

# Paid Parental Leave under the Family and Medical Leave Act



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# AGENDA

1. Background
2. Eligibility
3. Leave Entitlement and Usage
4. Documentation
5. Forms and Agreements
6. Process for taking PPL
7. Frequently Asked Questions/Scenarios



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# BACKGROUND

1. December 20, 2019, President Trump signed the National Defense Authorization Act (NDAA) for Fiscal Year 2020, which included the Federal Employee Paid Leave Act (PPL)
2. August 10, 2020, OPM issued rules to implement PPL
3. PPL amended the Family and Medical Leave Act (FMLA) to allow the substitution of up to 12 weeks of paid parental leave for a birth or placement of a child



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# ELIGIBILITY

1. An employee must meet FMLA eligibility requirements:
  - At least 12 months of Federal service in a part-time or full-time work schedule
  - Not on a temporary appointments not to exceed 1 year or an intermittent work schedule
2. An employee must have a *qualifying* birth or placement event—that is, the birth or placement (for adoption or foster care) must occur on or after October 1, 2020.



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# FMLA REFRESHER

1. Entitlement to twelve (12) weeks (or 480 hours) of unpaid leave for:
  - Birth & Care Of New Born
  - Placement Of A Child with the employee for adoption purposes
  - Care Of Spouse/Child/Parent With Serious Health Condition
  - Serious Health Condition Of Employee
  - Qualifying exigency arising out of military service of a spouse, son/daughter, or parent
2. Period begins first date that FMLA was used, not the date invoked
3. Must be returned to same position held or equivalent position with same benefits, pay and other terms of employment



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# LEAVE ENTITLEMENT AND USAGE

1. Must be requested by the employee to the supervisor just like FMLA or other requests for leave
2. May NOT use intermittently unless supervisor approves (and with only good reason)
3. Each employee has a separate entitlement to PPL for 12 weeks (when two parents work for the same agency)



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# LEAVE ENTITLEMENT AND USAGE

4. No carryover provisions for unused PPL and will not receive payment for unused leave
5. Available up to 12 weeks while the employee has a continuing parental role in connection with the birth or placement (increase child bonding)
6. Not required to use accrued leave before using PPL



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# TIMEKEEPING

COSS

WebTA



TRANSACTION CODE	R2	DESCRIPTION
62	70	Biological birth
62	71	Placement for adoption
62	72	Placement for foster care

## New Leave and Other Time Activity

Transaction Code	66 - Admin Leave w/ND 20% COURT
Prefix	66 - Admin Leave w/ND 20% EXAMINATION
Suffix	66 - Admin Leave w/ND 20% HAZARDOUS WEATHER
Appropriation Code	66 - Admin Leave w/ND 20% OFFICE CLOSED
APC	66 - Admin Leave w/ND 20% OFFICE CLOSED RED ALERT
CMIS	66 - Admin Leave w/ND 20% TRANSFER OF STATION
Project	66 - Admin Leave w/ND 20% VOTING
	67 - Injury Leave w/ND 15%
	67 - Injury Leave w/ND 20%
	68 - Emergency Military Leave w/ND 15%
	68 - Emergency Military Leave w/ ND 15% Parade/Encampment
	68 - Emergency Military Leave w/ ND 20%
	68 - Emergency Military Leave w/ ND 20% Parade/Encampment
	69 - Home Leave w/ND 15%
	66 - Home Leave w/ND 20%
	69 - Home Leave w/ND 20% FMLA
	62 - WOUNDED WARRIOR FEDERAL LEAVE ACT WITH 15% COPRA
	62 - WOUNDED WARRIOR FEDERAL LEAVE ACT WITH 20% NIGHT DIFF COPRA
	62 - FAMILY FRIENDLY SICK LEAVE/15% NIGHT DIFF - COPR EMPLOYEES FFSL GENERAL w/FMLA
	62 - FAMILY FRIENDLY SICK LEAVE/20% NIGHT DIFF - COPR EMPLOYEES FFSL GENERAL w/FMLA
	62 - FAMILY FRIENDLY SICK LEAVE/15% NIGHT DIFF - COPR EMPLOYEES FFSL SERIOUS w/FMLA
	62 - FAMILY FRIENDLY SICK LEAVE/20% NIGHT DIFF - COPR EMPLOYEES FFSL SERIOUS w/FMLA
	62 - FAMILY FRIENDLY SICK LEAVE/15% NIGHT DIFF - COPR EMPLOYEES FFSL GENERAL
	62 - FAMILY FRIENDLY SICK LEAVE/20% NIGHT DIFF - COPR EMPLOYEES FFSL GENERAL
	69 - Home Leave w/ND 15% FMLA
	62 - FAMILY FRIENDLY SICK LEAVE/15% NIGHT DIFF - COPR EMPLOYEES FFSL SERIOUS
	62 - FAMILY FRIENDLY SICK LEAVE/20% NIGHT DIFF - COPR EMPLOYEES FFSL SERIOUS
	62 - Biological birth
	62 - Placement for adoption
	62 - Placement for foster care



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# DOCUMENTATION

Reason for Use of PPL	Examples of Appropriate Documentation
Childbirth (birth on or after October 1, 2020)	<ul style="list-style-type: none"><li>• Birth certificate or consular report of birth abroad</li><li>• Document naming employee as second parent, such as declaration of paternity or “court order of filiation.”</li><li>• Appropriate court documents.</li><li>• Documentation provided by the child’s health care provider or hospital admission form for the delivery.</li></ul>
Adoption (placement on or after October 1, 2020)	<ul style="list-style-type: none"><li>• Documentation provided by the adoption agency confirming the placement and date.</li><li>• A letter signed by the parent's/parents' attorney confirming the placement and date.</li><li>• A U.S. Citizenship and Immigration Services immigrant visa for the child.</li><li>• The adoptive placement agreement or the independent adoption placement agreement.</li></ul>
Foster Care (placement on or after October 1, 2020)	<ul style="list-style-type: none"><li>• The foster care placement record or a foster care placement letter issued by the relevant local department or social services or the authorized voluntary foster care agency.</li><li>• Other documentation from the foster agency confirming the placement and date.</li></ul>

# FORMS AND AGREEMENTS

1. Employee must request PPL prior to the qualifying event (the birth or placement)
2. The sample form (recommended) can be used OR by email/memo in which similar information is obtained
3. Initial information given in order to *conditionally* make a determination on the request.



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Paid Parental Leave (PPL) Request Form		
<b>Identifying Information</b>		
Employee name		
Phone numbers (personal and work)	Email addresses (personal and work)	
Name of organization (agency, office, division, branch, etc.)		
<b>Plans for Substituting Paid Parental Leave (PPL) for FMLA Leave</b>		
Reason FMLA leave is being requested:		
<input type="checkbox"/> Birth of a child	<input type="checkbox"/> Placement for adoption	<input type="checkbox"/> Foster care placement
	Anticipated	Actual
Date of birth or placement		
Date use of PPL begins		
Date use of PPL concludes		
Date of planned return to duty (after use of other types of leave)		
Requested method of using PPL: <input type="checkbox"/> Continuous use <input type="checkbox"/> Intermittent use*		
*Reason(s) intermittent leave is being requested:		
*Describe plans for using PPL on an intermittent basis:		
<b>Employee Certifications (initial each box)</b>		
<input type="checkbox"/> I attest that PPL is being taken because of the birth of my child or because of placement of a child with me for adoption or foster care and that the PPL will be used in connection with my fulfillment of my parental role to care for and bond with the child.		
<input type="checkbox"/> I will provide documentation to support this request, as directed by my agency.		
<input type="checkbox"/> I acknowledge and understand the consequences of providing a false certification (e.g., the possibility that my agency could pursue appropriate disciplinary action, up to and including removal from Federal Service, or make a referral to a Federal entity that investigates whether conduct constitutes a criminal violation).		
<input type="checkbox"/> If I provided an anticipated date of birth or placement, I will notify my agency as soon as practicable of the actual date.		
<input type="checkbox"/> I attest that I am entering into the required work obligation agreement.		
<input type="checkbox"/> I hereby certify that all statements made in this application are true and correct to the best of my knowledge and belief.		
Employee's signature		Date

# FORMS AND AGREEMENTS

1. Employee will need to enter into a written service agreement to commence after the day PPL ends
2. Sample work agreement (recommended) provided but can use another written form with the same 12-week obligation requirements memorialized
3. If employee fails to meet obligation, they may be responsible to repay the Government contribution of FEHB



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## Agreement to Complete 12-Week Work Obligation

I, [insert employee's name], understand that the usage of paid parental leave requires that I complete a 12-week work obligation at the agency employing me at the time I conclude using paid parental leave granted in connection with the birth or placement (for adoption or foster care) of my child.

I agree to return to work and complete the required 12 weeks of work. I understand that 12 weeks of work will be converted to hours of work based on my work schedule, consistent with OPM regulations at 5 CFR 630.1705.

I understand that the required 12-week work obligation is fixed and not proportionally reduced if I use less than 12 weeks of paid parental leave. I understand that only actual work periods when I am on duty (during my scheduled tour of duty) will count toward the 12-week work obligation. I understand that periods (paid or unpaid) of leave and time off (including holiday time off) do not count towards the completion of the 12-week work obligation.

I understand that only work performed after use of paid parental leave concludes counts toward the 12-week work obligation. I understand that any period(s) of work during intermittent usage of paid parental leave (i.e., work performed prior to the conclusion of the use of paid parental leave) does not count toward the 12-week work obligation.

I understand that, if I fail to return to work and fully complete the required 12-week work obligation, any agency that employed me during a period of time in which I used paid parental leave may require a reimbursement equal in amount to the total amount of any Government contributions paid by the agency(ies) on my behalf to maintain my health insurance coverage under the Federal Employees Health Benefits (FEHB) Program established under 5 U.S.C. chapter 89 during that period of time, unless I meet statutory conditions that bar application of such a reimbursement requirement. If I do not meet those conditions and if my agency determines that reimbursement must be made, I understand that it must seek collection of the full amount and that there is no authority for a partial waiver of the amount owed.

I understand that, if I separate from the employing agency to which the 12-week work obligation is owed before completing that obligation, such separation is considered to be a failure to meet that obligation. I understand that, in that circumstance, I will not be allowed to complete the work obligation at a later time. (Note: An intra-agency reassignment without a break in service will not be considered a separation.)

If an affected agency determines that the reimbursement requirement applies, I agree to make the required reimbursement to that agency and to permit offset of Federal payments to recover the amount owed. However, I reserve the right to challenge the agency decision through any applicable administrative or judicial process and to seek return of any amounts erroneously collected from me.

Employee's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Note: Employee's paid parental leave request must be attached to this work obligation agreement.

# Process for Requesting Paid Parental Leave

1. Request PPL in writing (optional form) with work obligation agreement

2. Supervisor conditionally approves request if request form and agreement are provided

3. Qualifying event occurs and is on PPL for 12 weeks

4. Employee provides appropriate documentation within 15 days supporting PPL

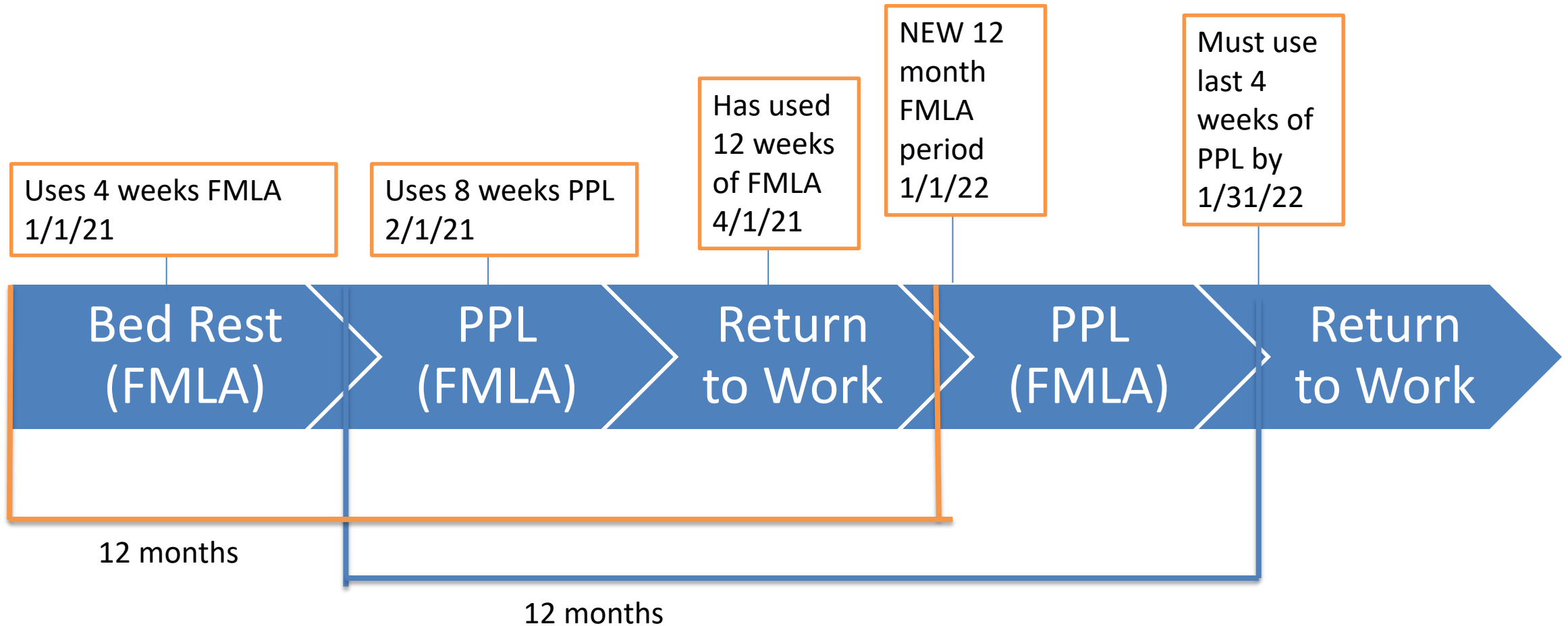
5. Employee returns to duty the day after the 12 weeks of PPL concludes



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# WHEN IT CAN GET COMPLICATED



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# FREQUENTLY ASKED QUESTIONS

## **Is PPL different than or in addition to FMLA?**

PPL amended FMLA (5 U.S.C. 6382(d)) to allow the substitution of up to 12 weeks of paid leave for the unpaid leave granted in connection with the birth of an employee's child or the placement of a child with an employee for adoption or foster care.



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# FREQUENTLY ASKED QUESTIONS

**How would an employee invoke their right to PPL at the right time since the law is based upon the actual birth or placement date which in many cases, is not known at the time they invoke their right to use PPL?**

The law anticipates that PPL would be provided on a *prospective* basis after an employee requests to use the leave and enters into a work obligation agreement. All information can be updated once it is known, and the PPL can be given conditionally until the documentation and information is provided.



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# FREQUENTLY ASKED QUESTIONS

## **Can PPL be used prior to the birth or placement?**

No. PPL can only be used after the birth or placement. This restriction applies even if an employee used FMLA unpaid leave for birth or placement purposes prior to the birth or placement event.



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# FREQUENTLY ASKED QUESTIONS

**What if the employee is unable to return to work after the 12 weeks of PPL concludes?**

CBP must waive the work obligation if an employee is unable to return to work because of the continuation, recurrence, or onset of a serious health condition (including mental health) of the employee or the newly born/placed child—but only if the condition is related to the applicable birth or placement.



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# FREQUENTLY ASKED QUESTIONS

## **What if the employee chooses not to return to work after the 12 weeks of PPL?**

If an employee fails to return to work for the required 12 weeks, CBP may recover from the employee the total amount of Government contributions paid by CBP on behalf of the employee to maintain the employee's health insurance coverage during the period of PPL. This reimbursement provision may not be applied if the employee is unable to return to work based on the onset of a serious health condition. Also, this provision may not be applied if the employee fails to meet the 12-week work obligation for any other circumstance beyond the employee's control.



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# FREQUENTLY ASKED QUESTIONS

**Can an employee still use FMLA for other issues such as a serious health condition?**

Yes, employees will still be able to use FMLA unpaid leave for certain purposes related to an anticipated future birth or placement, a serious health condition for themselves or a family member (as defined by FMLA regulations) and still be able to substitute annual or sick leave (as appropriate) for such unpaid FMLA leave. The total amount of FMLA that can be used in a 12-month period is 12 weeks including PPL.



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# FREQUENTLY ASKED QUESTIONS

**Can I use PPL for adopting a stepchild or a child that has already been living with the foster parent?**

No. The new definition of *placement* refers to a *new* placement. Thus, the term excludes the adoption of a stepchild or a foster child who has already been a member of the employee's household and has an existing parent-child relationship with an adopting parent. If a foster child is later adopted, the placement has already occurred; there is no new placement with a family that would warrant the use of FMLA leave for the same child.



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# FREQUENTLY ASKED QUESTIONS

**How much PPL would an employee be able to use if they used five weeks of FMLA for a serious health condition prior to giving birth?**

Since the employee used five weeks of FMLA, they can use seven weeks of paid leave during the 12-month timeframe from when they first started to use FMLA for the serious health condition. Once that 12-month period concludes, they can use their additional five weeks of PPL for the birth or placement of a child.



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# FREQUENTLY ASKED QUESTIONS

## **Is my pay affected while on PPL?**

The pay an employee receives when using PPL shall be the same pay the employee would receive if the employee were using annual leave. In other words, payroll systems will apply the same rules they apply in determining what pay continues during annual leave. PPL is a type of leave that is counted in applying the 8-hour rule in 5 U.S.C. § 5545(a) and 5 C.F.R. § 550.122(b) that determines whether night pay is payable during periods of leave. This is consistent with the treatment of annual leave.



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# SCENARIO 1

**Carmen is expecting her first child on November 1, 2020 but has experienced some complications prior to her delivery. On October 5, 2020 she is placed on bedrest for 4 weeks prior to her due date. She has been employed with DHS for 5 years. Is Carmen eligible for PPL and if so, how many weeks is she able to use?**

- *Carmen does not invoke FMLA while on bedrest and uses sick leave for the 4-week period.*
- *Carmen invokes FMLA at the onset of being placed on bed rest for her own serious health condition.*



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# SCENARIO 2

**Kevin is hired by CBP on February 15, 2018 and works an uncommon tour of six 24-hour shifts (144 hours) per biweekly pay period. His wife is expecting and their new baby boy is born on October 15, 2020. Kevin has not used any family and medical leave previously while employed with CBP. Is Keith eligible for PPL and if so, how many hours is he eligible to use?**



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# SCENARIO 3

**Denise is hired by ICE on December 13, 2019 and is new to the federal government. At the beginning of 2020, Denise and her spouse have decided to go through the foster care process and desire to foster two children. She receives her foster care license in August 2020 and finds out in September 2020 that two children (siblings) will be placed in her home on October 5, 2020. Is Denise eligible for PPL?**



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# ANY QUESTIONS?



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