Sexual Harassment:

What it is and what you can do about it



Preface

Perhaps it happened again this morning. One of your coworkers told another off-color joke before staff meeting. Maybe he or she didn't mean anything by it, but over time you have become aware that you are just not comfortable with the constant sexual banter. You wonder what you can do about the situation without making it a big deal. Or conceivably, you have experienced or witnessed a more severe form of harassment such as verbal abuse or bribery for sexual favors. Maybe you are a co-worker or supervisor who has been asked to help resolve such a situation. Or, just possibly, someone has approached you concerning your own behavior.

The law prohibits sexual harassment in the workplace and requires that organizations develop and publish procedures for reporting and resolving harassment as well as other discrimination issues. In recent years, changes in legislation and case law, the proliferation of class action complaints, and intrigues created in the media have created new understandings of the impacts of sexual harassment, as well as some ambiguity concerning appropriate behavior in the workplace.

The consensus is that sexual and other kinds of harassment are forms of intimidation or abuse of power. For the most part, in the Goddard culture there is clear delineation of power between supervisors and subordinates, between civil servants and contractors, and between new hires and longer-term employees. Insecurity or uncertainty in times of reorganization and significant workplace changes can exacerbate abuses of power and intimidation of lower ranking employees. Center management is committed to maintaining a work environment that fosters the full productivity of all its employees and contractors. Management recognizes that an understanding of and commitment to diversity here at Goddard are necessary to achieve the Center's missions.

This document seeks to update Goddard policy, clarify some frequently raised issues, and serve as a tool for the prevention of sexual harassment.

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This brochure is also published at http://eeo.gsfc.nasa.gov

Goddard Policy Statement



National Aeronautics and Space Administration Goddard Space Flight Center

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ANNOUNCEMENT

SUBJECT: Prohibition of Sexual Harassment in the Workplace

Discrimination on the basis of color, race, religion, sex, national origin, age, or disability is unlawful, and, therefore, unacceptable. Sexual harassment is a form of discriminaton and will not be tolerated. Specifically, the Equal Employment Opportunity Commission (EEOC) states:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Key elements in this definition are *unwelcome* and *of a sexual nature*. To protect the mutual interests of the Center and its employees, the following guidelines must be followed:

- Goddard employees are prohibited from abusing their positions by suggesting that a subordinate do any personal favor in order to remain in their good standing. This clearly prohibits unwelcome sexual advances by any supervisor towards any employee; and
- Each individual should take responsibility for maintaining a work atmosphere in which employees do not engage in conduct which is offensive to co-workers.

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Goddard Policy Statement

An offensive or hostile environment can be created by unwelcome verbal, nonverbal, and physical behavior of a sexual nature. Examples include unwelcome suggestive remarks, sexual insults, innuendos, jokes and humor about sex or gender specific traits; sexual propositions; unwelcome suggestive or insulting sounds, leering or ogling, whistling, obscene gestures, and obscene graphic materials; unwelcome cornering, touching, pinching, brushing the body, and actual or attempted rape or assault.

If you feel you have experienced or witnessed an incident of sexual harassment, report it immediately, before it becomes severe or pervasive, so that it can be stopped. The Center will treat all incidents of harassment as serious misconduct and will handle them in accordance with established standards of employee discipline. Retaliatory action against an employee who charges sexual harassment is also illegal and will not be tolerated.

If you need assistance in addressing a sexual harassment situation in your organization, please call the Equal Opportunity Programs Office (x6-7348). Every effort will be made to ensure confidentiality in the investigation of allegations of sexual harassment.

Edward J. Weiler Director

Definition: What is Sexual Harassment?

The Civil Rights Act of 1964 (§.703 of Title VII) defines sexual harassment as "unsolicited verbal comments, gestures, or physical contacts of a sexual nature which are unwelcome."

Equal Employment Opportunity Commission (EEOC) expanded that definition in guidelines set forth in Code of Federal Regulations (29 CFR §1614.11(a)) which state that:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute harassment when:

- Submission to such conduct is made a term or condition of employment;
- 2. Submission to or rejection of such conduct by an individual is used as a basis for decisions affecting that person; or
- 3. Such conduct has the purpose or effect of unreasonable interference with an individual's work performance or creating a hostile, intimidating, or offensive working environment.

This definition identifies two types of sexual harassment: *quid pro quo* and hostile or offensive work environment. Most people recognize *quid pro quo* harassment immediately. It corresponds to parts "1" and "2" above. It has direct and often immediate impact on a person's career. For example, if a supervisor tells a subordinate he or she will get a promotion or training in exchange for sexual favors, it is harassment. It is also harassment if the employee refuses to comply with the demand and the supervisor violates merit practices by limiting career development opportunities such as promotion, training or special assignments, in retaliation.

Hostile or offensive environment harassment is often more difficult to identify. Examples of this type of harassment include off-color jokes, posters or calendars featuring partially clad or nude persons, questionable or obscene E-mail messages, inappropriate comments from co-workers, and hazing

Definition: What is Sexual Harassment?

of a sexual nature. In hostile environment cases, the EEOC guidelines define the primary question as whether or not the conduct "unreasonably interfered with an individual's performance" or created "an intimidating, hostile, or offensive work environment." In these cases, the standard of judgment rests with the concept of what a "reasonable" person would consider hostile. Factors taken into account are: 1) whether the conduct was verbal or physical or both; 2) how frequently it occurred; 3) whether the conduct was blatantly hostile; 4) whether the alleged harasser was a co-worker or supervisor; 5) whether others joined in the harassment; and 6) whether the harassment was directed at more than one person. Each case is different and requires an assessment of the totality of circumstances.

Sexual Harassment v. Sex Discrimination

Sexual harassment is considered to be a form of sex discrimination under Title VII of the Civil Rights Act of 1964. The basis for this determination is that actions of sexual content directed toward an individual would fall within the definition of differential treatment based on sex. Needless to say, not all forms of sex discrimination can be placed under the heading of sexual harassment. Yet it is sometimes difficult to make a proper separation because many situations leading to sex discrimination will involve some type of interaction between the sexes that will at least suggest overtones of sexuality, sex roles, gender stereotypes, or sexual behavior.

When sexual activity is brought into the workplace or educational setting, women can tell the difference between being sexually harassed and consensual activity—just like a person who is handing over money can tell the difference between a gift and being robbed.

> –Camille Herbert Professor of Law at Ohio State

Myth v. Reality

Myth	Reality
Sexual harassment is rare.	It touches the lives of 40 to 60 percent of working women and similar proportions of female students in colleges and universities. While not as common, men can also be victims of sexual harassment.
The seriousness of sexual harassment has been exaggerated; most so-called harassment is just trivial and harmless flirtation.	Sexual harassment is a power play that uses sexuality to degrade another person. Research shows that women who have left their jobs to avoid harassment experience serious psychological and health-related problems.
If an employee asks another employee for a date, this could be grounds for sexual harassment charges.	As long as there is no coercion, asking another employee for a date should not constitute harassment. However, continued asking or retaliation for a negative response can be considered harassment. When a person makes it clear that sexual content in the relationship is not welcome, his or her wishes must be respected.
Many women make up and report stories of sexual harassment to get at someone who may have angered them.	Research shows that less than 1% of complaints are false. In fact, many victims never report harassment at all.

Myth v. Reality

Myth	Reality
Women who are sexually harassed bring it on themselves by the way they dress or act.	Studies have shown that sexual harassment victims vary in physical appearance, type of dress, age and behavior.
Women who enter into a pre- dominately male field should expect to put up with rough language, dirty jokes, and sexu- al hazing.	What usually happens when one woman or a small number of women begin work in an all- male environment is that men escalate their foul language or sexual conduct as a way of excluding the newcomers. Intensified, continuing sexu- ally directed conduct has been found to be sexual harassment by the courts.
Sexual harassment is a woman's issue.	Sexual harassment is a power issue. At this point in our work environments, men are more likely to be in power positions. In FY's 2002 & 2003 nearly 15% of the sexual harassment com- plaints filed were filed by men.
lf you ignore harassment, it will go away.	It won't. Harassers use harassment to boost their self- esteem. Chances are they will not stop of their own volition.

Notes

Based on research done by the American Psychological Association, 750 First St. NE. Washington DC 20002-4242. 202-336-5700.

Observations on the effects of power on sexual conduct in organizations were made by Rosabeth Moss Kanter in *Men and Women in the Corporation*.

General Principles

These general principles portray a range of workplace behaviors and reactions to them that can help you decide whether a particular behavior is acceptable or sexual harassment. A wide range of experiences, which color individual perceptions, may generate ambiguity within these boundaries. To create and maintain a work environment that fosters the productivity and development of all employees, we need to be sensitive to individual differences and to initiate dialogue on these boundaries when they are ambiguous.

Acceptable behavior includes counseling on performance or communications, normal social interactions, polite compliments, and touching which could not reasonably be perceived in a sexual or threatening way.

Uncomfortable behavior is that which creates discomfort in the recipient or an observer, but which appears to be acceptable to the majority or leaders of the group. Provacative comments on dress, or hugs or kisses routinely given in greeting are behaviors that may fall in this category.

Inappropriate behavior is that which most people perceive as improper in the workplace. It includes sexual jokes, boasting of sexual prowess, violations of personal space; and touching someone in a sexually suggestive way. This behavior is situational and whether or not it is harassment depends on the individuals involved as well as on those who witness it. If inappropriate behavior is pervasive, it can constitute a hostile environment and move into an unacceptable range.

Unacceptable behavior includes asking for sexual favors in return for promotion, assignments, travel, or training; making supervisory decisions based on race or gender; sending "hate" mail; and, of course, criminal offenses such as assault or rape.

If You Feel You Have Been Harassed

There is no one way to respond to harassment. Every situation is different and ultimately you must decide on the best course of action. The Equal Opportunity (EO) Programs Office Staff, any of the Goddard EO counselors, or if you are a contractor your Human Resources Office staff, can offer information and advice to help with your choice of action.

There are two things you can be sure of: sexual harassment will not go away by itself and you are not to blame.

Victims of harassment have found a number of strategies to be effective.

If the behavior is in the **unacceptable** range:

- Do what you need to do to keep yourself safe.
- Immediately inform a manager and a designated EO or union official.
- If you are experiencing psychological distress, you may want to consult with a mental health professional such as the Employee Assistance Program counselor here on Center.

If you perceive the behavior to be **inappropriate** in the workplace:

- Say NO to the harasser. Be direct and specific about what is offensive to you.
- If you are not comfortable with a personal confrontation, write a letter that describes the behavior and makes it clear that you want it to stop. Keep a copy, have someone witness it, or send it certified mail.
- Describe exactly what happened. Document the alleged harassment: include dates of incidents, time of day, location, names of the persons involved, and possible witnesses.
- · Document your work: compile copies of your performance

appraisals and accomplishments. The offending person may question your job performance in order to justify his/her behavior.

- Report the incident to a manager.
- Contact an EO official or union representative.

If the behavior is **uncomfortable** for you:

- Discuss your experience with a friend.
- Ask an EO or union official to act as a sounding board.
- Initiate a dialogue or ask a friend or supervisor to join you in dialogue with the person who offended you.

If the behavior is **acceptable**, no action is required.

If You Are A Supervisor Who Has Observed Or Been Approached About Offending Behavior

Supervisors are required by law to take action if an allegation of sexual harassment is made or *if he or she has reason to believe a person is being harassed*. Subsection 1604.11 (d) states that "an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show it took immediate and appropriate corrective action."

Sexual harassment can result in lost productivity, more frequent use of leave, loss of an employee, or legal action. Goddard's supervisors are in the best position to protect employees and the Center from sexual harassment and its consequences. They are aware of their employees' interactions, work performance, and work problems. They are in frequent contact with and have responsibility for managing their immediate employees. They are charged with applying Goddard's policies to foster an environment free of discrimination and harassment.

To create a positive workplace climate, a supervisor must:

- Emphasize to all employees that sexual harassment will not be tolerated.
- Advise all employees what kinds of behaviors are illegal.
- · Ask employees to report offensive conduct.
- Inform all employees what to do if they feel harassed.
- Treat all allegations of harassment seriously.
- Take immediate corrective action when you witness an employee engaged in harassment.
- Outline the possible consequences of harassment such as reprimand, suspension or even dismissal.
- Set an appropriate example of professional work behavior.

If an employee comes to you with an allegation of sexual harassment, you are required to take them seriously and follow-up. Recommended steps you can take are:

- a. Defuse the situation by listening to the allegation and responding seriously. Promise nothing beyond a thorough review of the facts.
- b. At any time feel free to contact the Equal Opportunity Programs Office for advice.
- c. GET THE FACTS. Identify exactly what happened. Who was involved? Were there witnesses? What was the impact on the work environment or an employee's performance? Avoid hearsay by going directly to the source and eyewitnesses. Maintain confidentiality and document your sources and conclusions.
- d. STAY NEUTRAL: Avoid drawing conclusions before you have fully researched the allegations. Treat both the accused and alleged victim with respect. False allegations of sexual harassment, as well as sexual harassment, are subject to disciplinary procedures.
- e. Ascertain what happened and compare the circumstances to what is prohibited by law or Goddard policy.
 - If the facts remain contradictory or confused:
 - Do not accept the unsubstantiated word of one party over another.
 - At a minimum, advise the person against whom the complaint was made to engage only in work related interactions. It does not matter whether the alleged harasser thinks his or her behavior was "harmless" or "misunderstood," chances are it was <u>not</u> work-related.
 - If you determine that the behavior is either **unacceptable** or **inappropriate**:
 - Protect the victim by removing the source of misconduct and by restoring unlawfully denied opportunities, employment benefits, or income.
 - Take corrective action in accordance with Center Policy. Seek advice from the Equal Opportunity Programs Office and/or Human Resources.

- If the behavior appears to be **uncomfortable** for the victim, generate dialogue between both parties with the aim of clarifying boundaries, increasing mutual respect for differences, and improving working relationships in the group.
- If you perceive the behavior to be **acceptable**, share your perceptions with both parties and explain why. Mediate to promote understanding of individual differences and establish clear behavioral boundaries.
- f. If a contractor on a contract that your organization oversees accuses one of your employees of harassment:
 - Advise your employee of the allegations and suggest that he or she stop the offending behavior pending resolution of the allegations.
 - Work with the appropriate contract management officials in pursuing steps (a) through (e) above.
 - Take appropriate corrective action.
- g. If you observe offensive or harassing behavior:
 - · Stop it immediately.
 - Take corrective action.
 - Follow up to ensure resolution.

If You Witness Or Hear About Behavior That May Be Harassment

It's possible that you, as an observer or as a friend or confidant of either a victim or accused harasser, may be able to help prevent sexual harassment. As a co-worker, it's important that you treat allegations of sexual harassment seriously. Listen to discern what actually happened and what was the impact of the behavior; offer to intervene and support if appropriate; maintain confidentiality when feasible; and be prepared to report the situation to management if it cannot be resolved between the parties involved.

- a. If you are approached by a person who feels harassed or offended:
 - · Listen attentively to the issues raised.
 - If the behavior is unacceptable,
 - Encourage the recipient to seek help from a supervisor or through the EO complaint process.
 - Offer to accompany him or her in talking with management.
 - Inform management, if appropriate.
 - Refer the person for counseling, if he or she is experiencing distress.
 - If the behavior is inappropriate,
 - Encourage your co-worker to approach directly or send a letter to the offending person in order to make clear that the behavior is offensive.
 - Offer to accompany your co-worker to meet with either the offending person or a supervisor.
 - If the behavior is **uncomfortable** for your co-worker, but generally **acceptable**,
 - Share why you believe the behavior to be acceptable.
 - Encourage him or her to discuss the issues with the offending person.
 - If you perceive the behavior as **acceptable** share your reasons with your co-worker. Offer to help him or her initiate dialogue on boundaries with the offending person.
- b. If you are sought out by a person who has been accused of sexual harassment or feels he or she may have been offensive:
 - If the behavior is unacceptable or inappropriate
 - Advise the offending person to stop.
 - Assist the person by offering to accompany him or her in discussing the issues with management.
 - Advise the offending person to seek mediation help to rebuild a working relationship with the recipient.
 - Inform management, if appropriate.

- If you perceive the behavior to be acceptable whether or not it may be uncomfortable to the recipient
 - Share your perception with the offending person and explain why.
 - Initiate dialogue with this person concerning individual differences and mutuality in establishing relational boundaries.
 - Encourage the offending person to talk with the recipient to discuss the situation.
- c. If you observe harassing or offensive behavior:
 - If the behavior is unacceptable
 - Stop it, if practical.
 - Inform management of the incident.
 - Encourage the recipient to pursue redress through supervisor or EO complaint process.
 - Refer all parties to appropriate support services.
 - Document your observations.
 - If the behavior is inappropriate:
 - Stop the offending behavior, if feasible.
 - Encourage your co-worker to directly approach or send a letter to the offending person in order to make clear that the behavior is offensive.
 - Offer to accompany the recipient to meet with either the offending person or a supervisor.
 - Approach the offending person and indicate what you observed. Urge that person to correct his or her behavior.
 - Encourage both parties to seek appropriate support
 - If the behavior is **uncomfortable** for the recipient, but **acceptable** to you:
 - Share your perceptions with the recipient and serve as a sounding board on the issues raised by your observation.
 - Offer to mediate boundaries between the recipient and offending person.
 - Inform the offending person of the impact of his or her behavior and offer to mediate.

• If the behavior is **acceptable** to both parties, but still **uncomfortable** for you, share your reactions with them and request that they refrain from the specific behavior in your presence.

If You Have Been Accused Of Harassment

Should you be accused of sexual harassment, take the allegations seriously and be aware that management will follow up with fact-finding activity. Seek to understand the issues raised, evaluate the impact of your behavior, and be open to options for resolution. During the fact-finding period, limit your interactions with the person who made the allegations to work-related matters. If not possible, include a third party in your interactions.

- If the behavior you have been accused of is unacceptable by law or organizational policy:
 - Stop it immediately, for your own protection.
 - Seek legal counsel or other assistance so you will know and understand your rights.
- If the behavior is inappropriate:
 - Change it.
 - Apologize, when it is appropriate to approach the person you offended. Recognize also that your apology or explanation may be inappropriate and refrain from approaching the person you offended if asked to do so.
 - Ask a supervisor or friend for advice or to accompany you in talking with the recipient or with management.
 - Seek training opportunities to increase your awareness of harassment and EO issues.
- If your behavior is **uncomfortable** for the recipient, but generally considered to be **acceptable**:
 - Clarify with the other person or a supervisor why the behavior is acceptable.
 - Ask another person or supervisor for advice or to accompany you in discussing the issues with the offended person.
 - Explore ways to accommodate the offended party by modifying your behavior.
 - Talk with the recipient about how the two of you can communicate more effectively in the future.

Complaint Options

Discrimination Complaint Process

The equal opportunity (EO) discrimination complaint process provides a means of resolving individual employment problems or class actions relating to issues involving race, gender, age (\geq 40), disability, ethnicity, color, or religion which of course includes sex harassment issues. When an issue is first raised, the Center will try to resolve it informally – i.e. without making a determination of discrimination. If the issues raised are not resolved through an informal process, the petitioner may progress to the formal stage, which involves sworn testimony and results in a decision as to merit of the case.

In the informal process, any employee or applicant for employment who believes she or he has been harassed or discriminated against should contact an EO counselor within 45 days of the alleged offense. EO counselors are Goddard employees who are trained to resolve issues quickly at the lowest possible organizational level. At the initial interview the counselor will listen to the issues, clarify the basis of the complaint, inform the petitioner of his or her rights, and provide information on the options available for seeking resolution. After the initial interview, the aggrieved person can choose between either the EO counseling or "mediation (alternative dispute resolution process)" process to seek resolution to the issues raised.

If the counseling or mediation options do not result in a resolution of the issues raised, the petitioner may file a formal EO complaint. The formal process must be initiated within 15 days of the termination of the informal process. The EO counselor will provide a form and specific information needed to file. The complainant or a representative, who has been designated in writing, can file the complaint with NASA Headquarters. If the complaint is accepted, NASA Headquarters will initiate a full investigation of the issues and eventually issue an Agency decision on the merits of the case.

Complaint Options

Contingent (contract) workers may qualify as "Federal employees" within the meaning of the anti-discrimination statutes and must contact an EO counselor within 45 days of alleged discrimination by NASA. Contract workers will qualify as "Federal employees" only if they meet certain criteria that show that NASA exercises control over the means and manner of their performance. Contractor employees should also pursue resolution through their company's complaint process.

The process associated with class action complaints is different from that for individual complaints. If you are considering filing a class action complaint, please contact the Equal Opportunity Programs Office (EOPO) (301-286-7348) rather than an EO counselor.

If you'd like more information on the complaint process the EOPO visit our Web site http://eeo.gsfc.nasa.gov or see our brochure entitled **EEO: What you need to know to file** *an EEO complaint*.

If You Are A Bargaining Unit Member

Some of Goddard's unions provide a process for grieving issues of discrimination. If you are a bargaining unit member, you cannot file both a union grievance and a formal EEO complaint on the same issue. Time frames for filing union grievances are often shorter than those for pursuing EEO complaints; so if you are considering that option, check with your union steward.

Complaint Options

If You Are A Contractor

Educate yourself on the processes your company has put in place and make use of them if your direct efforts to stop harassment have failed. In some cases you may be able to file to complaint under the federal EO complaint system (see above). If you feel you are being sexually harassed by a civil service employee, please raise that issue with your management, the harasser's supervisor, and/or the Goddard EO office. If your issues are not resolved, you have the further option to contact the Equal Employment Opportunity Commission local district office or other local agencies, which are listed as resources at the end of this brochure.

Resources

Equal Opportunity Programs Office (EOPO)

Greenbelt

301-286-7348 (Voice/TTY) Wallops 803-824-1412 (Voice/TTY) Homepage: http://eeo.gsfc.nasa.gov

The homepage identifies EOPO staff as well as EO counselors. Similar information is available in the Goddard phone book.

Employee Assistance Program

301-286-6666

Women's Advisory Committee (WAC)

Homepage: http://wac.gsfc.nasa.gov

The WAC homepage introduces committee members, provides up-to-date WAC program information, and offers the latest edition of Women 2 Women, the advisory committee monthly newsletter.

ADR Program Office

301-286-0482 Homepage: http://adr.gsfc.nasa.gov

Office of Human Resources

301-286-5025 Homepage: http://ohr.gsfc.nasa.gov

Labor Relations Office

301-286-9218

Merit Systems Protection Board

202-653-8898

Equal Employment Opportunity Commission (EEOC)

Homepage: http://www.eeoc.gov

Resources

If you are a Contractor, you can file a complaint directly with the EEOC or local agencies

Equal Opportunity Programs Office (EOPO)

Greenbelt 301-286-7348 (Voice/TTY) Wallops 803-824-1412 (Voice/TTY) Homepage: http://eeo.gsfc.nasa.gov

The homepage identifies EOPO staff as well as EO counselors. Similar information is available in the Goddard phone book.

Greenbelt Campus

EEOC: Baltimore, MD District Office 410-962-3932; TTY: 410-962-6065 Prince George's County Human Relations Commission 301-883-6170; TTY: 301-925-5167

Wallops Flight Facility

EEOC: Norfolk, VA Area Office 757-441-3470; TTY 757-441-3578 Virginia Council on Human Rights 804-225-2292; TTY 1-800-633-5510 Homepage: http://chr.vipnet.org/

Goddard Institute for Space Studies

EEOC: New York District Office 212-336-3620; TTY: 212-336-3622. New York City Commission on Human Rights 212-306-7500 Homepage: http://www.nyc.gov/html/cchr/

IV&V Facility

EEOC: Pittsburgh Area Office 412-644-3444; TTY: 412-644-2720. West Virginia Human Relations Commission 304-588-2616; TTY: 304-588-2976. Homepage: http://www.wvf.state.wv.us/wvhrc/

Notes



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