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Defined Benefit Plan

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What is it?

If you'd like a retirement plan that guarantees a specified benefit level at retirement regardless of investment results, you may want to consider a defined benefit pension plan. A defined benefit plan is a qualified employer-sponsored retirement plan that is funded solely by the employer (in most cases); it's the traditional type of pension plan. A defined benefit pension plan allows the highest potential contribution amount of any plan. These contributions are excluded from income and grow tax deferred. In addition, contributions can be deducted from business income.

Tip: *Generally, a defined benefit plan is most favorable for an employer that wants to maximize tax-deferred retirement savings for its older, long-term employees and that can afford to make large contributions.*

Who can establish a defined benefit plan?

Just about any employer can set up a defined benefit pension plan for its employees. Still, this type of plan is most attractive to employers that have a small group of highly compensated owners (and no employees) who are seeking to contribute as much money as possible on a tax-deferred basis. That's because the plan allows large deductions, and most of the current contributions generally will be used to fund benefits for high-paid, older principals.

Tip: *If you have younger employees, relatively little will be required currently to fund benefits for them. Because young employees have many years to accumulate their retirement benefits, relatively smaller current contributions are needed.*

Tip: *Traditional defined benefit pension plans are less common among employers than they used to be. As part of the corporate trend toward downsizing and cost cutting, some companies have eliminated these employer-funded plans in favor of 401(k)s and other defined contribution plans that are funded largely (or solely) through employee contributions. Other companies are converting their traditional defined benefit pension plans into "cash balance" plans, which have certain advantages for employees (e.g., portability in the event of a job change).*

Tip: *Sole proprietors and other small business owners may also be interested in Section 412(e)(3) (formerly 412(i)) defined benefit plans, which can produce larger initial deductions and simpler plan administration. See Questions & Answers for more information.*

How are employees' benefits determined and paid?

Under a defined benefit plan, the amount of each employee's future retirement benefit is determined by using a specific formula set forth in the plan. The formula generally bases each employee's benefit on his or her compensation, age, length of service with the employer, or some combination thereof. In some cases, for example, the calculation of benefits may be as simple as multiplying the employee's number of years of service (up to a stated maximum number) by a flat dollar amount. More often, though, a defined benefit formula weighs an employee's final few years before retirement more heavily than the preceding years. For instance, an employer may promise to pay each employee an annual retirement benefit equal to a certain percentage of the employee's final three-year average salary.

As employees retire, their benefits are paid to them from a pension trust fund that is used to hold all of the plan's assets. (In addition to retirement benefits, survivor benefits and/or disability benefits may be paid from the trust fund.) This is in sharp contrast to a defined contribution plan, such as a 401(k) plan. Typically, such plans give each participant an individual account whose value at retirement depends on both contributions made and the performance of plan investments.

What are some advantages offered by defined benefit plans?

You can make higher contributions to a defined benefit plan than to any other plan

An actuary determines the appropriate contribution amount to ensure the guaranteed future payout. Your payout generally depends on such factors as your salary, age, and years of service with the company. For a benefit beginning at age 65, a participant can have an annual lifetime retirement benefit that is the lesser of (1) $210,000 (in 2014 and 2015) (the "dollar limit"), or (2) 100 percent of the participant's compensation averaged over his or her three highest-earning consecutive years (the

"compensation limit"). (The dollar limit will be reduced for employees retiring prior to age 62, and increased for those retiring after age 65.) The compensation limit does not apply to an employee whose annual benefit is $10,000 or less, if certain conditions are satisfied.

Example(s): *Hal retires from ABC Enterprises in 2015 at age 65. His high three-year average compensation was $75,000. As a result, ABC Enterprises' defined benefit plan cannot provide a life or joint and survivor annuity of more than $75,000 annually. Hal's coworker, Mark, retires in 2015 at age 65 with a high three-year average compensation of $225,000. The limit for Mark is $210,000 annually.*

The plan provides a guaranteed pension benefit

Benefits do not hinge on the performance of underlying investments. Instead, each participant receives the amount guaranteed under the plan. Retirement benefits are based on a formula. This formula can provide for a set dollar amount for each year you work for the employer, or it can provide for a specified percentage of earnings. An actuary determines the appropriate contribution amount to ensure the guaranteed payout. If, during the course of the plan, it appears that this amount is not going to be adequately funded, the actuary must recalculate the contributions necessary to ensure that the guaranteed benefit can be paid.

Your contributions are tax deductible

You may deduct contributions to the plan from your business's income in the year in which you make them.

Your contributions are tax deferred for your employees

Contributions and earnings on plan assets are nontaxable to plan participants until plan distributions are made.

Your plan may be "integrated" with Social Security

Basically, this means that you can (within specific limits) allow your plan to pay more to higher-paid employees. This is because benefits provided by a qualified retirement plan and those provided by Social Security are viewed by the IRS as one retirement program. Because Social Security provides a higher percentage-of-salary benefit to lower-paid employees, the IRS allows a qualified retirement plan to favor higher-paid employees within specific limits (this is referred to as "permitted disparity").

Loans can be made available to participants

A defined benefit plan can be set up to allow participants to take loans from the plan. However, loans are often not permitted because they can be administratively burdensome. Generally, participant loans must meet the following conditions:

- They must not be made available to highly compensated employees in an amount greater than that available to other employees
- They must be made in accordance with specific loan provisions set forth in the plan
- They must carry a reasonable interest rate
- They must be adequately secured

What are some disadvantages associated with defined benefit plans?

You must make periodic payments to the plan regardless of whether your business is making a profit

Regardless of how your business is performing, you must fund your traditional defined benefit plan on a quarterly or more frequent installment basis. Consequently, you should not establish a defined benefit plan if you have a business that might not have the cash to fund the plan in future years. You may be subject to substantial penalties by the IRS if you underfund the plan.

You must hire an actuary to determine how much you must contribute to the plan

In order to operate a traditional defined benefit pension plan, you must enlist the services of an actuary to calculate how much you must deposit periodically to pay the promised benefit to each participant upon retirement. The actuary bases the amount of plan

contribution on several factors, including:

- The retirement benefits promised by the plan
- The age, salary, and retirement age of the participants
- The mathematical projections ("assumptions") of:
    - The interest to be earned by the plan assets
    - Future salary increases of the participants, and
    - The projected rates of turnover, disability, and mortality of the plan participants

You may have to purchase pension insurance

A covered defined benefit plan is subject to mandatory insurance coverage by the Pension Benefit Guaranty Corporation (PBGC). Most qualified defined benefit pension plans are covered. The PBGC is the federal agency that "insures" pensions accrued under certain defined benefit plans. This means that, if the sponsoring employer defaults on the plan, the PBGC will pay benefits to the plan participants according to the provisions of the plan (up to certain limits).

The PBGC is funded through a mandatory premium paid by employer-sponsors of covered plans. Generally, the premium is a flat annual rate per participant with a possible additional annual premium depending on the amount of the plan's unfunded vested benefits. If you want to terminate the plan, the PBGC must be notified in advance and must approve any distribution of plan assets to participants.

The maximum annual benefit is limited to employees with at least 10 years of participation

The maximum dollar limit ($210,000 for 2015) is reduced for any participant with a retirement age earlier than 62. In addition, the maximum dollar limit is restricted to employees who have completed at least 10 years of plan participation. The maximum benefit is reduced proportionately for each year less than 10 that the employee has participated in the plan. Similarly, both the 100 percent of compensation limit and the $10,000 exception, are reduced proportionately for each year of service (as opposed to participation) less than 10.

Example(s): *Jane is employed by XYZ, Inc. At age 58, Jane joins the defined benefit plan. She participates in the plan for seven years and retires in 2015 at age 65. Her high three-year average compensation is $150,000. Jane's maximum annual benefit is 7/10 x $210,000 (or $147,000).*

Employees who leave well before retirement may receive relatively little benefit from the plan

If a young participant leaves a defined benefit plan, the participant will have earned only a very small benefit because of the limited length of time during which the benefit is funded. Also, the participant will not receive any benefit at all if he or she is not vested. See Questions & Answers, below, for the required vesting schedule.

Plan benefits are not portable

An employee's accrued retirement benefits under a defined benefit plan are not portable. In other words, when an employee terminates employment prior to normal retirement age, he or she cannot roll over accrued benefits to an IRA or another employer's retirement plan (unless paid in a lump sum, which is atypical). For many employees, lack of portability may be perceived as a disadvantage, particularly in an age when few employees remain with the same employer for an entire career.

A defined benefit plan is subject to strict distribution rules

In general, a pension plan, including a defined benefit pension plan, can't pay benefits to a participant until the participant separates from service, becomes disabled, retires, or dies. In-service distributions are generally permitted only after an employee reaches the plan's normal retirement age (typically age 65).

Tip: *If the plan allows employee after-tax contributions, the plan can let employees withdraw those dollars, and any accumulated earnings, at any time.*

Tip: *The Pension Protection Act of 2006 encourages "phased retirement" programs by permitting the distribution of pension*

benefits to employees who have attained age 62, but haven't yet separated from service or reached the plan's normal retirement age.

The plan is subject to federal "top-heavy" legal requirements

A defined benefit plan is subject to the "top-heavy" requirements of the Internal Revenue Code (IRC) that prohibit key employees from accruing significantly more benefits than non-key employees. Specifically, a defined benefit plan is top-heavy if the present value of the accrued benefits of the key employees (generally, owners and officers) is more than 60 percent of the present value of the accrued benefits of all participants. If the plan is top-heavy, a minimum retirement benefit of 2 percent of pay per year of service (but not more than 20 percent of pay) must be provided for all non-key participants, and special vesting rules apply.

The plan is not allowed to discriminate in favor of highly compensated employees

Basically, this means that your highly compensated employees (see Questions & Answers for the definition of highly compensated employee) may not benefit substantially more under the plan than your non-highly-compensated employees. To insure that this is the case, you are required to undergo annual nondiscrimination testing.

Tip: *State and local government plans are exempt from discrimination testing.*

If the plan is underfunded, the company must catch up

If, during the course of the plan, it appears that the plan's current assets will not be adequate to produce the guaranteed payments under the plan, the actuary will recalculate the contributions necessary to fund the plan. The company must fund the additional contributions regardless of whether it has sufficient income. Underfunding may be caused by poor investment performance or the hiring of workers who require faster funding based on age and salary.

The plan is generally subject to reporting and disclosure rules

A traditional defined benefit plan is subject to the reporting and disclosure requirements under the Employee Retirement Income Security Act (ERISA) and the IRC.

Tip: *ERISA doesn't apply to governmental and most church retirement plans, plans maintained solely for the benefit of non-employees (for example, company directors), plans that cover only partners (and their spouses), and plans that cover only a sole proprietor (and his or her spouse).*

How do you establish a defined benefit plan?

Have a plan developed for your business

Due to the nature of the rules governing qualified defined benefit plans, you will need a retirement plan specialist and an actuary to develop a plan that meets legal requirements as well as the needs of your business. You must:

- Determine the plan features most appropriate for your business: Carefully review your business, looking at factors such as your cash flow and profits, how much you and your employees will benefit from the plan, tax deduction needed, and employee population (tenure, ages, salaries, turnover), to determine plan features including retirement benefit, eligibility requirements, etc.
- Choose the plan trustee (this may or may not be you): The assets of the plan must be held in trust by a trustee. The trustee has overall responsibility for managing and controlling the plan assets, preparing the trust account statements, maintaining a checking account, retaining records of contributions and distributions, filing tax reports with the IRS, and withholding appropriate taxes.
- Choose the plan administrator: Administering the plan involves many duties, including managing the plan (determining who is eligible to participate in the plan, the amount of benefits, and when they must be paid) and complying with reporting and disclosure requirements. The plan administrator may also be responsible for investing plan assets and/or providing investment educational services to plan participants. The employer is legally permitted to handle these responsibilities in-house, but plan sponsors will frequently hire a third-party firm or financial services company to assist in performing the function of plan administration. Be sure to comply with ERISA's bonding requirements.

Submit the plan to the IRS for approval

Once a plan has been developed, it should be submitted to the IRS if it is not a previously approved prototype plan. Since there are a number of formal requirements (for example, you must provide a formal notice to employees), a retirement plan specialist should assist you in this task. Submission of the plan to the IRS is not a legal requirement, but it is highly recommended. See Questions & Answers. The IRS will carefully review the plan and make sure that it meets all legal requirements. If the plan meets all requirements, the IRS will issue a favorable "determination letter." If the plan does not meet all requirements, the IRS will issue an adverse determination letter indicating the deficiencies in the plan.

Adopt the plan during the year in which it is to be effective

You must officially adopt your plan during the year in which it is to become effective, so plan ahead and allow enough time to set up your plan before your company's year-end. A corporation adopts a plan by a formal action of the corporation's board of directors. An unincorporated business should adopt a written resolution in a form similar to a corporate resolution.

Provide a copy of the summary plan description to all eligible employees

ERISA requires you to provide a copy of the summary plan description (SPD) to all eligible employees within 120 days after your plan is adopted. A SPD is a booklet that describes the plan's provisions and the participants' benefits, rights, and obligations in simple language. On an ongoing basis you must provide new participants with a copy of the SPD within 90 days after they become participants. You must also provide employees (and in some cases former employees and beneficiaries) with summaries of material modifications to the plan. In most cases you can provide these documents electronically (for example, through email or via your company's intranet site).

File the appropriate annual report with the IRS

Each employer that maintains a qualified retirement plan is generally required to file an annual report with the IRS. The annual report is commonly referred to as the Form 5500 series return/report. You must file the appropriate Form 5500 series return/report for your plan for each plan year in which the plan has assets. Consult a tax or retirement plan specialist for more information.

What are the tax considerations?

Income Tax

Your employer contributions can be deducted from income

You can deduct your employer contributions to the defined benefit plan. Employees are not taxed on the contributions you (the employer) make on their behalf until the benefits are distributed to them.

Defined benefit plan assets accrue tax deferred

Amounts in defined benefit plans, including investment earnings, are not subject to income tax until withdrawn.

Income tax is due as distributions are made

Distributions from your defined benefit plan are subject to income tax in the year they are distributed.

Early distributions may result in a premature distribution tax

If a participant takes a distribution from your defined benefit plan before reaching age 59½, the participant may be subject to a federal 10 percent premature distribution tax (unless an exception applies) and possibly a state penalty tax, too.

Minimum distributions are required after age 70½

If you own more than 5 percent of the business, you must begin taking required minimum distributions from the defined benefit plan by April 1 of the year after the year you reach age 70½. This applies to you if, for the plan year ending in the calendar year in which you reach age 70½, you own (or are considered to own) more than 5 percent of the outstanding stock or voting power of the employer, or more than 5 percent of the capital or profits interest in the employer.

A different rule applies to your employees, as long as they don't own more than 5 percent of the business. An employee generally must begin to receive distributions by April 1 of the first year after the later of the following years:

- The calendar year in which he or she reaches age 70½, or
- The calendar year in which he or she retires

Caution: *In some cases, however, a plan may require you to begin receiving distributions by April 1 of the year after the year you reach age 70½, even if you have not retired.*

Your business may qualify for the small employer pension plan start-up tax credit

If you establish a new defined benefit plan, you may be eligible to receive an income tax credit of up to $500 (50 percent of the first $1,000 of qualified start-up costs to create or maintain the plan) in three tax years. The credit may be claimed for qualified costs incurred in each of the three years starting with the tax year when the plan became effective.

Estate Tax

The value of a participant's vested benefit is included in the decedent's gross estate

The entire value of a participant's vested benefit is included in a deceased participant's gross estate for federal estate tax purposes.

Questions & Answers

Which employees must you include in your defined benefit plan?

Generally, plan participation must be offered to all employees who are at least 21 years of age and who worked at least 1,000 hours for the employer in a previous year. Two years of service may be required for participation as long as the employee will be 100 percent vested immediately when he or she enters the plan. You can impose less (but not more) restrictive requirements.

In addition, your defined benefit plan must meet minimum participation requirements regarding the number of employees who must participate in the plan. Specifically, on each day of the plan year, a defined benefit plan must benefit at least the lesser of (1) 50 employees, or (2) the greater of:

- 40 percent of all employees, or
- 2 employees

But if there is only one employee, the plan must benefit that employee.

Tip: *State and local government plans are exempt from the minimum participation requirements.*

When does plan participation begin?

An employee who meets the minimum age and service requirements of the plan must be allowed to participate no later than the earlier of:

- The first day of the plan year beginning after the date the employee met the age and service requirements, or
- The date six months after these conditions are met

Example(s): *Assume that Jane (age 48) was hired by XYZ, Inc. on December 1, 2013. XYZ, Inc. has a defined benefit plan, and the plan year begins on January 1 of each year. Jane will have one year of service as of December 1, 2014. She must be allowed to participate in the plan by January 1, 2015. XYZ's plan can impose less (but not more) restrictive requirements.*

What is minimum coverage testing?

In general, to be qualified (i.e., tax favored), a plan must meet employee coverage tests that demonstrate that the plan does not discriminate in favor of highly compensated employees. A plan that covers highly compensated employees must also cover a certain minimum number (or percentage) of the non-highly-compensated employees.

There are several coverage tests. Under the most basic minimum coverage test, a plan may cover any or all of the highly compensated employees if it also covers a number of non-highly-compensated employees equal to at least 70 percent of the percentage of highly compensated employees covered.

For example, if the plan covers 100 percent of the highly compensated employees, then the plan must also cover at least 70

percent of the non-highly-compensated employees of the employer. Or, if the plan covers only 50 percent of the highly compensated employees, then the plan must also cover at least 35 percent of the non-highly-compensated employees of the employer (70 percent of 50 percent equals 35 percent).

For more information, consult an attorney or retirement plan specialist.

Tip: *State and local government plans are exempt from the minimum coverage requirements.*

What is a highly compensated employee?

For 2015, a highly compensated employee is an individual who:

- Was a 5 percent owner of the employer during 2014 or 2015, or
- Had compensation in 2014 in excess of $115,000 and, at the election of the employer, was in the top 20 percent of employees in terms of compensation for that year. (This $115,000 limit is subject to cost of living adjustments each year.)

How is compensation defined?

For purposes of determining who is a highly compensated employee, compensation includes all taxable personal services income--such as wages, salaries, fees, commissions, bonuses, and tips--and also includes elective or salary reduction contributions to cafeteria and salary deferral plans such as 401(k) plans.

When do employees have part or full ownership (i.e., vesting) of their defined benefit accounts?

Employer contributions in general either must vest 100 percent after five years of service ("cliff" vesting), or must gradually vest with 20 percent after three years of service, followed by 20 percent per year until 100 percent vesting is achieved after seven years ("graded" or "graduated" vesting). Top-heavy plans, however, must have either 100 percent three-year cliff vesting or six-year graduated vesting. Finally, plans that require two years of service before employees are eligible to participate must vest 100 percent after two years of service.

What happens if your defined benefit plan investments do better than expected and are more than necessary to pay the promised benefit?

If the account becomes overfunded, your employer contributions must be suspended for a period of time.

Do you need to receive a favorable determination letter from the IRS in order for your plan to be qualified?

No, a plan does not need to receive a favorable IRS determination letter in order to be qualified. If the plan provisions (both the written provisions and as implemented) meet IRC and ERISA requirements, the plan is qualified and entitled to the appropriate tax benefits. Nevertheless, without a determination letter, the issue of plan qualification for a given year does not arise until the IRS audits your tax returns for that year. By that time, however, it is generally too late for you to amend your plan to correct any disqualifying provisions. Consequently, a determination letter helps to avoid this problem, because auditing agents generally won't raise the issue of plan qualification with respect to the "form" of the plan (as opposed to its "operation") if you have a current favorable determination letter.

What happens if the IRS determines that your defined benefit plan no longer meets the qualified plan requirements?

The IRS has established programs for plan sponsors to correct defects. These programs are designed to allow correction with sanctions that are less severe than outright disqualification. If, however, you are unable to correct the defects in your program appropriately, your plan may be disqualified. Loss of a plan's qualified status results in the following consequences:

- Employees could be taxed on their accrued benefits when they vest, rather than when benefits are paid
- Your deduction for employer contributions may be deferred
- The plan trust would have to pay taxes on its earnings

- Distributions from the plan become ineligible for special tax treatment and cannot be rolled over tax free

What is a Section 412(e)(3) (formerly 412(i)) defined benefit plan?

A Section 412(e)(3) defined benefit pension plan is the only defined benefit plan that is exempt from the minimum funding requirements of Section 412 of the IRC. (Note: IRC Section 412 was amended by the Worker, Retiree, and Employer Recovery Act of 2008, and the provisions formerly found in IRC Section 412(i) are now found in IRC Section 412(e)(3)). It must be funded exclusively with insurance contracts (e.g., annuity products or a combination of life insurance and annuity products) issued by an insurance company. The benefits provided to each individual must be equal to the values provided in the contracts.

Section 412(e)(3) plans offer several advantages, including the following:

- Generally create larger initial income tax deductions than traditional defined benefit plans (because the funding assumptions are required to be more conservative)
- Simpler plan administration
- Provide retirement benefits that are guaranteed by the insurance company

Caution: *Policy loans are not allowed under the contracts.*

The Pension Protection Act of 2006

On August 17, 2006, President Bush signed the Pension Protection Act of 2006 into law. Some of the key provisions of the Act are summarized below.

Changes effective upon enactment

- Repeal of EGTRRA sunset provisions: The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) contained numerous pension and IRA-related provisions that were scheduled to expire after 2010. The Act makes these provisions permanent.
- "At risk" plans and NQDC funding: If an employer with an underfunded ("at risk") defined benefit plan sets aside assets in a rabbi trust or other arrangement to fund nonqualified deferred compensation benefits for certain, those employees will be subject to income tax and a 20 percent penalty on the amount set aside. (This rule also applies if an employer is bankrupt--or a member of the employer's controlled group is bankrupt--and to certain employers who have previously terminated underfunded defined benefit plans.)
- Cash balance and other hybrid plans: Going forward, the Act protects hybrid plans (like cash balance plans) from age discrimination charges if a plan's design satisfies statutory requirements.
- Qualified public safety employees: The Act provides that the 10 percent early withdrawal penalty doesn't apply to distributions from governmental defined benefit plans to qualified public safety employees who separate from service after age 50.

Changes effective in 2007

- "Phased" retirement: The Act encourages "phased" retirement by allowing distribution of benefits from pension plans to employees who have attained age 62, but who haven't yet separated from service.
- Single participant plans: The Act provides that one-participant qualified plans aren't required to file a Form 5500 if plan assets are $250,000 or less (increased from $100,000).

Changes effective in 2008 (or as otherwise noted)

- New funding rules: The Act completely revamps the qualified defined benefit plan funding rules, generally requiring funding of a plan's current year liabilities and, if the plan is less than 100 percent funded, funding of the shortfall over 7 years. Special accelerated funding rules apply to "at risk" plans. The Act restricts plans that don't meet specified funding levels from taking actions that might place the plan at further risk--for example, increasing benefits or paying benefits in the form of a lump sum. (Certain aspects of the new law apply prior to 2008. Special rules apply to certain collectively bargained plans.)
- Increased deductions: The Act modifies the deduction rules applicable to defined benefit plans to reflect the new funding rules. The Act also increases the deduction available to employers who maintain both a defined benefit and a defined contribution plan.
- Expanded survivor annuity options: The Act provides that where the survivor annuity provided by the plan's QJSA is less than 75 percent, a participant must be allowed to instead elect a 75 percent survivor annuity. If the survivor annuity provided

by the plan's QJSA is greater than or equal to 75 percent, the participant must be allowed to instead elect a 50 percent survivor annuity. This "qualified optional survivor annuity" is actuarially equivalent to a single life annuity for the life of the participant. (A later effective date applies to certain collectively bargained plans.)

- 401(k)/DB Plan: The Act allows employers with 500 or fewer employees to adopt a combined defined benefit/401(k) plan. The defined benefit portion of the plan must meet minimum accrual requirements, and the 401(k) portion must have automatic enrollment and meet minimum matching contribution requirements. These plans would be exempt from ADP/ACP and top-heavy testing, and employers will have the convenience of a single plan document and single Form 5500 filing. This provision is effective for plan years beginning after December 31, 2009.

IMPORTANT DISCLOSURES

This material is not provide designed to provide specific investment, tax, or legal advice. The information presented here is not specific to any individual's personal circumstances.

To the extent that this material concerns tax matters, it is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that may be imposed by law. Each taxpayer should seek independent advice from a tax professional based on his or her individual circumstances.

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