

REGULATORY ADVISORY SERVICES

FEBRUARY 2025 EDITION

THE BIG ORANGE BOOK

A BANK & CREDIT UNION'S GUIDE TO COMPLIANCE

a **wipro** company

"The BOB is an industry standard that has helped state banking associations, federal agencies, and financial institutions for over 30 years."



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Welcome

Welcome to Capco! Here's How to Use the BOB! As one of the nation's leading compliance advisors, Capco's Regulatory Intelligence Solutions team has helped thousands of financial institutions and government agencies gain a richer understanding of current and emerging federal compliance laws and regulations. Our consulting solutions are designed to make your life easier by giving you honest, accurate, and timely compliance advice that you can easily apply within your organization.

The Big Orange Book: A Bank & Credit Union Guide to Compliance was originally published in 1990 and has become an industry standard that has helped state banking associations, federal agencies, and financial institutions clear the fog of compliance for over 30 years. BOB is written in plain English and easy to follow, making compliance understandable for even the newest compliance officers, while also serving as an excellent reference tool for the most seasoned subject matter experts.

- Throughout this publication you will see **orange font** which indicates updated information since the prior release of **November 2024**.
- The table of contents is organized by functional departments (Deposits, Loans, Customer-Related Operations, and Internal Operations.)
- These sections contain materials on laws and regulations within the functional area, and topics that provide you with a more thorough understanding of the applicable issues. It is also hyperlinked, which allows you to click and go to your desired location within the BOB.
- The index allows you to locate the topic in which you are interested in. Each term is followed by the page number(s) on which the term occurs.
- You can also use the search button to find specific terms listed throughout the BOB.

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Advertising Deposits

Introduction

Virtually every aspect of the business of banking is regulated in the United States, including advertising. There is no single federal regulation that sets out all the advertising rules, rather they are scattered about in the regulations in different subject areas (e.g. deposit insurance, different lending regulations, etc.). Some states also have laws and regulations that govern advertising, so each institution should check their state's rules.

Insurance Rules

Common Name: Insurance Rules	
Agency	Regulation
FDIC	12 C.F.R. 328

FDIC Rules

FDIC Advertising Statement. On December 23, 2023, the FDIC adopted a final rule to modernize and amend rules governing Insured Depository Institution (IDI) display of the official sign. The amendments have an effective date of April 1, 2024 with full compliance date extended to January 1, 2025 (for misrepresentations of deposit insurance) and May 1, 2025 (for new signs and advertising requirements). The Rule's sign requirements include three distinct signs relating to deposit insurance.

FDIC Official Sign. The first is the FDIC official sign advertising display of the official sign, statement "Member of the Federal Deposit Insurance Corporation," "Member FDIC," or the new option "FDIC-Insured".

The advertising statement must be in every advertisement published by a bank if the advertisement promotes deposit products or services, or promotes the financial institution generally, unless the advertisement falls within one of the exceptions described later

in this chapter. For example, an advertisement that states, "Hometown Bank is the friendliest bank in town," must have the advertising statement. In print advertisements, the statement must be of a size that is clearly legible.

Symbol. The FDIC corporate symbol can be used instead of the statement. It consists of the portion of the official sign containing "FDIC" and two lines of text appearing above and below the "FDIC." If the symbol instead of the statement is used, drop the two lines of text if they are illegible and use the "FDIC" part only.

Usage. Insured depository institutions are required to include the official advertising statement in all ads that either promote deposit products and services or promote non-specific banking products and services. An example of an ad that promotes a non-specific banking product and service would be listing the financial institution's name and stating that it offers a full range of banking services. Unless the use of the FDIC advertisement is specifically forbidden to be included under the FDIC rules, such as for advertisements of only non-deposit investment products, then insured financial institutions should make sure to include the advertising statement in advertisements. Remember, FDIC insurance is a positive benefit to offer and, therefore, a good thing to advertise.

IDI Physical Premises. An IDI must continuously, clearly, and conspicuously display the official sign where consumers have access to or transact with deposits, including all of its branches and other physical premises. The sign must be visible from teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area. IDIs must display the FDIC official sign in any physical location where IDIs receive deposits other than teller windows or stations or non-branch locations.

Digital Sign. Second, beginning May 1, 2025, banks will be required to display the FDIC official digital sign "clearly and

conspicuously” in a continuous manner, near the top of the relevant website page or screen, mobile applications and in close proximity to the IDI’s name. Banks also will be required to display the FDIC official digital sign on certain automated teller machines. The official digital sign has specific font, size and color requirements.

The FDIC official digital sign must be displayed on the (1) initial or homepage of the website or application including hyperlinks to a website offering non-deposit products, (2) landing or login pages, and (3) pages where the customer may transact non-deposit products with deposits. For example, the FDIC official digital sign should be displayed where an IDI’s mobile application allows customers to deposit checks remotely.

ATMs and like devices are required, at a minimum, to display the FDIC official digital sign on the home page or screen and each transaction page or screen relating to deposits. After May 1, 2025, IDIs must display the official digital sign (with no option to satisfy the requirement through display of the physical official sign).

Non-deposit Investment Products. Third, a non-deposit sign requirement addresses potential confusion where an IDI offers both insured deposits and non-deposit products through the same channel, including branches, ATMs or like devices. Non-deposit products include crypto-assets. The non-deposit signage must be continuously displayed on each IDI page relating to non-deposit products indicating that the non-deposit products are (1) not insured by the FDIC; (2) are not deposits; and (3) may lose value.

Generally, an IDI must physically segregate the areas where non-deposit products are offered from areas where insured deposits are usually and normally accepted. When both insured deposits and non-deposit products are offered within the IDI’s premises, regardless of whether deposits are received at teller windows or stations or deposits are received in areas other than

teller windows or stations, IDIs must continuously, clearly, and conspicuously display a non-deposit sign within a segregated area and not in close proximity to the official sign.

After May 1, 2025, an IDI’s ATM or like device that both receives deposits and offers access to non-deposit products, such as ATMs must: (a) display the official digital sign clearly, continuously, and conspicuously on the home page or screen and on each transaction page or screen relating to deposits; and (b) clearly, continuously, and conspicuously indicate that non-deposit products are not insured by the FDIC, are not deposits, and may lose value on each transaction page or screen relating to non-deposit products.

When advertising non-deposit products, do not include the advertising statement or official symbol in advertisements for non-deposit investment products, such as mutual funds, annuities, insurance products and crypto-assets. These products are not insured deposits of the financial institution. To include the advertising statement or symbol with these products would be confusing to the reader and a violation of the regulations. The FDIC rule permits combined advertisements, but FDIC-insured products must be clearly segregated from non-deposit investment products, and the advertisement must disclose that non-deposit investment products are not financial institution products, not FDIC insured, may go down in value and are not guaranteed by any government agency. Please see the Non-deposit Investment Products article for additional information on advertising such products.

Exemptions from Use of the Advertising Statement. There are ten exceptions included in the regulation. Therefore, financial institutions are permitted, but not required, to include either the official advertising statement or the official symbol in the following advertisements:

- Statements and reports of condition that are required by law to be published.
- Printed supplies, such as envelopes, deposit slips, checks, signature cards, passbooks, time deposit certificates and similar items. Stationery is not required to have the statement except when used in an advertising mailing.
- Signs or plates containing the financial institution's name located in the financial institution's offices or attached to a building in which an office of the financial institution is located.
- Listings in directories.
- Display advertisements in a financial institution directory provided the name of the financial institution is listed on a page with a symbol or other descriptive material indicating it is a member of the FDIC.
- Joint or group advertisements of a financial institution's services where the names of both insured and non-insured institutions are listed and form a part of the advertisement.
- Advertisements on radio that do not exceed 30 seconds.
- Advertisements on television, other than display advertisements, that do not exceed 30 seconds.
- Advertisements in which it is impractical to include the official advertising statement, such as calendars, matchbooks, pens, pencils, key chains and similar items. The most questioned items are shirts and other articles of clothing. If a shirt is intended to be worn by employees of the financial institution on the premises of the financial institution, then its purpose is to identify financial institution employees to customers, and it is not an advertisement. Alternatively, articles of clothing given to customers or intended to be worn off of the financial institution's premises are advertisements, and it is recommended in these situations to add "Member FDIC" to the logo on a shirt or baseball cap.

- Advertisements that contain within their text a statement that the financial institution is a member of the Federal Deposit Insurance Corporation or that the institution's deposits are insured by the FDIC.

Pitfalls. There are several pitfalls for the unwary in these rules. First, billboard advertisements do not fall under any of the exceptions unless they deal with a topic that is the subject of an exception. Therefore, all outdoor billboard advertisements for which the financial institution cannot claim such an exception must include the advertising statement or the official symbol. It must be large enough to be legible to the drivers at whom the billboard is directed.

Another pitfall arises for advertisements in languages other than English. Financial institutions are directed to translate the advertising statement or symbol into any other languages used in their advertisements. The regulation, however, dictates that the translated advertising statement or symbol must have the written approval of the FDIC before it is used. It is a regulatory violation to use even a perfect translation unless it has been approved in writing by the FDIC. Any such important approval should be retained in the financial institution's files. The FDIC does not have **any** pre-approved translations into non-English languages in which financial institutions might wish to advertise. Should an institution wish to change the language of the sign, it must obtain advance clearance.

Another pitfall comes with the financial institution's annual report. An annual report is not required to identify the bank's FDIC membership unless it is given to anyone who does not own shares.

NCUA Rules

Common Name: Insurance Rules	
Agency	Regulation
NCUA	12 C.F.R. 740

NCUA Advertising Statement. The National Credit Union Administration official advertising statement is “This credit union is federally insured by the National Credit Union Administration.” Alternatively, insured credit unions can use the short statement “Federally insured by NCUA,” “Insured by NCUA” or a reproduction of the official sign. The official advertising statement must be in a size and print that is clearly legible and may not be smaller than the smallest font size used in other portions of the advertisement. Non-English equivalents may be used, but only if the regional director gives prior approval of the translation.

Requirements for the Official Sign. Each insured credit union must display the official sign at each station or window where insured deposits are normally received, as well as on its website where the credit union accepts deposits or opens accounts. The official color scheme is a blue background with white lettering, but credit unions may develop the sign in any color scheme, as long as it is legible. To achieve readability, a credit union may alter the font size on the sign on its website or its advertisements, but it cannot change the font size on the physical sign that is posted at each teller window or station where it receives deposits in its main office and in all branches. The sign is not required on automated teller machines (ATMs) or at point of sale terminals.

Either the official statement or the official sign must be included in all advertisements and on its main website.

Generally, to avoid member confusion as to NCUA insurance coverage, federally insured credit unions are prohibited from receiving deposits at any teller station or window where any non-federally insured credit union

also receives deposits. Exceptions can be made in the following instances:

- A teller in a branch of a federally insured credit union may accept account funds for non-federally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign that states, “This credit union participates in a shared branch network with other credit unions and accepts share deposits for members of those other credit unions. While this credit union is federally insured, not all of these other credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.” This sign must be similar to the official sign in terms of design, color and font.
- A teller in a facility operated by a non-credit-union entity may accept account funds for both federally insured credit unions and non-federally insured credit unions, but only if the teller displays a conspicuous sign next to the official sign stating, “This facility accepts share deposits for multiple credit unions. Not all of these credit unions are federally insured. If you need information on the insurance status of your credit union, please contact your credit union directly.” This sign must be similar to the official sign in terms of design, color and font.
- A teller in a branch of a non-federally insured credit union may accept account funds for federally insured credit unions. However, the non-federally insured credit union teller may not display the official NCUA sign.

Exemptions from Use of the Advertising Statement.

Credit unions are permitted, but not required, to include either the official advertising statement or the official sign in the following advertisements:

- Supplies such as stationery (except when used for mass mailings), envelopes, deposit slips, checks, drafts, signature

cards, account passbooks and non-insurable certificates.

- Signs or plates in the office or attached to the building in which the offices are located.
- Listings in directories.
- Advertisements that do not use the name of the credit union.
- Display advertisements in directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured.
- Joint or group advertisements of credit union services where the names of insured credit unions and non-insured credit unions are listed and form a part of such advertisement.
- Radio advertisements lasting less than 30 seconds.
- Television advertisements, other than display advertisements, that last less than 30 seconds.
- Advertisements in which, because of their type or character, it would be impractical to include the official advertising statement including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils and key chains.
- Advertisements that already contain a statement that the credit union is insured by the NCUA, or states that shares or members are insured to the maximum insurance amount for each member.
- Advertisements that do not relate to member accounts, such as those relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable and credit life or disability insurance.

Insured credit unions that do not adhere to the NCUA notice requirements are subject to a penalty of up to \$148 per day (as of 2023)

under the regulation. This penalty is adjusted annually for inflation.

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

Common Name: UDAAP	
Agency	Regulation
FTC	15 U.S.C 45 (section 5a of the FTC Act); 10-14-1983 Policy Statement
CFPB	12 U.S.C. 5531 & 5536

There are additional rules in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) with requirements for unfair, deceptive or abusive acts or practices (UDAAP). UDAAP is an umbrella of rules prohibiting financial institutions from engaging in any unfair, abusive or deceptive acts or practices in every context, including in advertising. Even though an advertisement might comply with certain regulations, if they are confusing, misleading, incomplete or deceptive, there could be a UDAAP violation. For more information on these requirements, please see the Unfair, Deceptive or Abusive Acts or Practices article.

Federal Trade Commission (FTC)
Advertising Rules - General

Policy Statement on Deceptively Formatted Advertisements. On December 22, 2015, the FTC issued an enforcement policy statement explaining how established consumer protection principles apply to different advertising formats, including so-called native advertisements that look like surrounding non-advertising content. The FTC lays out the general principles it considers in determining whether any advertisement format is deceptive and violates the FTC Act. The policy statement affirms the long-standing consumer protection principle that advertisements and promotional messages that promote the

benefits and attributes of goods and services should be identifiable as advertising to consumers. For more information on these requirements, please see the FTC Advertising Rules article in the Advertising Loans section of this manual.

Banks - Truth in Savings

Common Name: Truth in Savings Act	
Agency	Regulation
CFPB	12 C.F.R. 1030

What is an Advertisement? Regulation DD defined an advertisement as a commercial message, appearing in any medium, that promotes the availability of terms of, or a deposit in, a new or existing account. Television, radio, newspapers, billboards and even hold messages are media for advertising. Lobby boards and an institution's name on a building are advertising. Rate sheets published by newspapers are not advertisements as long as a financial institution does not pay a fee to be included and has no control over the information. Any message that a financial institution controls the content of is considered an advertisement.

Restrictions. The Truth in Savings Act contains three rules for what an advertisement must not contain:

- Anything misleading or inaccurate or that misrepresents the financial institution's deposit contract.
- The words free, no cost, or similar terms to describe an account if any maintenance or activity fee may be imposed.
- The word profit if used to refer to interest paid on an account.

The third is the most straightforward of these rules: Do not use the word profit, and the institution will be in compliance.

The second rule is slightly more obscure. A financial institution may not use the word free, or any similar term, to describe an

account if it is possible under any circumstances for a maintenance or activity fee to be charged on the account. Monthly service charges and minimum balance fees are examples of maintenance charges. Fees imposed for exceeding a specified number of transactions and per check charges are examples of activity charges. Balance inquiry, stop-payment, dormant, account, insufficient fund and overdraft charges, check certification, check reorder and similar charges are neither maintenance nor activity charges. While a financial institution may not advertise an account as free because it imposes maintenance charges, the financial institution may advertise a service as free. Free bill pay or free telephone banking are examples. An advertisement may state that an account (or a specific service) is free for a limited time, provided the time period is stated as well. And "free subject to conditions" is also permissible, such as "free for persons over age 62," even though maintenance and/or activity fees are imposed on those under 62.

What constitutes misleading or misrepresentation is more subjective. Problems in this area generally result from what is not stated rather than what is. Make sure the wording of the advertisement is accurate. Financial institutions shouldn't forget the UDAAP provisions referenced earlier in this article. There are also state laws that prohibit unfair and deceptive acts and misleading advertising.

Requirements. If an advertisement does not state an annual percentage yield (APY) or bonus, or promote a discretionary overdraft program, there are no regulations regarding content other than UDAAP considerations. A bonus is something with a value greater than \$10 that is not a financial institution product and does not require the customer to spend money to use. For example, a \$15 stadium blanket is a bonus, while a \$9 stadium blanket is not. Services such as free safe deposit boxes, added interest rates or other fee waivers are not considered bonuses even when the value is greater than \$10.

This includes discounts on loans and premium rates on time deposits or other interest-bearing deposit products.

Stating an APY or a bonus, however, are trigger terms, meaning when they are used (or when words conveying the same thoughts are used), additional disclosures must be made. A general reference to the word bonus will not trigger the additional disclosures. For example, statements such as, “bonus checking,” “get a bonus when you open a checking account” or “bonus rates available” in advertisements do not trigger additional disclosures if the bonus being advertised does not fall within the bonus definition.

When advertising in broadcast or electronic media such as radio or television, outdoor media such as billboards, telephone response machines and lobby boards, the Truth in Savings Act provides some exceptions to the disclosure requirements if a rate of return is stated. There are no limited disclosure requirements for print media, such as newspapers, periodicals, brochures and any other media not listed above.

Print Media. If the advertisement is in a newspaper, a brochure or other print media, additional disclosures are required. Website advertisements should generally be treated the same as those advertisements that are printed. If a rate of return is expressed in an advertisement, it must be the annual percentage yield, and it must be called or spelled out “annual percentage yield,” using exactly those words. (Once the term annual percentage yield has been used in an advertisement, it may subsequently be referred to as APY in the same advertisement.) If the APY is stated in print media, the following must also be included as applicable:

- Variable rate. If the account is a variable-rate account, the advertisement must contain a statement that the rate may change after the account is opened.
- Timeframe in which the APY is offered. The advertisement must set out a date by which an account opened will receive the

yield advertised. For example, “This Annual Percentage Yield is available for accounts opened through November 30, 2020.” Alternatively, the advertisement may state a recent date that the advertised rate was offered. If the advertisement is in a dated periodical, such as a newspaper, and the rate stated is offered on the date of the periodical, then the date or time the yield will be offered must be stated in the advertisement.

- Minimum balance to earn the APY. If there is a minimum balance required to earn the APY, that balance must be stated. For tiered rate accounts, the minimum balance for each tier must be stated in close proximity, and with equal prominence, to the applicable APY.
- Minimum opening deposit. If there is a minimum deposit required to open the account that is HIGHER than the minimum balance to earn the APY, the advertisement must state what the minimum deposit is.
- Effect of fees. If fees may be charged to an account, a statement that fees could reduce the earnings on the account must be made. Note that this disclosure applies only to the imposition of maintenance or activity fees.

Additionally, for time deposits:

- The term of the account.
- Early withdrawal penalties. The advertisement must state a penalty will or may be imposed if there is an early withdrawal from the account.
- The statement that “interest cannot remain on deposit and payout of interest is mandatory” for any non-compounding time deposits with a term of greater than one year that require interest payouts at least annually.

If a bonus is being advertised:

- The APY and all disclosures triggered by the APY.
- The time requirement to obtain the bonus.
- The minimum balance required to obtain the bonus.
- The minimum balance required to open the account if it is greater than the minimum balance necessary to obtain the bonus.
- When the bonus will be provided.

For example, if a newspaper advertisement for a minor/student savings account states that \$10 will be deposited to the account by the financial institution upon account opening and annually thereafter on the birthday of the consumer, up to but not including the consumer's eighteenth birthday, the bonus disclosures are triggered. Why, if \$10 is de minimis? The initial \$10 is de minimis, but the crediting of \$10 on the consumer's birthday will cause the amount to breach the de minimis exception. Therefore, the APY must be disclosed along with all the terms it triggers. The time requirement to obtain, and when the bonus will be provided, are both satisfied by the fact that the advertisement states "\$10 will be deposited to the account by the financial institution upon account opening and annually thereafter on the birthday of the consumer." The advertisement must comply with all the requirements triggered when a bonus is stated in an advertisement.

For stepped-rate account advertisements in print media, if an interest rate is advertised for one step, then the advertisement must disclose the rate for every step.

All of a financial institution's lobby brochures and other handout-type advertising literature must conform to the print media rules too.

Note the APY must be disclosed with a tolerance of .05%. A 6.00% APY may be disclosed as anything from 5.95% to 6.05%. With today's technology, an APY can be computed with great accuracy. If a financial

institution purposely overstates an APY, albeit within the tolerance, it will be deemed to have violated the regulation.

Indoor Signs. An indoor sign is a sign inside a depository institution, whether it can be viewed from inside or outside the facility. Indoor signs are exempt from most of the advertising requirements because people who see them are inside or near the building and thus other information is available to them. Be aware, however, that signs on the financial institution's property not inside the building, such as message boards in the parking lot, are not on-premises signs.

Although on-premises signs are exempt from most of the Truth in Savings Act's advertising requirements, the following rules still apply. If an on-premises sign states a rate of return on deposits, it must state the rate as an "annual percentage yield" using that term or APY. The sign may also state an interest rate in conjunction with the APY to which it relates. If the on-premises sign advertises a tiered-rate account, it must state the lower dollar amount of the tier for which it shows an APY. For a time account, an on-premises sign must state the term of the account. Additionally, if the APY is stated on the sign, the sign must contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

Broadcast Media. If a rate of return is expressed in an advertisement on radio or television, it must be the annual percentage yield and must be called or spelled out "annual percentage yield," using exactly that term. (Once the term "annual percentage yield" has been used in an advertisement, it may subsequently be referred to as APY in the same advertisement.) If the annual percentage yield is stated in a broadcast media advertisement, the interest rate may be stated in conjunction with it, provided it is not more prominent or conspicuous than the annual percentage yield and the words "interest rate" are used to identify it. Otherwise, if only one rate is published, it

must be the annual percentage yield and not the interest rate.

If the APY is stated, the advertisement must also disclose, as applicable:

- The minimum balance, if any, required to earn the yield advertised.
- If the account is a tiered-rate account, the minimum balance for each tier must be stated “in close proximity and with equal prominence” to the corresponding APY. If one tier is highlighted over all other tiers, that tier and its corresponding balance requirements must be the same size, and the remaining tiers and corresponding rates must be listed in the disclosure section of the advertisement.
- For a stepped-rate account, if an interest rate is advertised for one step, then the advertisement must disclose the rate for every step.
- If the account is a time account, the advertisement must disclose:
 - The term of the account.
 - The statement that “interest cannot remain on deposit and payout of interest is mandatory” for any non-compounding time deposits with a term of greater than one year that require interest payouts annually.

If a bonus is offered, the advertisement must state, as applicable:

- The APY and all the disclosures the APY triggers for broadcast media.
- The time requirement to obtain the bonus.
- The minimum balance required to obtain the bonus.

Discretionary Overdraft Programs. When a financial institution promotes a discretionary overdraft program, the following additional disclosures must also be stated clearly and conspicuously:

- The fee or fees for each overdraft payment.
- The transaction categories for which the overdraft fee may be imposed.
- The time period by which the consumer must repay or cover the overdraft.
- The circumstances under which the institution will not pay an overdraft.

Additionally, as with any advertisement covered by TISA, overdraft promotions must not be misleading or inaccurate.

If the overdraft program is promoted on an ATM screen or a telephone response machine, only the first and third bulleted items above need to be disclosed. If the program is promoted on an indoor sign, none of the bulleted items above need to be disclosed. The sign must clearly and conspicuously state that fees may apply and that consumers should contact an employee for further information about applicable fees and terms. Note that the regulation specifically states that an indoor ATM screen is not considered an indoor sign. Several types of communications are exempt from the additional advertising rules. They are discussed in the Overdraft Protection Products article.

Record Retention. An institution is required to retain evidence of compliance with the TISA for two years, including a copy of every advertisement it publishes, lobby materials and either an audio recording or the script of any broadcast advertisement. This also includes the financial institution’s website. Each time the site is changed, the financial institution should retain a copy of the previous version. Each advertisement should be labeled with the date(s) on which it was published and the media in which it was published.

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