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House OKs bipartisan retirement savings reform package – with ‘kiddie tax’ fix

The House on May 23 voted 417-3 to approve a bipartisan package of retirement savings reforms aimed at making it easier for smaller businesses to offer tax-qualified retirement savings plans to their employees, encouraging individuals to participate in retirement plans, and promoting savings for certain nonretirement expenses.

The Setting Every Community Up for Retirement Enhancement Security (SECURE) Act (H.R. 1994) also includes revenue-raising provisions that, among other things, would accelerate distributions of retirement account assets in certain cases after an account holder’s death.

URL: https://www.congress.gov/bill/116th-congress/house-bill/1994/text?q=%7B%22search%22%3A%5B%22%22%5D%7D&r=1&s=2

Significantly, the SECURE Act also would address certain unintended consequences of a change that Congress made to the so-called “kiddie tax” in the 2017 tax cut law (P.L. 115-97, known informally as the Tax Cuts and Jobs Act or TCJA).
The Joint Committee on Taxation (JCT) staff estimates that the legislation would reduce federal receipts by $389 million (net) over 10 years. (The House Rules Committee waived all points of order against the bill – including the chamber’s pay-as-you-go requirements – when it considered the measure on May 20.)

URL: https://www.jct.gov/publications.html?func=startdown&id=5189

Highlights of pension reforms, savings incentives

Among its more notable retirement and savings provisions, the SECURE Act would:

- Expand access to employer-provided retirement plans by requiring an employer to allow part-time employees to participate in the employer’s defined contribution plan if an employee has worked for the employer at least 500 hours a year for at least three continuous years and has reached the age of 21 by the end of the three-consecutive-year period;
- Modify the qualified plan nondiscrimination rules to allow current participants in a defined benefit plan to continue to accrue benefits under that plan after it has been closed to future employees;
- Simplify some of the compliance rules for employers offering annuity options within a qualified plan and require employers sponsoring defined contribution plans to provide plan participants an annual disclosure that estimates the monthly payments they would receive if their total account balance was used to provide a lifetime income stream;
- Ease administrative burdens for small employers participating in multiple-employer pension plans (MEPs) and encourage more businesses to participate in MEPs by making it easier for employers that are not in a common industry or do not share some other employment-based nexus to form “pooled” retirement plans;
- Provide alternative rules for calculating funding obligations for qualified plans sponsored by financially struggling community newspapers;
- Enhance the available tax incentives for employers that offer qualified retirement plans with automatic enrollment provisions;
- Increase the age for beginning required minimum distributions from a defined contribution plan or IRA to 72 (from 70-1/2 under current law) and repeal the maximum age (currently 70-1/2) for making contributions to a traditional IRA;
- Expand the list of expenses treated as qualified for under the rules for section 529 education savings accounts (more on that below); and
- Permit individuals to make penalty-free withdrawals from retirement accounts to cover expenses associated with the birth or adoption of a child.


URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190405_1.html

Kiddie tax fix

The legislation as approved would repeal a change Congress made to the kiddie tax as part of the Tax Cuts and Jobs Act that requires unearned income of children to be taxed at the rate for estates and trusts. Under the SECURE Act, children’s unearned income would be taxed at their parents’ top marginal rates, as was the case before the TCJA was enacted.

The provision, which Ways and Means Committee Chairman Richard Neal, D-Mass., added to the bill shortly before it reached the floor, generally would be effective for taxable years beginning after December 31, 2018, although taxpayers would be able to elect to have it apply retroactively to taxable years beginning after December 31, 2017.

TCJA’s unintended consequences: The TCJA’s change to the kiddie tax rules generally was intended to discourage wealthy individuals from making tax-motivated transfers of investment income to their minor children; but the provision as enacted also ended up ensnaring survivors’ benefits paid to children of deceased active-duty military service members as well as other types unearned income received by children in less affluent families, leaving them facing significantly higher tax rates on that income than they would have under prior law.

Since that anomaly came to light a few weeks ago, there have been bipartisan proposals in both chambers to carve out exemptions from the kiddie tax for “Gold Star” families. But in recent days, calls for kiddie tax relief grew to include carve-outs for other types of income, such as survivors’ benefits paid to children of first responders, distributions from qualified disability trusts, scholarship payments, Indian tribal government payments, and Alaska
permanent fund dividends. In the face of that expanding wish list, House Democratic leaders ultimately proposed to address the issue by scrapping the TCJA provision altogether and reverting to prior-law kiddie tax rules.

**Stand-alone bill in the Senate:** The Senate, meanwhile, on May 21 approved by unanimous consent a stand-alone bill (S. 1370) sponsored by Finance Committee Republican Bill Cassidy of Louisiana that would treat survivors’ benefits paid to children of active-duty military service members as earned income (rather than unearned income) for purposes of the current-law kiddie tax rules. Just how the House and Senate will resolve their differing approaches to this issue is currently unclear.

**529 provision trimmed**

Another pre-vote change to the SECURE Act deleted a Republican-backed provision in the version approved in the Ways and Means Committee last month that would have treated withdrawals from tax-preferred section 529 education savings accounts to cover expenses for home schooling and private elementary, secondary, and religious schools as qualified distributions. (Criticism of that provision by progressive House Democrats in recent weeks had forced Democratic leaders to delay bringing the measure to the House floor.)

In a May 23 floor speech ahead of the House vote, Ways and Means Committee ranking Republican Kevin Brady of Texas decried the decision by Democratic leaders to remove this provision but said the bill nonetheless “deserve[d] to pass.”

The legislation as approved retains provisions from the original version of the bill that would expand the section 529 rules to cover costs associated with registered apprenticeships and up to $10,000 of qualified student loan repayments.

**‘Stretch IRAs’ and other revenue offsets**

The single largest revenue offset in the bill – increasing receipts by an estimated $15.75 billion over 10 years – would clamp down on so-called “stretch IRAs” by requiring that amounts in an IRA or defined contribution plan generally must be distributed within 10 years of the death of the IRA holder or plan participant, unless the beneficiary is within 10 years of the account holder’s age, an individual with special needs, a minor, or the account holder’s spouse. (In those cases, the 10-year rule would apply after the beneficiary dies or, if the beneficiary is a minor, reaches the age of majority.)

The provision generally would be effective for required minimum distributions for IRA holders or plan participants with a date of death after December 31, 2019.

The measure also includes provisions to increase current-law penalties for failure to file income tax returns and failure to file various required pension plan returns and notices. (Penalty amounts and thresholds for failure to file pension plan returns were tweaked before the bill came to the floor.)

**Senate action up next**

Across the Capitol, meanwhile, Finance Committee Chairman Charles Grassley, R-Iowa, said in a May 23 news release that the SECURE Act “takes an important step forward to help encourage and facilitate retirement savings” and represents “an example of bipartisan cooperation to solve issues on behalf of Americans.”

Grassley and Finance Committee ranking Democrat Ron Wyden of Oregon unveiled their own retirement savings bill – the Retirement Enhancement and Savings Act (RESA) of 2019 – in April. That measure is broadly similar to the SECURE Act, and according to press reports, Senate leaders are exploring whether there is sufficient support in the chamber to approve the SECURE Act under expedited “unanimous consent” rules. If that effort is successful it would avoid the prospect of bicameral negotiations to reconcile the SECURE Act with RESA. It also would resolve the disparate approaches the two chambers have taken to fix the kiddie tax.

**URL:** https://www.finance.senate.gov/imo/media/doc/OTT19202%20(002)%20As%20filed.pdf

But press reports on May 23 – the Senate’s last work day before adjourning for the week-long Memorial Day recess – suggested that Texas Republican Sen. Ted Cruz was prepared to block a unanimous consent request because the House bill dropped the provision treating home schooling and private school costs as qualified expenses for section
529 accounts. (Cruz had tried – without success – to get a similar provision in the TCJA. Grassley Wyden’s RESA proposal does not include any expansions of section 529 benefits.)

Just how Senate leaders intend to proceed likely will become clearer when the legislative session resumes on June 3.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

**Congressional leaders, Trump officials, kick-off talks on debt limit, spending ‘caps’**

A bipartisan contingent of congressional leaders left an extended day of meetings with Trump administration officials on May 21 without a deal to lift the debt limit and avoid automatic spending cuts this fall, but vowed to continue talking.

**Raising the caps**

As a general matter, both Democrats and Republicans in Congress are eager to strike a deal to raise the statutory caps on annual appropriations for fiscal year 2020, which begins on October 1. Bringing Republicans to the table is the prospect of $71 billion in cuts to defense spending next year relative to fiscal 2019’s enacted levels; for Democrats, the focus is more on nondefense (sometimes called “domestic”) appropriations – which covers departments such as State, Education, Labor, Treasury, and Health and Human Services – which would face a $55 billion reduction in the absence of a deal.

The spending caps came about as part of the Budget Control Act of 2011 (BCA) – a budget deal that was enacted in large part to secure an increase in the government’s borrowing limit. Those spending caps were ratcheted down even further when the so-called congressional “supercommittee” (also an offspring of the BCA of 2011) failed to agree on alternative deficit reduction measures in the months after the BCA was signed into law.

The caps are enforced by the Office of Management and Budget (OMB) through a mechanism known as the “sequester.” If a law is not signed to lift the caps (or waive enforcement with respect to offending legislation, e.g., a continuing resolution that extends current-year funding while budget talks continue) then beginning in mid-January of 2020, the OMB would be forced to sequester any appropriated spending for fiscal year 2020 in excess of the statutory limits.

**Fourth and final caps deal?:** On three separate occasions since 2013, Democrats and Republicans have come together to raise the statutory spending caps in two-year increments – most recently through the Bipartisan Budget Act of 2018, which raised the caps by roughly $300 billion over fiscal years 2018 and 2019 – which then cleared the way for more generous follow-on funding bills.

Regardless, under current law, the sequester will no longer apply after fiscal year 2021 – raising the prospect that this year’s deal, should one materialize, could be the last.

Senate Majority Leader Mitch McConnell, R-Ky., and Minority Leader Charles Schumer, D-N.Y. – both of whom were present for the budget talks this week – summed up the stakes after the May 21 meeting.

“A negotiated agreement with the House Democrats is the best of three alternatives, the other two being arguing back and forth over the length of a [continuing resolution] for God only knows how long, or a sequester, which hits defense with about a $71 billion cut at the end of the year,” McConnell said.

For his part, Schumer expressed measured optimism, but also noted that disagreements persist, particularly on the domestic side of the spending ledger.
“There are still some significant issues outstanding, particularly the domestic side spending issues like health care and infrastructure middle-class folks need,” Schumer noted.

Not so fast?: The Trump administration officials who took part in the talks – Treasury Secretary Steven Mnuchin, acting White House Chief of Staff Mick Mulvaney (a fiscal hard-liner during his days in Congress), and acting OMB Director Russell Vought – were more reticent, declining to characterize the talks.

“I’m not going to talk about that,” Mulvaney said, when questioned by reporters.

At least on paper, the White House laid down a marker on appropriations spending earlier this year – as part of its fiscal 2020 budget submission to Congress – that moved 180 degrees away from past spending cap deals.

That blueprint called for returning domestic spending to sequester levels in fiscal year 2020 and then reducing it by 2 percent per year after that – a cut of $1.1 trillion over the next decade.

On the defense side, the White House proposed a near mirror image increase of roughly $1 trillion over the next decade, with the increases over the next two years (that is, the years that the sequester still applies) provided for by tapping the so-called Overseas Contingency Operations (OCO) account that is intended for war-related outlays and exempt from the statutory limits. (For prior coverage of the president’s fiscal 2020 budget, see Tax News & Views, Vol. 20, No. 10, Mar. 15, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190315_1.html

If President Trump – who was not present for the budget talks this week – sticks to the hard line taken in his budget, a caps deal could be extremely difficult to reach.

McConnell, however, implied that the administration may be willing to take a softer approach in the hopes of avoiding a government shutdown – that is, at least if the president’s advisers have Trump’s backing.

“I’m hopeful and optimistic that the secretary of the Treasury is speaking for the president,” McConnell said on May 21.

It should be noted, though, that bipartisan discussions on another fiscal policy issue – infrastructure – blew up less than one day later, calling into question whether and under what circumstances President Trump will even negotiate with congressional Democrats. (See related coverage in this edition for details.)

Caps deal just the first step: It is important to note that even if a caps deal is reached, lawmakers still will have to pass appropriations legislation that provides funding at a programmatic level in order to avoid a full or partial government shutdown when the new fiscal year begins this fall. (Even with the last caps deal – the BBA of 2018 – in place, the government still went into partial shutdown for 35 days late last year.)

To that end, House Democratic appropriators have been busy processing fiscal 2020 appropriations measures. However, those bills will likely need to be reworked depending on the contours of any caps agreement. And in any case, they will also need to be reconciled with spending bills yet to be taken up in the GOP-controlled Senate.

Debt limit, too?

Also factoring in to the debate is the federal debt limit, the suspension of which lapsed on March 2, and which according to projections made by the Congressional Budget Office will need to be raised or further suspended around the time fiscal year 2020 begins. Since March 2, the Treasury has been employing so-called “extraordinary measures” that enable it to effectively borrow additional funds without breaching the ceiling.

The coincident timing of the debt limit and appropriations deadlines has led many observers to predict that a debt limit solution will be moved along with either a spending caps deal or follow-on appropriations package.

Secretary Mnuchin, for his part, has been urging lawmakers to resolve the debt limit issue sooner rather than later, even on a “clean” basis – that is, not attached to unrelated legislation.
In an unrelated hearing before the House Financial Services Committee on May 22, Mnuchin reiterated the urgency of raising or suspending the debt limit to avoid a potential default.

"I have confidence that this Congress will not let that occur," Mnuchin said. "From my meetings with senior leadership, everyone understands this issue, and I hope we never get to the point late summer where we're even talking about these things. I would hope for the benefit of the American people that we raise the debt limit soon."

Next meeting: TBD

House Minority Leader Kevin McCarthy, R-Calif., said negotiators agreed to meet again, but have not yet set a date.

“Deals like this take time,” McCarthy said, “I’m always optimistic.”

Congress will be out of session the week of May 27 for its Memorial Day recess.

— Alex Brosseau
Tax Policy Group
Deloitte Tax LLP

A bridge too far? Bipartisan infrastructure funding talks collapse

Prospects for a multitrillion-dollar bipartisan infrastructure investment bill – which already seemed to many like a long-shot ahead of the 2020 elections – grew even more dim this week after a White House meeting on funding ideas ended before it began and the president said he would refuse to work with Democrats in Congress while they continue to investigate him and his administration.

Less than a month ago, top congressional Democrats including House Speaker Nancy Pelosi of California, Senate Minority Leader Charles Schumer of New York, and House Ways and Means Committee Chairman Richard Neal of Massachusetts met with President Trump and emerged with a broad agreement to work together on a $2 trillion infrastructure package addressing roads, bridges, telecommunications improvements, and more. The question of how to fund such a massive plan was seen as the bigger stumbling block and was left for a future discussion, but the fact that the two sides reached consensus on a policy priority was still seen as cause for a glimmer of optimism. (For prior coverage, see Tax News & Views, Vol. 20, No. 15, May 3, 2019.)


’You can’t do it under these circumstances’

At the follow-up session at the White House on May 22, the president reportedly entered the meeting room very frustrated by Democrats’ investigations and comments in the media, then said he couldn’t work with them under the circumstances and walked out less than five minutes later. He immediately held a short press conference in the Rose Garden, where he had summoned White House reporters earlier.

“I walked into the room and I told Sen. Schumer, Speaker Pelosi, I want to do infrastructure. I want to do it more than you want to do it. I’d be really good at that. That is what I do,” Trump said. "But you know what, you can’t do it under these circumstances. So get these phony investigations over with.”

Schumer and Pelosi followed up with their own press conference back at the Capitol, where they implied that the president’s actions were a ruse to distract from the fact that he does not have any funding proposals to counter theirs and is not up to the challenge of negotiating a legislative agreement.

"I think they can’t figure out a way to do infrastructure,” Schumer said, “and they came up with a very inelegant way to get out of it.”

Senate Democrats released a Jobs & Infrastructure Plan for America’s Workers in March 2018 that proposed to raise $1 trillion in revenue by rolling back some of the tax cuts for the highest income earners from the Republicans’ 2017 tax overhaul, as well as increasing the corporate tax rate to 25 percent and taxing carried interest income as ordinary.
After their initial meeting last month with the president, Democrats put the onus on the White House to propose funding mechanisms for the $2 trillion package both sides agreed is needed. Congressional Republicans have said that undoing TCJA is a non-starter, and although President Trump has at times indicated openness to increasing federal fuel taxes, GOP leaders have also pushed back on that as a funding source.

URL: https://www démocrats .senate.gov/imo/media/doc/Senate%20Democrats%20Jobs%20and%20Infrastructure%20Plan .pdf

The May 22 meeting already appeared destined to go less smoothly than the April session when Trump sent a letter to Schumer and Pelosi the day before saying that he wasn’t willing to work on infrastructure until Congress passes the US-Mexico-Canada Agreement (USMCA), a replacement for the North American Free Trade Agreement (NAFTA) that his administration negotiated last year.

Further fallout

In the aftermath of the truncated White House meeting, House Transportation and Infrastructure Committee Chairman Pete DeFazio, D-Ore., told Politico that the breakdown in talks over a broad infrastructure improvement package also bodes poorly for the funding needed just to maintain the status quo that legislators on both sides of the aisle insist is unacceptable. The current authorization for surface transportation funding (the FAST Act) will expire September 30, 2020, and the Congressional Budget Office projects a shortfall will quickly re-emerge between the Highway Trust Fund and its spending needs: $85 billion over the first five years following the FAST Act, and $109 billion over the first six years. (The CBO projections are cited in a report from the Congressional Research Service.)

URL: https://www.everycrsreport.com/reports/R45350.html

DeFazio has said he is working on a six-year reauthorization plan.

"My hope was these discussions would lead to a commitment on a significant funding package which would not have included major policy changes; that would have come later. Now we’re going to work on the policy in the hope that we can work out something on funding at the end," DeFazio said, referring to the fact that his committee has jurisdiction over transportation policy but not funding, which falls to the House Ways and Means Committee.

— Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

Ways and Means Democrats hint at next steps for extenders

House Ways and Means Committee Democrats offered comments this week on a possible path forward for addressing expired and expiring tax “extenders” provisions, according to reports in Bloomberg Tax and Politico; but specific details on the timing and substance of an eventual legislative proposal remain elusive.

Ways and Means Chairman Richard Neal, D-Mass., told reporters following a May 21 meeting that the panel’s Democrats “started to talk a bit more” about extenders and alluded to plans for a post-Memorial Day “walk-through.” Neal said the following day that he had spoken with Senate Finance Committee Chairman Charles Grassley, R-Iowa, about acting quickly on provisions that are scheduled to expire in 2019 to avert a year-end legislative rush.

Select Revenue Measures Subcommittee Chairman Mike Thompson, D-Calif., addressing an issue that has stymied progress on extenders legislation since Democrats regained control of the House in the 116th Congress, told reporters May 21 that Democrats “would like to pay for” renewing lapsed tax provisions but have not yet agreed on how to do it.

“We are closer, but we are not close,” he said.

Thompson also commented that the committee intends to revisit the extenders list after the Memorial Day recess to determine which provisions should remain in the tax code and which should be eliminated.

For his part, Ways and Means ranking Republican Kevin Brady of Texas said May 22 that the panel must put forward an extenders package with “significant reforms, including letting some of these provisions that no longer have value expire.”
Finance pondering short- and long-term extenders strategies

Across the Capitol, Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking Democrat Ron Wyden of Oregon introduced legislation on February 28 that would retroactively extend through the end of this year some two dozen temporary tax deductions, credits, and incentives that expired at the end of 2017 and a handful of others that expired at the end of 2018, while also providing targeted tax relief to businesses and individuals who suffered losses in certain federally declared disasters. (For prior coverage, see Tax News & Views, Vol. 20, No. 8, Mar. 1, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190301_1.html

Grassley and Wyden also recently announced the formation of five bipartisan Finance Committee task forces that will be charged with developing a long-term approach to addressing some 42 extenders provisions that expired, or will expire, between December 31, 2017 and December 31, 2019, and a separate task force to consider the possibility of developing a core package of temporary tax relief provisions that would be available to victims of natural disasters. (For prior coverage, see Tax News & Views, Vol. 20, No. 17, May 17, 2019.)

URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190517_2.html

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

Wyden proposes novel approach to taxing carried interest income

Sen. Ron Wyden of Oregon, the ranking Democrat on the Senate Finance Committee, introduced legislation on May 23 that would take a novel approach to closing the perceived loophole in the tax treatment of carried interest income.

‘Deemed compensation’

Wyden’s legislation – dubbed the Ending the Carried Interest Loophole Act – relies on a concept of “deemed compensation,” which he argues would not only prevent fund managers from converting wage income into lower-taxed, long-term capital gain, but also would prevent deferral of carried interest income taxation until the underlying investment producing the carry is sold, a gap that Wyden says exists in current law and would continue to exist under most proposals to reform the taxation of carried interest.

URL: https://www.finance.senate.gov/imo/media/doc/Ending%20the%20Carried%20Interest%20Loophole%20Act%20of%202019%20Bill%20Text.pdf

Instead, according to a press release and high-level summary released by Wyden’s office, a fund manager would be required to recognize annually as ordinary income a deemed compensation amount that is computed by applying an interest factor to the capital he or she manages on behalf of others. That deemed compensation would also be subject to self-employment tax.


URL: https://www.finance.senate.gov/imo/media/doc/Ending%20the%20Carried%20Interest%20Loophole%20Act%20of%202019%20OnePager.pdf

"Under current law, the fund manager’s carried interest is taxed as income from the partnership, which allows the deferral of tax payments until future investment sales,” the press release states.

The press release provides a simple example wherein a manager would be required to recognize $2.8 million in deemed compensation assuming a 20 percent carry, $100 million of investor capital, and a 14 percent prescribed interest rate.

To avoid double-taxation, the bill would also treat the fund manager as realizing long-term capital loss equal to the deemed compensation, which could be carried forward and used to offset long-term gain realized upon sale of an underlying investment.
**Prospects unclear**

Wyden dropped his proposal not long after President Trump – during a May 19 interview on Fox News – reiterated his displeasure with the long-term capital gain treatment of carried interest income.

“I would like to do it,” Trump said of closing the perceived loophole. “I will do it.”

Trump campaigned in 2016 on repealing the carried interest rules. But he explained in his interview that he ultimately backed off full repeal of the tax preference during negotiations on the 2017 tax cut legislation, arguing that the tactic enabled lawmakers to instead deliver a lower corporate rate. (The 2017 tax legislation did, however, increase the holding period – from one year to three years – required to receive long-term capital gain taxation on carried interest income.)

But Wyden argued that the president should stand by his 2016 campaign pledge to end preferential treatment for carried interests.

"President Trump railed against it on the campaign trail, but he broke his promise when the time came to act," Wyden said in his May 23 statement. "...If President Trump wants to address carried interest and make the tax code more fair, he'll be happy to support my new proposal that would fully close the loophole – existing bills only address half the problem."

Wyden’s proposal appears unlikely to be taken up in the Republican-controlled Finance Committee in the near term; but it does add to the list of revenue-generating ideas being put forward by congressional Democrats and 2020 presidential contenders that could come into play if Democrats clinch the White House and make substantial electoral gains in Congress next year. In that vein, Wyden announced last month his intention to release a proposal – in the form of a “detailed white paper” – that would employ an annual mark-to-market approach for taxing certain capital assets. (For prior coverage, see Tax News & Views, Vol. 20, No. 13, Apr. 5, 2019.)

**URL:** http://newsletters.usdbriefs.com/2019/Tax/TNV/190405_6.html

— Alex Brosseau
  Tax Policy Group
  Deloitte Tax LLP

**A note on our publication schedule**

The House and Senate will be out of session the week of May 27 as lawmakers adjourn for their Memorial Day recess. Barring unexpected developments on the tax policy front, the next issue of Tax News & Views will be published the week of June 3, when the legislative session resumes.

— Jon Traub
  Managing Principal, Tax Policy
  Deloitte Tax LLP

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