



ECONOMIC STIMULUS UPDATE

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**EXCEPTIONAL
PEOPLE.**

**OUTSTANDING
CLIENT SERVICE.**

LEGISLATIVE UPDATE



LEGISLATIVE UPDATE

- CARES Act signed into law 3/27/2020
- Notable programs included in the CARES Act
 - Paycheck Protection Program
 - Delayed Payment of Employer Payroll Taxes
 - Economic Stabilization and Assistance to Severely Distressed Sectors
 - Employee Retention Credit for Employers Subject to Closure due to COVID-19
 - Significant Income Tax Provisions

PAYCHECK PROTECTION PROGRAM

PAYCHECK PROTECTION PROGRAM

- **I. Covered loan program** - During the covered period, in addition to small business concerns, any business concern, nonprofit organization . . . shall be eligible to receive a nonrecourse covered loan if the business concern, nonprofit organization . . . employs not more than the greater of 500 employees or if applicable, the size standard in number of employees established by the administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates.
 - 1) The covered period runs from February 15, 2020 through June 30, 2020;
 - 2) Payroll costs:
 - a) Salary and wages, vacation time, group health costs and insurance premiums, retirement benefit, payments to independent contractors up to \$100,000;
 - b) Does not include salary over \$100,000, sick leave benefits for which a credit is allowed under Families First Coronavirus Response act.
 - 3) Individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.
 - a) Documentation - an eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as is necessary to establish such individual as eligible, including payroll tax filings reported to the Internal Revenue Service, Forms 1099-MISC, and income and expenses from the sole proprietorship, as determined by the Administrator and the Secretary.
 - 4) Business concerns with more than 1 physical location - during the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72 at the time of disbursement shall be eligible to receive a covered loan.

PAYCHECK PROTECTION PROGRAM

- **II. The maximum loan amount shall be the lesser of**
 1. The sum of the
 - The product obtained by multiplying 2.5 times the average total monthly payments for payroll costs incurred during the 1-year period before the date on which the loan is made, and,
 - the outstanding amount of other SBA loans made after January 31, 2020.
 2. \$10 million dollars per business.
- The maximum is applied per “business.” A business is a company or a group of companies under common control. SBA has guidelines for determining common control.
- **III. During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for**
 1. payroll costs;
 2. costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
 3. employee salaries, commissions, or similar compensations;
 4. payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
 5. rent (including rent under a lease agreement);
 6. utilities;
 7. interest on any other debt obligation incurred before the covered period.

PAYCHECK PROTECTION PROGRAM

- IV. Borrower requirements

- 1) Certification - an eligible recipient applying for a covered loan shall make a good faith certification that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- 2) Acknowledge that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- 3) The eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
- 4) During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.
- 5) During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, shall not apply to a covered loan.
- 6) No personal guarantee shall be required for the covered loan; and no collateral shall be required.

PAYCHECK PROTECTION PROGRAM

- V. Loan forgiveness

- 1) The term “expected forgiveness amount” means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of any
 - a) Payroll costs;
 - b) Payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);
 - c) Payments on any covered rent obligation; and
 - d) Covered utility payments.
- 2) Limits on amount of forgiveness
 - a) The amount of loan forgiveness shall not exceed the principal amount of the financing made available under the applicable covered loan.
- 3) Reduction based on reduction in number of employees
 - a) In general- the amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the “expected forgiveness amount”
 - b) by the quotient obtained by dividing (i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by at the election of the borrower either
 - (aa) the average number of full time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or
 - (bb) the average number of full time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or
 - in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30,2019.
 - c) Calculation of average number of employees – the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling with a month.

PAYCHECK PROTECTION PROGRAM

- 4) Reduction relating to salary and wages
 - The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
 - 5) Exemption for re-hires equivalent employees for each pay period falling
 - If there was a reduction in the number of full time employees, the reduction will not include employees rehired by June 30. There is significant fine print for how this exception is computed.
 - 6) Any loan forgiven is tax free.
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- VI. If you obtain a loan through the Paycheck Protection Program you will not qualify for the Employee Retention Credit.

DELAYED PAYMENT OF EMPLOYER PAYROLL TAXES

DELAYED PAYMENT OF EMPLOYER PAYROLL TAXES

- The payment of the employer Social Security match is delayed. 50% is due December 31, 2021, and the other 50% is due December 31, 2022. The Social Security match is 6.2%.
- The provision applies to payroll paid as of March 27, 2020 through December 31, 2020.

ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS

IN GENERAL

- The stimulus package contains significant funds for United States businesses which have not received adequate economic relief in the form of loans or loan guarantees provided elsewhere in the act.
- The Secretary is authorized to make loans, loan guarantees, and other investments in support of eligible businesses up to \$500 billion.
- As soon as practicable, but in no case later than 10 days after the date of enactment, the Secretary shall publish procedures for application and minimum requirements.
- The Secretary may enter into agreements to make loans to 1 or more eligible businesses if the Secretary determines that, in the Secretary's discretion,
 1. The applicant is an eligible business for which credit is not reasonably available at the time of the transaction,
 2. The intended obligation by the applicant is prudently incurred,
 3. The loan is sufficiently secured or is made at a rate that reflects the risk,
 4. The duration of the loan is as short as practicable and in no case longer than 5 years,
 5. The agreement provides that the eligible business will not repurchase its securities if listed on an exchange,
 6. The agreement provides that for at least 12 months after the loan is repaid, the business will not pay dividends or distributions,
 7. Until September 30, 2020, the business will maintain its employment levels as of March 24, 2020 to the extent practical, and in no case will reduce employment by more than 10%,
 8. The business must have incurred or is expected to incur losses such that the continued operations of the business are jeopardized.

ASSISTANCE FOR MIDSIZED BUSINESSES

- The Act instructs the Secretary to endeavor to seek the implementation of a program or facility that provides financing to banks and other lenders that make direct loans to eligible businesses, including nonprofits, with between 500 and 10,000 employees. Such loans would be subject to an interest rate not higher than 2%. No payments of interest or principal would be due for 6 months.
- An eligible borrower applying for a loan shall make a good-faith certification that
 1. The uncertainty of economic conditions as of the date of the application makes necessary the loan request to support the ongoing operations,
 2. The funds will be used to retain 90% of recipient's workforce at full compensation and benefits until September 30, 2020,
 3. The recipient intends to restore not less than 90 percent of the workforce which existed as of February 1, 2020, and to restore all compensation and benefits to the workers no later than 4 months after the termination date of the public health emergency,
 4. The applicant is a U.S. business,
 5. The recipient is not in bankruptcy,
 6. The recipient has a majority of its employees based in the U.S.,
 7. The recipient will not pay dividends while the loan is outstanding,
 8. The recipient will not outsource or offshore jobs.

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19

- **In General**
 - In the case of an eligible employer, there shall be allowed as a credit against the employer FICA match for each calendar quarter an amount equal to 50 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.
- **Limitations and Refundability**
 - Wages taken into Account
 - The amount of qualified wages with respect to any employee which may be taken into account for all calendar quarters shall not exceed \$10,000.
- **Credit Limit**
 - The credit allowed with respect to any calendar quarter shall not exceed the employer Social Security match paid with respect to the employment of all the employees of the eligible employer for such calendar quarter
- **Refundability of Excess Credit**
 - If the amount of the credit exceeds the limitation for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded.
 - Since the new law defers payment of all of the Social Security match until December 31, 2021 and 2022, all of the credit would result in an immediate refund.

ELIGIBLE EMPLOYER

- An eligible employer is any employer
 - 1) Which was carrying on a trade or business during calendar year 2020, and
 - 2) With respect to any calendar quarter, for which either,
 - a) the operation of the trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19), or,
 - b) such calendar quarter is within the period where there is a significant decline in gross revenue. There is a significant decline in gross revenue if (i) beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts are less than 50 percent of gross receipts for the same calendar quarter in the prior year, and (ii) ending with the calendar quarter following the first calendar quarter beginning after a calendar quarter described in clause (i) for which gross receipts of such employer are greater than 80 percent of gross receipts for the same calendar quarter in the prior year.
- Tax Exempt Organizations
 - In the case of an organization which is described in section 501(c) of the IRC and exempt from tax under section 501(a) of such Code, the credit applies if items 1 and 2(a) above apply.

QUALIFIED WAGES

- For employers with greater than 100 employees, wages paid either due to a shut down of the business (2.a. above) or a significant decline in gross revenue (2.b. above).
- For employers with 100 or fewer employees, all wages paid during a shut down of the business (2.a. above) or during the entire quarter in which there was a significant decline in gross revenue (2.b. above).
- Wages do not include any wages taken into account under the Families First Coronavirus Response Act.
- Limitation - qualified wages paid or incurred by an eligible employer with respect to an employee for any period described in such subparagraph may not exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period.

RULE FOR EMPLOYERS TAKING SMALL BUSINESS INTERRUPTION LOANS

- If an eligible employer receives a covered loan under the Paycheck Protection Program, such employer shall not be eligible for the credit under this section.

ADVANCE PAYMENTS ARE AVAILABLE

- The Secretary shall issue such forms, instructions, regulations, and guidance as are necessary—
- To allow the advance payment of the credit, subject to the limitations provided in this section, based on such information as the Secretary shall require,
- To provide for the reconciliation of such advance payment with the amount advanced at the time of filing the return of tax for the applicable calendar quarter or taxable year,
- To provide for the recapture of the credit under this section if such credit is allowed to a taxpayer which receives Paycheck Protection Program loan during a subsequent quarter.
- This section shall only apply to wages paid after March 12, 2020, and before January 1, 2021

SIGNIFICANT INCOME TAX PROVISIONS

MODIFICATIONS FOR NET OPERATING LOSSES

- Net operating losses (NOL's) from 2018, 2019, and 2020 can now be carried back five years to get refunds. They would have been limited to being carried forward to future years.
- NOL carryforwards from 2018 and later years can now offset all taxable income. They would have been limited to offsetting 80% of taxable income before the CARES Act.

MODIFICATIONS FOR LIMITATIONS ON LOSSES – TAXPAYERS OTHER THAN CORPORATIONS

- For 2018, 2019, and 2020, otherwise deductible business losses from passthrough entities and sole proprietorships can now be claimed in full against nonbusiness income by taxpayers other than corporations. Deductible losses could only exceed business income by \$500,000 (\$250,000 if not filing a joint tax return) under prior law.
- Additional losses now allowed could result in net operating losses that can now be carried back five years.

MODIFICATIONS OF LIMITATIONS ON BUSINESS INTEREST

- The deduction for business interest expense was previously limited to the amount of business interest income plus 30% of adjusted taxable income, which is essentially taxable income plus interest, depreciation, and amortization (tax EBITDA).
- Business interest expense can now be claimed to the extent of business interest income plus 50% of tax EBITDA.
- The change to the 50% threshold applies in 2019 and 2020 for taxpayers other than partnerships. The change applies to partnerships in 2020 only.
- Owners of partnerships do not get to deduct additional interest expense in 2019. 50% of the excess business interest that is carried forward to 2020 will be allowed in full in 2020 without regard to these limitations. The other 50% will remain subject to existing limitations.
- Taxpayers will also have the option to calculate their 2020 deductible interest expense based on 50% of their 2019 tax EBITDA. This will help taxpayers whose business income is lower in 2020.

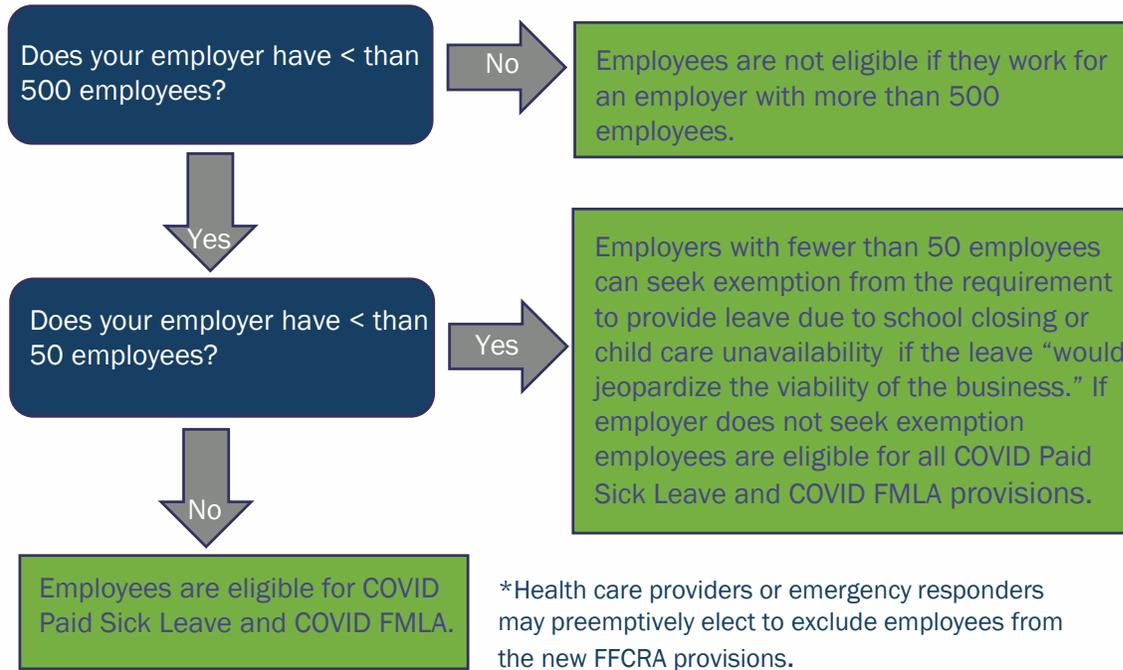
TECHNICAL AMENDMENTS REGARDING QUALIFIED IMPROVEMENT PROPERTY

- Qualified improvement property (QIP) was intended to be treated as having a 15 year life for tax depreciation purposes under the Tax Cuts and Jobs Act (TCJA) of 2017. Due to a drafting error in that legislation, these building improvements could only be depreciated over 39 years.
- This error has now been corrected retroactively to the date of enactment for the TCJA. That means that QIP can be depreciated over 15 years for assets placed in service in 2018 and later (and in late 2017 in limited cases).
- The most important aspect of this change is that 15 year depreciable property is eligible for 100% bonus depreciation. Qualifying assets can be written off in 1 year instead of 39.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

SUMMARY OF FFCRA – PAID LEAVE AND FMLA

WHO IS ELIGIBLE?



Tax Credits for Employers: Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. This includes Paid Sick Leave and FMLA. Qualifying wages are defined as those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Tax credits also extend to amounts paid or incurred to maintain health insurance coverage.



The Families First Corona Virus Response Act (FFCRA) will take effect April 1, 2020. Provisions will apply from effective date through December 31, 2020.

COVID PAID LEAVE PROGRAMS

Paid Sick Leave

- Employee is to receive regular pay for 10 days, capped at \$511/day and \$5,110 in the aggregate, if they are subject to isolation or quarantine order, advised by healthcare professional to self quarantine, or experiencing symptoms and seeking medical care.
- Employee is to receive 2/3 regular pay rate for 10 days, capped at \$200/day and \$2,000 in the aggregate, if they are caring for an individual who is quarantine, caring for a child due to school or childcare provider closure, or any other “substantially similar condition” specified by the Secretary of Health and Human Services.
- Full Time employees are to receive up to 80 hours of paid sick leave; Part Time employees are granted leave equivalent to their average hours worked in a two-week period.
- Available for immediate use, regardless of how long the employee has been employed.
- This paid leave does not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.

FMLA Amendment

- Employees may be eligible for up to 12 weeks of FMLA provided to employees who have worked at least 30 days and who are unable to work onsite or telework because they have to care for a child (under the age of 18) due to school or childcare provider closure.
- The 10 days can be unpaid – however an employee can use employer provided vacation or two weeks of Paid Sick Leave followed by up to 10 weeks of paid FMLA.
- After the initial 10-day unpaid period employer must pay full-time employees 2/3 the employee’s regular rate for the number of hours the employee would have normally worked. Limits on pay per employee are \$200/day and \$10,000 in the aggregate.
- Employers with more than 25 employees are to restore employees to position held prior to the leave. Employers with less than 25 employees are to make reasonable efforts to restore employee to prior or equivalent position.

SBA ECONOMIC INJURY DISASTER LOAN PROGRAM (EIDL)



SBA'S ECONOMIC INJURY DISASTER LOAN PROGRAM (EIDL)

- Makes low-interest loans from U.S. Treasury available in federally declared disaster areas
- Not like traditional SBA loans
- Provided directly by SBA – not outside banks
- Intended to help you meet necessary financial obligations that you could have met had the disaster not occurred
- Provides relief from economic injury caused directly by the disaster and permits you to maintain a reasonable working capital position
- Not intended for expansion - does not replace lost sales or revenue
- No cost to apply
- No obligation to take the loan if offered
- Applicants can have an existing SBA Disaster Loan and still qualify for an EIDL
- New EIDL cannot be consolidated with previous disaster loans



U.S. Small Business
Administration



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CAUSES FOR ELIGIBILITY

Directly
impacted by
disaster

The applicant business must have a physical presence in the declared disaster area. An applicant's economic presence alone in a declared area does not meet this requirement.

NOT due to
economic
downturn

Business offering
services directly
related to businesses
in the declaration
zone

Example: A restaurant may be eligible as well as third party suppliers and contracted cleaning company.

*Note: All U.S. states and territories have been declared disaster areas and are eligible to apply.



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ELIGIBLE ORGANIZATIONS

- Small Businesses
- Small Agricultural Co-ops
- Small Aquaculture Businesses
- Most Private Non-Profit Organizations

NOTE: SBA defines "small business" by NAICS code. The size standard is usually stated in number of employees or average annual receipts. The definition of "small" varies by industry.

To determine if the size of your organization qualifies visit: www.sba.gov/document/support-table-size-standards.

INELIGIBLE ORGANIZATIONS

- **Agricultural Enterprises:** If the primary activity of the business (including its affiliates) is as defined in Section 18(b)(1) of the Small Business Act, neither the business nor its affiliates are eligible for EIDL assistance.
- Religious Organizations
- Charitable Organizations
- **Gambling Concerns:** (Ex: Concerns that derive more than 1/3 of their annual gross revenue from legal gambling activities)
- **Casinos & Racetracks:** (i.e., businesses whose purpose for being is gambling (e.g., casinos, racetracks, poker parlors, etc.) are not eligible for EIDL assistance regardless of 1/3 criteria above.



TERMS AND LIMITS

- Up to \$2 Million
 - Eligibility for these working capital loans are based on the size (must be a small business), type of business, and its financial resources
 - Actual amount loaned to the business is determined by SBA to be the business's actual economic injury combined with the business's financial need
- Interest rates: 2.75% Non-profit rate, 3.75% Small business rate
- Term length – up to 30 years
- Loans can be used for:
 - Fixed Debts
 - Accounts Payable
 - Payroll
 - Other Bills – that could have been paid had the disaster not occurred
 - Not intended to replace loss sales, profits, or expansion
- Collateral requirements:
 - Greater than \$25,000 loan requires collateral
 - Real estate can be used
 - Personal Guarantee
 - *SBA will not decline a loan for lack of collateral, but requires borrowers to pledge what is available*

APPLYING FOR THE LOAN

- **Basic requirements:**
 - Credit History: Applicants must have a credit history acceptable to SBA.
 - Repayment: SBA must determine the applicant business has the ability to repay the SBA loan.
 - Eligibility: The applicant business must be physically located in a declared state and suffered working capital losses due to the declared disaster. Personal net worth will also be considered.
- **Documents needed:**
 - Completed SBA loan application (SBA Form 5)
 - Tax Information Authorization (IRS Form 4506T) for the applicant, principals, and affiliates
 - Complete copies of the most recent Federal Income Tax Return
 - Schedule of Liabilities (SBA Form 2202)
 - Personal Financial Statement (SBA Form 413)
 - Other Information may also be requested
- **Other information that may be requested:**
 - Complete copies, including all schedules, of the most recent Federal Income Tax Return for principals, general partners or managing member, and affiliates (see filing requirements for more information)
 - If the most recent Federal Income Tax Return has not been filed, a year-end profit-and-loss statement and balance sheet for that tax year
 - A current year-to-date profit-and-loss statement
 - Additional Filing Requirements (SBA Form 1368) providing monthly sales figures



WHERE TO APPLY

- Visit SBA's secure website: <https://disasterloan.sba.gov/ela>
- Disaster loan information and application forms may also be obtained by calling the SBA's Customer Service Center at 800-659-2955 (800-877-8339 for the deaf and hard-of-hearing) or by sending an email to disastercustomerservice@sba.gov
- Decision will arrive in roughly 2 to 3 weeks from the time the application was submitted.
- The biggest reason for delays in processing is due to missing information.
- If more funds are needed, applicants can submit supporting documents and a request additional funds.
- If less funds are needed, applicants can request a reduction in the loan amount.
- If the loan request is denied, the applicant will be given up to six months to provide new information, and submit a written request for reconsideration.

PEASE, CPAs CONTACTS

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