



Top Five **Red Flags** For ESSER, ESSA, and IDEA

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Five Red Flags

χ Not Keeping Up With EDGAR

χ Supplement Not Supplant

χ Maintenance of Effort

χ Lack of Policies and Procedures (Tracking Supplies)

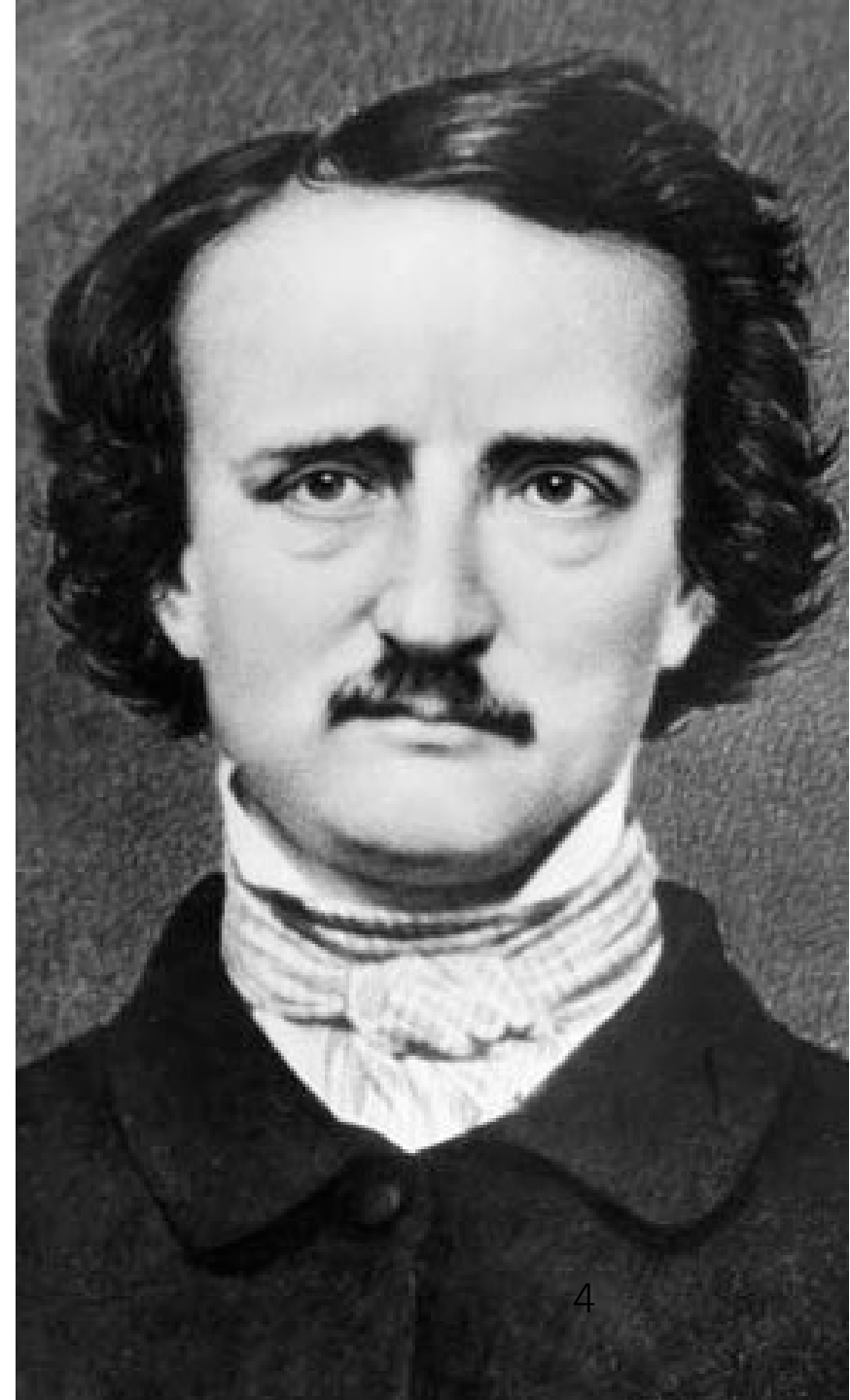
χ Missing Contract Elements



Not Keeping Up with EDGAR!

Education Department General
Administrative Regulations

<https://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html>



EDGAR and the UGG

- The Education Department General Administrative Regulations (EDGAR) includes various grants management rules applicable to all federal awards issued by the U.S. Department of Education (ED).
- The Uniform Grant Guidance (UGG) are federal grants management rules that apply to all awards issued by all federal awarding agencies.
- Created and amended by the Office of Management and Budget (OMB)
- EDGAR incorporated the UGG back in 2014
- Parts 74 and 80 of EDGAR were replaced with 2 CFR Part 200

2023 Proposed Changes to the UGG

- OMB announced on February 9, 2023 that it would be proposing revisions to the UGG in 2023
- <https://www.federalregister.gov/documents/2023/02/09/2023-02158/omb-request-for-information-rfi/>
- Comments closed on March 13, 2023
- OMB anticipates publishing final update by December 2023

OMB Goals For 2023 Proposed Changes

1. Revise guidance to incorporate statutory requirements and administration priorities;
2. Revise guidance to reduce agency and recipient burden;
3. Clarify guidance by addressing sections that recipients or agencies have interpreted in different ways; and
4. Clarify guidance by rewriting applicable sections in plain English, improving flow, and addressing inconsistent use of terms. The revision will not represent a complete revision or restructuring of 2 CFR. OMB will strive to maintain the same overall structure of 2 CFR, including section numbers.

Domestic Preferences for Procurements 200.322

- “To the greatest extent practicable” must provide a preference for the purchase of goods and materials produced in the U.S.
- Must include this section in all subawards, contracts and purchase orders



Prohibition on certain telecommunications and video surveillance services or equipment 200.216

- Prohibits grantees from **entering into** contracts with certain covered entities
- 200.471: Telecommunication and video surveillance services or equipment are allowable, *except*:
- “Covered” telecommunications and surveillance under 200.216
- Applies to new contracts, services, equipment, and any renewals or extensions

Prohibition on
certain
telecommunications and video
surveillance
services or
equipment
200.216 (cont.)

OMB FAQ 47: How do you know if an entity has been added to the list of covered entities?

Entities added to this list will be incorporated into the excluded parties list in the SAM (www.sam.gov). When a user conducts a search of the excluded parties list, a record will appear describing the nature of the exclusion for any entity identified as covered by this prohibition.

Recommendation: Check SAM.gov for applicable contracts!



Supplement Not Supplant



SNS Requirements

Programs											
SNS Standard	Title I,A	Migrant Educ	Title II,A	Title III,A	Title IV,A	REAP/SRSA	21 st CCLC	IDEA	Perkins	ESSER	
	State and Local Funds	ESSA Sec. 1118(b)	ESSA Sec. 1304(c) (2)								---
	Non-Federal Funds			ESSA Sec. 2301		ESSA Sec. 4110			Sec. 211	---	
	Federal, State and Local Funds				ESSA Sec. 3115(g)		ESSA Sec. 5232	ESSA Sec. 4204 Subs "Nonfed funds" 4202 (b)(2)(G)	34 CFR 300.164 (a) (SEA); 300.202(a) (LEA)		---

ESSA Titles I, A Sec. 1118(b) SNS

- A LEA may use Part A funds only to supplement the funds that would, in the absence of the Part A funds, be made available from state and local sources for the education of students participating in a Part A program.
- In no case may a LEA use Part A funds to supplant funds from state and local sources.
- [HTTPS://WWW2.ED.GOV/POLICY/ELSEC/LEG/ESSA/SNSFINALGUIDANCE06192019.PDF](https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf)

SNS “Special Rule” for Title I

An LEA may not be required to...

- 1) identify that an individual cost or service supported with Part A funds is supplemental; or
- 2) provide services through a particular instructional method or in a particular instructional setting.

See ESEA section 1118(b)(3)



ESSA Title I, A Sec. 1118(b) (cont.)

- TEST: An LEA must demonstrate that it has a methodology (e.g., through written procedures) and uses it to allocate **state and local funds to each Title I school** [and] ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds—i.e., the LEA’s methodology may not take into account a school’s Title I status
- ED frames this as “Title I neutral”

What is a compliant methodology?

One that results in Title I schools receiving “all the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds”

Allocation methodology may include allocation of State and local dollars and/or the allocation of resources backed by State and local funds

E.g. weighted funding based on student characteristics, staffing distribution

Methodologies can:

Differentiate by grade span or school type (e.g. charters), school enrollment

Consider “high concentrations of children with disabilities, English learners, or other such groups of students the LEA determines require additional support”

Exceptions - When may consider Title I Status

When LEA is allocating more State and local funding to Title I school because of its status

Where requirements are met but for certain expenditures that meet the “intents and purposes” of Title I

SEA or LEA may exclude supplemental state or local funds used for program that meet the *intents and purposes* of Title I, A. SNS Guidance Q&A 7

Also applies to the MEP program re: supplemental funds that meet MEP intents and purposes.

What About District-level Activities?

- The LEA must conduct activities with those funds in a manner that does not take into account a school's Title I status.
- For example, the LEA reserves the State and local funds for a social worker at the district level.

The LEA deploys the social worker to different schools throughout the school year on an as-needed basis.

Access to or assignment of the social worker must be Title I neutral in order to comply with the general SNS requirement.

SNS Guidance, Section VI

Are there any SNS exceptions?

- Excluded from SNS Methodology Test:
 - Single School LEAs;
 - LEAs with only Title I schools.
 - A grade span that contains only: a single school, non-Title I schools, or Title I schools.

SNS Guidance Q&A 26

Title I vs. Other Programs

For programs outside of Title I-A,
can still use:

Specific Cost Test

Presumptions of Supplanting



Presumptions of Supplanting

Auditors presume supplanting occurs if federal funds were used to provide services...

1. Required to be made available under other federal, state, or local laws
2. Provided with non-federal funds in prior year
For Title III, A and 21st CCLC → other federal funds
3. **[Title I, C and Perkins only]** Provided services to eligible students with federal funds, and the same services were provided to non-eligible students with nonfederal funds.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-federal funds had the federal funds not been available.

IDEA Supplement not Supplant - SEA

General. Funds paid to a State under IDEA Part B must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services. (34 CFR 300.164(a))

“A State may use funds it retains under 300.704(a) [state admin] and (b) [state-level activities] without regard to the prohibition on supplanting other funds.”

IDEA Supplement not Supplant - LEA

General. Amounts provided to the LEA under IDEA Part B must be used to supplement State, local, and other Federal funds and not to supplant those funds. (34 CFR 300.202(a)(3))

Compliance Supplement: Supplement not supplant is “not applicable”

- ED Guidance: if meet local MOE, then meet supplanting requirement
- Presumptions of supplanting do not apply

SNS Testing

SNS is a current to prior year test.

ESSER and GEER funds do not have a SNS requirement but are considered Federal Funds.

May be able to use GEER/ESSER funds to remove supplanting presumptions for programs without an “other Federal” SNS test.



Maintenance of Effort



ESSA Maintenance of Effort (MOE)

Sec. 1118(a) and 8521

- The combined **fiscal effort per student** or the **aggregate expenditures** of the LEA
- from state and local funds
- from preceding year must not be less than 90% of the second preceding year.

MOE (34 CFR 299.5)

ESSA MOE applies to:

Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies)

Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At Risk)

Title II, Part A (Improving Teacher Quality)

Title III, Part A (English Language State Grants)

Title IV, Part B (21st Century Learning Centers)

Title V, Part B (Subpart 2, Rural Education Programs)

MOE Calculation 34 CFR 299.5

Include state and local expenditures for:

- Expenditures for administration
- Instruction
- Attendance and health services
- Pupil transportation services
- Operation and maintenance of plant
- Fixed charges
- Net expenditures to cover deficits for food services and student body activities.

Exclude state and local expenditures for:

- Community services
- Capital outlay
- Debt service
- Supplemental expenditures made as a result of a declared disaster

20/21 MOE Example: Expenditure Analysis

MOE Not Met = Reduce by 5.3%

Analysis for Meeting MOE in Previous Year	Fiscal Effort per Student	Aggregate Expenditures
2018-19 Actual Amount	\$6,100	\$1,000,000
90% of 2018-19 Amount	\$5,490	\$900,000
2019-20 Actual Amount	\$5,200	\$850,000
Difference (Shortfall)	(\$290)	(\$50,000)
Percent Shortfall/Reduction in Award for 2021-22	<u>-5.3%</u>	-5.6%

MOE Consequences Sec. 8521(b)

5 Year Penalty-Free

- LEA is not subject to sanctions for failing to maintain 90% effort for one year (either combined fiscal per student or aggregate State and agency expenditures) provided it has not failed to meet MOE for one or more of five immediately preceding fiscal years.

MOE Waiver Sec. 8521(c)

Secretary of Education may waive MOE if “equitable”:

Exceptional or uncontrollable circumstances, such as a natural disaster;
or

A change in the organizational structure of the LEA; or

A precipitous decline in the financial resources of the LEA.

Waiver = meeting MOE!

IDEA Maintenance of Effort Requirements

IDEA Maintenance of State Fiscal Support (MFS)
IDEA Local Maintenance of Effort (MOE)

Maintenance of State Financial Support

34 CFR § 300.163

State requirement to not reduce the amount of state financial support for special education and related services (MFS) made available for children with disabilities

- Includes ALL State funds

Waiver permitted for exceptional or uncontrollable circumstance

- One fiscal year at a time

- Contact state lead at OSEP for assistance

- Note past OSEP decisions, proportionality of cuts analysis

<https://www2.ed.gov/policy/speced/guid/idea/monitor/smfs-partb-waivers.html>

Failure to Meet State MFS

Consequences for failure to maintain support:

- ED reduces allocation for **any** FY following the FY in which the State fails to comply

- Reduction is the same amount by which the State fails to meet the requirement

- Following year reverts back to previous level of effort

Ability of SEA to reduce its fiscal effort is VERY RARE!

(IDEA Regs Section 300.230)

IDEA Maintenance of Effort (LEA)

The general rule: An LEA may not reduce the amount of local, or state and local, funds that it spent for the education of CWDs below the amount it spent for the preceding fiscal year.

Two components:

Eligibility standard (34 CFR 300.203(a))

Compliance standard (34 CFR 300.203(b))

Four ways to calculate:

Compare using local only or state and local; aggregate or per pupil (34 CFR 300.203(b))

Allowable Exceptions (Reductions) to MOE

1. The voluntary departure or departure for just cause, of special education or related services personnel
2. A decrease in the enrollment of CWDs
3. A CWD with an exceptionally costly program (as determined by SEA) left the LEA, aged out, or no longer needs the program
4. The termination of costly expenditures for long-term purchases (equipment, construction, etc.)
5. The assumption of cost by the high cost fund operated by the SEA

(34 CFR 300.204)

Allowable Exceptions (Reductions) to MOE

For any fiscal year for which an LEA's IDEA allocation exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures for the education of children with disabilities otherwise required by not more than 50 percent of the amount of that excess.

- Must use the reduction on ESSA allowable activities
- May be reduced if funds are used for voluntary CEIS set-aside
- Not permitted if LEA is identified as having significant disproportionality or does not have “meets requirements” status

(34 CFR § 300.205(d) & 300.226(a))

Failing the Compliance Standard

SEA payback to ED with nonfederal funds:

- Lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year

- Can use most favorable method

SEA can use State procedures to recover funds from LEA

LEA MOE Subsequent Years Rule, 34 CFR 300.203(c)

- If LEA fails to meet MOE requirements, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA's reduced level of expenditures.



Lack of Policies and Procedures (Tracking Supplies)

1. READ DIRECTIONS ON BOX



2. THROW BOX AWAY



3. PULL BOX OUT OF TRASH
15 SECONDS LATER



4. REPEAT



Policies vs. Procedures

Policy

- A **policy** is a guiding principle used to set direction in an organization.
 - Change infrequently
 - State generally who, what, when, or why
 - Broad and general

Procedure

- A **procedure** is a series of steps to be followed as a consistent and repetitive approach to accomplish an end result.
 - Continuously change and improve
 - State specifically who, what, when, and how
 - Offer a detailed description of activities

Required Policies

- ✘ Conflicts of Interest Policy – 2 CFR 200.318(c)
- 📊 Accounting Policies – 2 CFR 200.306(h)(2)(i); 200.400; and 200.430(i)(v)
- 🕒 Time and Effort Policies – 2 CFR 200.430(a)(2)
- 🤝 Fringe Benefits Policies – 2 CFR 200.431
- ⊕ Employee Health and Welfare Policies – 2 CFR 200.437(a)
- ✈️ Travel Reimbursement Policy – 2 CFR 200.475(a)

Required Procedures



Procedures - Real property sales procedures – 2 CFR 200.311(c)(2)



Time & Effort Procedures – ED Cost Allocation Guide



Written Allowability Procedures – 2 CFR 200.302(b)(7); 200.403(c)



Written Cash Management Procedures – 2 CFR 200.302(b)(6) and 200.305



Written Procurement Procedures – 2 CFR 200.318(a), 200.319(d), and 200.320



Procedures for Managing Equipment – 2 CFR 200.313(d)

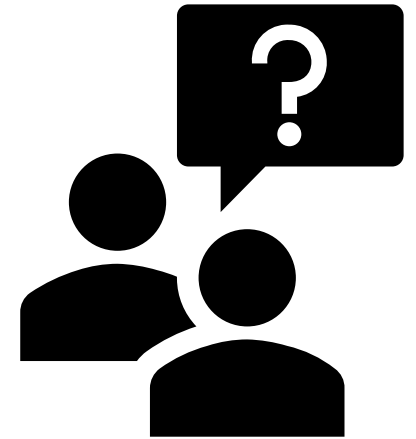
Suggested Policies and Procedures

Record Retention

Audit Resolution

For the pass-through entity: Subrecipient Monitoring
listed in OMB Compliance Supplement

Program Specific Requirements



Suggested Table of Contents

- I. Organization, Structure, and Function
- II. Grant Application Process
- III. Financial Management System
- IV. Allowability
- V. Procurement
- VI. Inventory/Property Management
- VII. Record Keeping/Record Retention
- VIII. Monitoring and Audit Resolution
- IX. Programmatic Requirements
- X. Emergency Policies and Procedures

Example: How do you handle disposition of Supplies??

If there is a residual inventory of supplies that are not needed exceeding \$5,000 in total aggregate value, the State or LEA may retain or sell the supplies but, in either case, must compensate the Department for its share per 2 CFR 200.313(e)(2).



Documentation Requirements

Retention Requirements For Records (200.334)

When original records are electronic and cannot be altered, there is no need to create and retain paper copies. (200.336)

UGG = three years

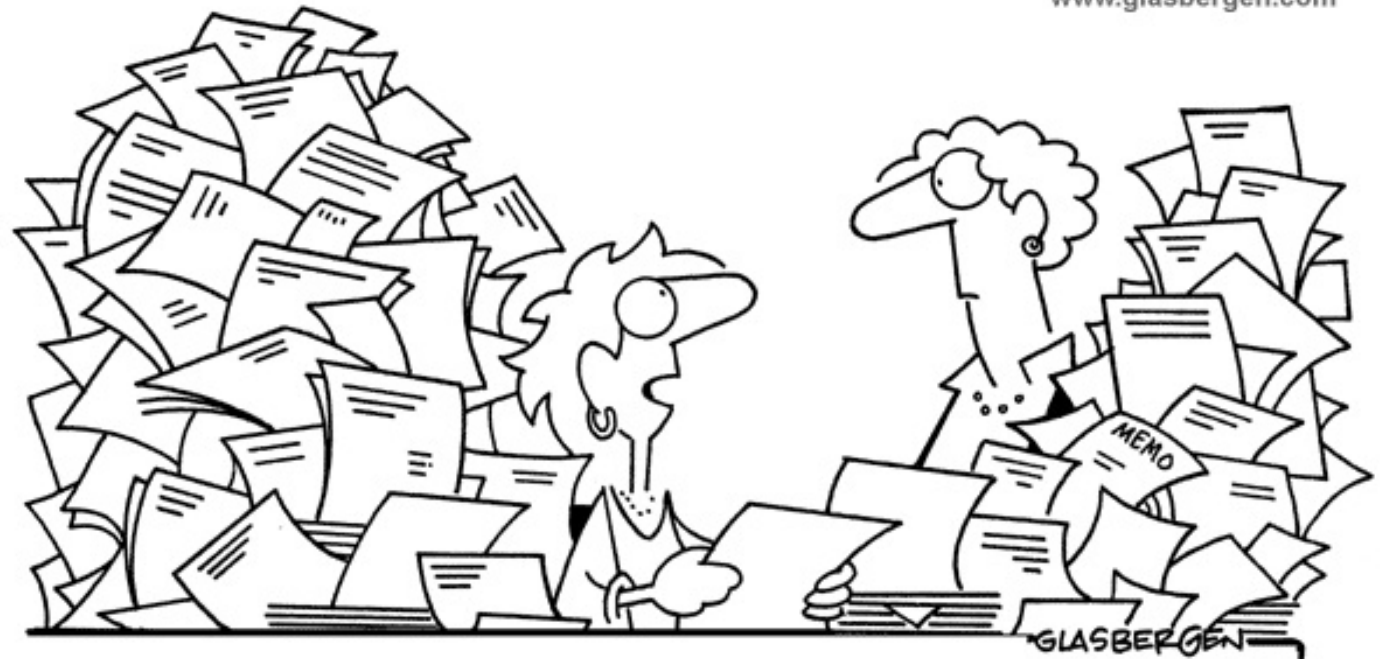
BUT... Watch applicable Statute of Limitations!

(Example, USDE = 5 years under the General Education Provisions Act)

Record Keeping and Record Retention Best Practices

- Describe method for collection of records
- How PII and FERPA are met
- Storage of records
- Disposition of records

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**“I am not disorganized — I know *exactly* where everything is!
The newer stuff is on top and the older stuff is on the bottom.”**



Missing Contract Requirements



Contract Requirements

- Contractors are only responsible for what is include in their contract, not the Uniform Grants Guidance!
- UGG does include requirements for what should be included in your contracts
- Nonfederal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract (200.318(b))

Contracts over \$10,000

- The contract must address termination for cause and for convenience by the nonfederal entity, including the manner by which it will be effected and the basis for settlement.
- Language will depend on the type of contract and the terms of your agreement

Small Business and Non-Profit Contracts

For contracts with a Small Business or Non-Profit

- Rights to Inventions Made Under a Contract or Agreement

“Contractor agrees to comply with the requirements of 37 CFR Part 401, ‘Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,’ and any implementing regulations issued by the awarding agency.”

Contracts over \$25,000

For contracts over \$25,000 **OR** for telecommunications and video surveillance services or equipment:

Contracts over \$100,000

Byrd Anti-Lobbying Amendment (31 USC 1352)

For contracts over \$100,000 involving employment of mechanics or laborers:

Contract Work Hours and Safety Standards Act (40 USC 3701-3708)

Contracts over \$150,000

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended

Contracts over \$250,000

The contract must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

Questions



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