward a 12/27/2022 compliance deadline.

In-Network Rate File

- For each coverage option offered under the plan:
 - The name and the Employer Identification Number (EIN) (for self-insured plans) or Health Insurance Oversight System (HIOS) identifier (for fully insured plans)
 - For each billing code for each covered item or service under each coverage option offered, the code number and a plain language description
 - All applicable rates (i.e., negotiated rates, underlying fee schedule rates, and/or derived amounts)
 - Reflected as dollar amounts;
 - Associated with the National Provider Identifier (NPI), Tax Identification Number (TIN), and Place of Service Code for each in-network provider;
 - Associated with the last date of the contract term or expiration date for each provider-specific applicable rate that applies to each covered item or service; and
 - Indicated with a notation where a reimbursement arrangement other than a standard fee-for-service model (such as capitation or a bundled payment arrangement) applies

Out-of-Network Allowed Amount File

- For each coverage option offered under the plan:
 - The name and the EIN (for self-insured plans) or HIOS identifier (for fully insured plans)
 - For each billing code for each covered item or service under each coverage option offered, the code number and a plain language description
 - Unique out-of-network allowed amounts and billed charges with respect to covered items or services furnished by out-of-network providers during the 90-day period that begins 180 days prior to the publication date of the machine-readable file*
 - Reflected as dollar amounts; and
 - Associated with the NPI, TIN, and Place of Service Code for each out-of-network provider

*Data in relation to a particular item or service and provider that would require the plan to report payment of out-of-network allowed amounts in connection with fewer than 20 different claims for payments under a single plan or coverage must be omitted!

Next Steps

- Talk to your vendors!
 - Review contracts
 - Continue to monitor
- Determine where the MRFs will be most easily accessible by the public
 - Landing page?
 - “Careers” page?
- Prepare for Phase 2 and 3 (and 1.5?)

Questions?

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Biography



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Erin is part of a team that helps clients find solutions to their employee benefits–related problems. She counsels clients on employee benefits matters, including design, implementation, and administration of cash or deferred compensation arrangements, nonqualified deferred compensation plans, and executive and equity compensation arrangements. Erin negotiates employment agreements and severance arrangements for senior executives, and advises clients on all employee benefits and compensation-related aspects of mergers, acquisitions, sales and spin-offs.

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Sariyah ensures that benefit plans and compensation arrangements comply with US state and federal laws including ERISA and the Internal Revenue Code. Sariyah drafts employment agreements, equity plans, grant agreements, and proxy materials, and prepares custodial agreements, disclosures, and election and beneficiary designation forms for IRA custodians. She assists clients in corporate transactions and represents clients before the IRS, PBGC, and DOL. She is an associate representative for the firm's First Generation Lawyer Network.

Biography



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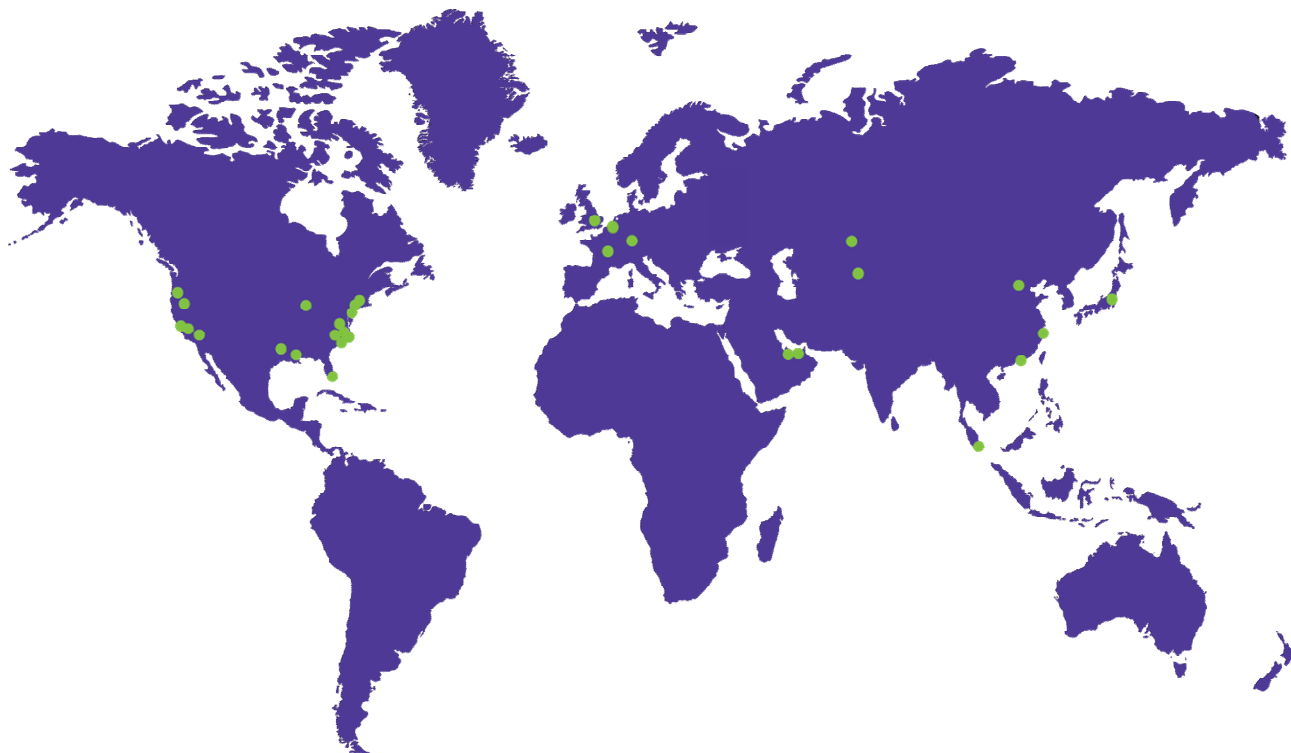
Allison advises clients on health and welfare plans, helping them stay in compliance with applicable requirements under ERISA, the Internal Revenue Code, the Affordable Care Act, COBRA, and HIPAA. She also prepares and reviews plan documents and related materials. In addition, Allison reviews and negotiates services agreements with third parties. Before joining Morgan Lewis, Allison served in the DOL's Office of Health Plan Standards and Compliance Assistance. There she helped develop and issue regulatory, interpretive, and compliance-assistance guidance concerning group health plans under ERISA.

Our Global Reach

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Middle East
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