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Policy Title: Criminal Background Checks

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Authority: Ark. Code Ann. §§ 21-15-111-113, § 25-1-123, § 26-17-403, § 27-16-1201 et seq. and 6 CFR § 37.45, 49 CFR § 1572.103, IRS Pub 1075

POLICY

The Arkansas Department of Finance and Administration (DFA) requires a Criminal Background Check (CBC) for Disqualifying Convictions to be conducted on all Employees and Applicants in DFA divisions, offices, boards, and commissions both prior to an offer of employment and as a condition of continued employment. In addition, DFA requires additional background checks for positions that authorize the manufacture or production of REAL ID driver's licenses or identification cards or have access to such ability and for DFA positions that have access to Federal Tax Information (FTI).

DEFINITIONS

Applicant(s): A person applying for employment or an employee who has applied for a different position within DFA.

Conviction: The final judgment or sentence that the accused is guilty as charged. The final judgment on a verdict or finding of guilty, a plea of guilty or a plea of nolo contendere but does not include a final judgment that has been expunged by pardon, reversed, set aside, sealed or otherwise rendered ineffective or invalid.

Criminal Background Check (CBC): A criminal history report produced by the Identification Bureau of the Arkansas State Police.

Disqualifying Conviction:

A. A Conviction of

1. A misdemeanor of a financial nature, including misdemeanors that involve theft, fraud, misrepresentation, failure to pay fines, failure to appear or any other financial related conviction, within five (5) years of the date of the CBC,
2. A felony within fifteen (15) years of the date of the CBC that is not a Disqualifying Conviction listed in items 3-58 below.
3. A felony due to theft, dishonesty, fraud, misrepresentation, possession or distribution of stolen property.
4. Capital murder, as prohibited in § 5-10-101;
5. Murder in the first degree, murder in the second degree, or manslaughter as prohibited in §§ 5-10-102, 103, and 104;
6. Kidnapping, as prohibited in § 5-11-102;
7. Rape, as prohibited in § 5-14-103;
8. Sexual assault in the first degree or second degree, as prohibited in §§ 5-14-124 and 5-14- 125;
9. Endangering the welfare of a minor in the first degree or endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-205 and 5-27-206;
10. Incest, as prohibited in § 5-26-202;
11. Arson, as prohibited in § 5-38-301;
12. Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5- 27-201;
13. Adult abuse that constitutes a felony, as prohibited in § 5-28-103;

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14. Robbery or Aggravated Robbery, as prohibited in §§ 5-12-102 and 5-12-103;
 15. Battery in the First Degree or Second Degree, as prohibited in §§ 5-13-201 and 5-13-202;
 16. A felony violation of the Arkansas Tax Procedure Act, as prohibited in § 26-18-201, et seq.;
 17. Theft of public benefits, a Class B Felony, as prohibited in § 5-36-202;
 18. Soliciting money or property from incompetents, as prohibited in § 5-27-229;
 19. Theft of property, as prohibited in § 5-36-103;
 20. Theft by receiving, as prohibited in § 5-36-106;
 21. Theft of property lost, mislaid, or delivered by mistake, as prohibited in § 5-36-105;
 22. Theft of leased, rented, or entrusted personal property, as prohibited in § 5-36-115;
 23. Shoplifting, as prohibited in § 5-36-116
 24. Embezzlement;
 25. Theft of public benefits, as prohibited in § 5-36-202;
 26. Theft of wireless service, as prohibited in § 5-36-303;
 27. Facilitating theft of wireless service by a manufacture, distribution, or possession of devices for theft of wireless services, as prohibited in § 5-36-304;
 28. Any offense involving theft detection devices, as prohibited in §§ 5-36-401 - 5-36-405;
 29. Forgery, as prohibited in § 5-37-201;
 30. Falsifying business records, as prohibited in § 5-37-202;
 31. Defrauding secured creditors, as prohibited in § 5-37-203;
 32. Fraud in insolvency, as prohibited in § 5-37-204;
 33. Issuing a false financial statement, as prohibited in § 5-37-205;
 34. Receiving deposits in a failing financial institution, as prohibited in § 5-37-206;
 35. Fraudulent use of a credit card or debit card, as prohibited in § 5-37-207;
 36. Criminal impersonation, as prohibited in § 5-37-208;
 37. Criminal possession of a forgery device, as prohibited in § 5-37-209;
 38. Obtaining signature by deception, as prohibited in § 5-37-210;
 39. Defrauding judgment creditors, as prohibited in § 5-37-211;
 40. Unlawfully using slugs, as prohibited in § 5-37-212;
 41. Criminal simulation, as prohibited in § 5-37-213;
 42. Use of false transcript, diploma, or grade report from a postsecondary educational institution, as prohibited in § 5-37-225;
 43. Financial identity fraud, as prohibited in § 5-37-227;
 44. Any offense as prohibited in the Arkansas Hot Check Law, § 5-37-301 et seq.;
 45. Theft of communication services, as prohibited in § 5-37-402;
 46. Criminal mischief in the first degree, as prohibited in § 5-38-203;
 47. Residential or commercial burglary, as prohibited in § 5-39-201;
 48. Breaking or entering, as prohibited in § 5-39-202;
 49. Computer fraud, as prohibited in § 5-41-103;
 50. Computer trespass, as prohibited in § 5-41-104;
 51. Any offense involving computer crime, as prohibited in §§ 5-41-201- 5-41-206;
 52. Criminal use of property or laundering criminal proceeds, as prohibited in § 5-42-204;
 53. Any offense involving corruption in public office, as prohibited in §§ 5-52-101 -- 5-52- 108;
 54. Tampering with a public record, as prohibited in § 5-54-121;
 55. Criminal acts constituting Medicaid fraud, as prohibited in § 5-55-111;
 56. Any offense involving illegal food coupons, as prohibited in §§ 5-55-201 -- 5-55-205;
 57. Engaging in a continuing criminal gang, organization, or enterprise, as prohibited in § 5- 74-104; or
 58. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.
- B. An equivalent crime to the offenses listed in section A, in another State or Federal jurisdiction.

Employee: A person working for DFA in a full-time, part-time, or extra help capacity.



Federal Tax Information (FTI): FTI includes tax return or return information received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source, such as the Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from a federal return or return information received from the IRS or obtained through a secondary source.

Hiring Official: A person authorized to make the hiring decision for a vacant DFA position.

REAL ID: The Real ID Card Act codified as the Arkansas Voluntary Enhanced Security Driver's License and Identification Card Act at Ark. Code Ann. § 27-16-1201-1213, or its successor to comply with the Federal REAL ID Act of 2005, Pub. L. No. 109-13 or information related to the Act.

PROCEDURES

A. APPLICANTS

All job announcements and applications for DFA positions notify Applicants that all DFA positions require a CBC prior to employment or as a condition of continued employment and that failure to meet these requirements may cause the Applicant or Employee to be disqualified or terminated from the position. All DFA Applicants and current Employees, upon request, are required to sign a consent form for a CBC.

For Applicants, the consent form will be provided at the time of interview by the Hiring Official. The Hiring Official will forward a copy of the signed consent form to the DFA Human Resources Manager (HRM). The Hiring Official will maintain all signed consent forms of Applicants interviewed until the hiring process has been completed, at which time the Hiring Official will shred all background check consent forms of the Applicants not selected. Applicants who meet the requirements of the CBC will be eligible for hire.

Upon the Agency's decision to make an offer of employment to an Applicant, the DFA HRM will use the Online Criminal Background Check system, provided by the Arkansas State Police (ASP) to obtain the criminal history or forward the criminal history check form to the Identification Bureau of the ASP and request the bureau to review the database of criminal history. No person shall be eligible for employment with DFA if that person has been Convicted of any Disqualifying Conviction by any court in the State of Arkansas or been Convicted of any similar offense by a court in another state or of any similar offense by a federal court.

If the CBC reveals no Disqualifying Conviction, the HRM will provide the "Eligible for Hire" letter to the Hiring Official. The Applicant's signed consent form and the "Eligible for Hire" letter will be placed in the hire packet of the Applicant for processing.

If the CBC reveals a Disqualifying Conviction, an Applicant is disqualified from employment at DFA. The DFA HRM will notify the Applicant of the right to challenge the results through the Arkansas State Police or request an exemption as described in the *Challenge/Exemption for a Disqualifying Conviction* section. The Hiring Official will be notified of the final results of the background check. If the Applicant does not challenge



the results through the ASP or request an exemption, the Applicant will be disqualified from consideration for the position. The DFA HRM Procedures regarding challenges/exemptions are in the *Challenge/Exemption for a Disqualifying Conviction* section of this policy.

B. BACKGROUND CHECK REQUIREMENTS FOR REAL ID AND FTI:

REAL ID: In addition to the CBC required for Disqualifying Convictions, DFA Applicants and Employees who authorize the manufacture or production of REAL ID driver's licenses or identification cards or have access to such ability are required to submit to an additional background check for Permanent or Interim Disqualifying Criminal Offenses as more fully described below in the *Background Requirements for REAL ID* section.

FTI: Applicants and Employees who have access to FTI are also required to submit to a name-based and fingerprint-based criminal history records check (CHRC), and an employment eligibility verification as otherwise required by law and more fully described below in the *Background Requirements for FTI Positions* section.

If an Applicant or Employee does not consent to the required background investigations, described in the *Background Requirements for REAL ID* and *Background Requirements for FTI Positions* sections of this policy, and currently or will require access to FTI or is applying for or holds a position in which he/she will authorize the manufacture or production of REAL ID driver's licenses or identification cards or have access to such ability, he/she will be deemed ineligible for employment with DFA.

C. CURRENT EMPLOYEES WITH CRIMINAL BACKGROUND CHECK HISTORY

A current DFA Employee applying for a different position will be subject to the same requirements as any other Applicant. If the results of the CBC or other required background checks reveal a Disqualifying Conviction, the DFA HRM will notify the Employee of the right to challenge the results in accordance with Ark. Code Ann. § 12-12-1013 through the ASP and Arkansas Crime Information Center (ACIC) or request an exemption. The Hiring Official will be notified of the final results of the CBC. The Employee will be provided a copy of the state background check results upon request with identification verification. Federal background check results will not be available through the DFA HRM. The DFA HRM Procedures regarding challenges/exemptions are in the *Challenge/Exemption for a Disqualifying Conviction* section of this policy.

D. CONTINUING EMPLOYMENT AND CRIMINAL BACKGROUND CHECKS

As a condition of continued employment, all DFA Employees shall be subject to additional CBC's and other background checks, as required for the position, and must meet the same standards as an Applicant. Failure to meet the CBC requirements may result in immediate termination. These CBC's or other background checks may be performed at random or may be done as an investigation of alleged wrongdoing by an Employee.

If the results of any CBC or other background check reveal a Disqualifying Conviction, the DFA HRM will notify the Employee of the right to challenge the results in accordance with applicable law including Ark. Code Ann. § 12-12-1013 through the ASP and ACIC.



The Supervisor of the employee will be notified of the final results of the background check. The Employee will be provided a copy of any CBC results upon request with identification verification. The Employee may also request an exemption as set out in the *Challenge/Exemption for a Disqualifying Conviction* section of this policy.

Employees that are convicted of a Disqualifying Conviction must notify their supervisor within 72 hours of the date of the Conviction. Notice to the supervisor may be given by an individual authorized by the Employee in writing.

DFA Employees must complete subsequent background checks for Disqualifying Convictions every five (5) years. DFA Employees with access to FTI must complete the required background checks to hold their positions at least every five (5) years.

CHALLENGE/EXEMPTION OF A DISQUALIFYING CONVICTION

A. EXEMPTION REQUESTS

All DFA Employees and Applicants have the right to request an exemption for a Disqualifying Conviction unless the Applicant or Employee holds a position in which he/she will authorize the manufacture or production of REAL ID drivers licenses or identification cards or have access to such ability.

1. If the CBC reveals a Disqualifying Conviction, the DFA Director may determine that an Applicant or Employee should not be disqualified from employment or terminated based on a Disqualifying Conviction upon the request of:
 - a) A supervisor or other managerial Employee in DFA;
 - b) An Applicant; or
 - c) An incumbent Employee who is subject to discharge.
2. A request for an exemption must be made to the DFA HRM in writing within five (5) calendar days of the Employee's notification from the DFA HRM of a Disqualifying Conviction on their CBC.
3. If the crime is a misdemeanor and more than five (5) years have lapsed since the Conviction, DFA is not required to discharge an incumbent Employee if a request for an exemption is timely made and if the exemption is granted.
4. If the exemption is not granted and the exemption request was for an incumbent Employee who was put on LWOP, the DFA shall immediately discharge the incumbent Employee.
5. If the exemption is not granted and the exemption request was for an Applicant, DFA is prohibited from hiring the Applicant.
6. If an incumbent Employee was put on LWOP as set out in the *Challenge/Exemption for a Disqualifying Conviction* section, part (C)(1) below but was subsequently granted an exemption or successfully challenged the CBC with ASP, the incumbent Employee shall be immediately reinstated but is not entitled to retroactive relief, including back pay.

B. AN EXEMPTION MAY BE GRANTED BASED UPON THE FOLLOWING FACTORS:

1. The Disqualifying conviction has been subject to pardon, expungement, sealing or other official treatment that exonerates the Applicant or Employee or vacates the conviction; or



2. In the DFA Director's discretion the following factors demonstrate that there is a preponderance of evidence that the Applicant or Employee is rehabilitated such that the public interest is not threatened by the Applicant's or Employee's employment. Evidence of rehabilitation may include:
 - a) The age of the Applicant/Employee at the time of the offense;
 - b) The circumstances surrounding the crime or act, particularly any extenuating or mitigating matters, including whether the offense was against persons or property and the seriousness of the offense as well as whether the Employee was the recipient of parole or probation and restitution was paid;
 - c) Subsequent work history;
 - d) The length of time since the crime or act;
 - e) Subsequent rehabilitative measures accomplished by the Employee, including efforts made by the Employee or Applicant to seal the record or obtain a pardon or expungement;
 - f) Employment references;
 - g) Character references; and
 - h) Other evidence demonstrating the rehabilitation of the Applicant or Employee.

C. CHALLENGE/EXEMPTION PROCEDURES

1. A current Employee with a Disqualifying Conviction will immediately be required to use any available leave, excluding sick leave, or will be placed in Leave Without Pay (LWOP) status for up to five (5) working days while an Employee challenges the Conviction with the ASP or requests an exemption by the DFA Director. The DFA HRM may authorize the use of additional leave, including LWOP, for a reasonable period of time, if needed, to challenge the Disqualifying Conviction or pending a response to a request for an exemption.
2. The Applicant/Employee is responsible for working with the ASP and ACIC to ensure that the Applicant's or Employee's criminal record is sealed or expunged within the challenge period in the *Challenge/Exemption for a Disqualifying Conviction* section, part (C)(1) and the Disqualifying Conviction is no longer in the ACIC record. The DFA HRM will not accept a judge's order or a letter from a court stating the intent to expunge or seal a record.
3. Following the challenge period in the *Challenge/Exemption for a Disqualifying Conviction* section, part (C)(1) and with confirmation from the Applicant or Employee that he/she has successfully sealed or expunged the record and the Disqualifying Conviction has been removed from the ACIC record, the DFA HRM will obtain a new background check for the Applicant/Employee, at which time the results of the background check will be considered final. If the Employee is not successful in the challenge within the period in the *Challenge/Exemption for a Disqualifying Conviction* section, part (C)(1), the employee will be terminated.

BACKGROUND REQUIREMENTS FOR REAL ID POSITIONS

The following minimum requirements for background investigations must be conducted for a DFA Applicant or Employee whose position authorizes the manufacture or production of REAL ID driver's licenses or identification cards or whose position has access to such ability:



A. INVESTIGATION REQUIREMENTS

Before receiving access to Real ID, DFA will conduct a name-based and fingerprint-based CHRC using the FBI's National Crime Information Center and the Integrated Automated Fingerprint Identification database as well as Arkansas records to determine if the employee has been convicted of a Permanent Disqualifying Criminal Offense or Interim Disqualifying Criminal Offense.

B. DISQUALIFICATION

If the results of the CHRC reveal a Permanent Disqualifying Criminal Offense or an Interim Disqualifying Criminal Offense, as defined below, the Employee may not be employed in a position that authorizes the manufacture or production of REAL ID driver's licenses or identification cards or has access to such ability. In addition, an Employee whose position authorizes the manufacture or production of REAL ID driver's licenses or identification cards or whose position has access to such ability must comply with the requirements of §274A of the Immigration and Nationality Act, and its implementing regulations.

C. PERMANENT DISQUALIFYING CRIMINAL OFFENSES

For purposes of determining eligibility for DFA positions that authorize the manufacture or production of REAL ID driver's licenses or identification cards or have access to such ability, an Applicant or Employee has a Permanent Disqualifying Criminal Offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

1. Espionage or conspiracy to commit espionage.
2. Sedition, or conspiracy to commit sedition.
3. Treason, or conspiracy to commit treason.
4. A federal crime of terrorism as defined in 18 U.S.C. 2332b (g), or comparable state law, or conspiracy to commit such crime.
5. A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.
6. Improper transportation of a hazardous material under 49 U.S.C. 5124, or a state law that is comparable.
7. Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material as defined in 18 U.S.C.232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).
8. Murder.
9. Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal devices in or against a place of public use, a state or government facility, a public transportations system, or an infrastructure facility.
10. Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 et seq. or comparable state law, where one of the predicates acts found by a jury or admitted by the defendant, consists of one of the crimes listed in paragraph (D) of this section.
11. Attempt to commit the crimes in paragraphs (D)(1) through (D)(4).
12. Conspiracy or attempt to commit the crimes in paragraphs (D)(5) through (D) (10).



D. INTERIM DISQUALIFYING CRIMINAL OFFENSES

1. For purposes of determining eligibility for DFA positions that authorize the manufacture or production of REAL ID driver's licenses or identification cards or have access to such ability, the Interim Disqualifying Felonies listed in this paragraph are disqualifying, if any of the following apply:
 - a. the Applicant or Employee was convicted or found not guilty by reason of insanity of the offenses in a civilian or military jurisdiction within seven years of the date of the application, or
 - b. the Applicant or Employee was incarcerated for that crime and released from incarceration within the five years preceding the date of application or employment in the position.
2. The Interim Disqualifying Criminal Offenses are:
 - a. Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
 - b. Extortion.
 - c. Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to a crime described in paragraphs (a) or (b) of this section. Welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation for purposes of this paragraph.
 - d. Bribery
 - e. Smuggling
 - f. Immigration violations
 - g. Distribution of, possession with intent to distribute, or importation of a controlled substance;
 - h. Arson;
 - i. Kidnapping or hostage-taking;
 - j. Rape or aggravated sexual abuse;
 - k. Assault with intent to kill
 - l. Robbery
 - m. Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law
 - n. Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq. or comparable state law, other than the violations listed in paragraph (D)(10) of this section.
 - o. Conspiracy or attempt to commit the Permanently Disqualifying Criminal Offenses listed in the Background Requirements for REAL ID section, part (C).

E. UNDER WANT, WARRANT, OR INDICTMENT

An Applicant or Employee who is wanted, or under indictment in any civilian or military jurisdiction for an Interim Disqualifying Offense is disqualified until the want or warrant is released or the indictment is dismissed.

F. DETERMINATION OF ARREST STATUS

1. When a fingerprint-based check discloses an arrest for an Interim Disqualifying Criminal Offense without indicating a disposition, the DFA HRM will notify the Applicant/ Employee and provide instructions on how the Applicant/Employee must clear the disposition as set out below.



2. Within 10 calendar days after the service date of the notification of the offense, the Applicant/Employee must provide the DFA HRM with written proof that the arrest did not result in Conviction for the Interim Disqualifying Criminal Offense. Pending the receipt of written proof that the arrest did not result in Conviction, the Applicant/Employee must take any available leave, excluding sick leave, or be placed on LWOP. If the DFA HRM does not receive a proof within 10 calendar days, the DFA HRM will notify the Applicant/Employee that he or she is disqualified or notify the Employee that he/she is terminated. If an employee was put on LWOP and provides written proof the arrest did not result in a Conviction for the Interim Disqualifying Criminal Offense, the Employee shall be immediately reinstated but is not entitled to retroactive relief, including back pay.

BACKGROUND REQUIREMENTS FOR FTI POSITIONS

The following minimum requirements for background investigations must be conducted for a DFA Applicant or Employee whose position has access to FTI:

A. INVESTIGATION REQUIREMENTS

Before receiving access to FTI, all Applicants and Employees must consent to a state and national CBC and consent to other background investigations as outlined below:

1. Federal Bureau of Investigations (FBI) fingerprint background check conducted to identify possible suitability issues.
2. Local law enforcement background check, including locations where the Employee has lived, worked and/or attended school within the last five (5) years, and if applicable, of the appropriate agency for any identified arrests.
3. Citizenship/residency validation must be conducted to ensure the Employee is eligible to legally work in the United States. DFA will complete USCIS Form I-9 to document verification of the identity and employment authorization of each new employee. Within three (3) days of completion, any new employee must also be processed through E-Verify to assist with verification of their status and the documents provided with the Form I-9.

B. DISQUALIFICATION

An Applicant/Employee will not be eligible for access to FTI and will be terminated from employment if a background investigation finds one of the following and an exemption as described in the *Challenge/Exemption for a Disqualifying Conviction* section is not granted:

1. Disqualifying Conviction,
2. Misdemeanor Conviction of an offense of dishonesty or fraud within seven years of the date of the background investigation,
3. Any felony Conviction.



EMPLOYEE REPORTING REQUIREMENTS

- A. An Employee who is found guilty of a Disqualifying Conviction or of a Permanent or Interim Disqualifying Offense or who receives a felony Conviction or a Conviction involving a crime of dishonesty or fraud, including but not limited to the Disqualifying Convictions, after successfully completing a CBC, must report his/her Conviction to the DFA HRM within five calendar days of the receipt of the Conviction.
- B. Failure to report any criminal Conviction to the DFA HRM may result in disciplinary action.
- C. Failure to comply with this policy may result in disciplinary action, up to and including termination. The cost of any background check conducted pursuant to this policy shall be paid by DFA.

DEPARTMENT CONTACT:

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