TRID FAQ

TILA/RESPA Integrated Disclosure

Frequently Asked Questions

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GENERAL QUESTIONS

1. What is TRID?

TRID is an abbreviation for the TILA (Truth in Lending Act) and RESPA (Real Estate Settlement Procedures Act) Integrated Disclosure. This new Federal rule replaces the existing Early Truth-in-Lending Disclosure and Good Faith Estimate of Closing Costs (GFE) and combines them into a new disclosure called the Loan Estimate (referred to as the "LE").

The new rule also replaces the Final Truth-in-Lending Disclosure and HUD-1 Settlement Statement and combines them into a new disclosure called the Closing Disclosure (referred to as the "CD").

The rule issued by the Consumer Financial Protection Bureau (CFPB) implements the Dodd-Frank Act requirement that existing TILA and RESPA Disclosures be combined to make it easier for consumers to understand the terms of their mortgage loan and to provide a better means for consumers to shop between competing mortgage loan offers.

2. When did this new TRID rule go into effect?

The new TRID rule is effective for mortgage applications received on or after October 3, 2015. Mortgage applications received on or before October 2, 2015 will use the previous disclosures. Mortgage applications received on or after October 3, 2015 will use the new TRID disclosures.

3. What types of loans are subject to the TRID rule?

The new rule applies to most closed-end consumer credit transactions secured by real property, including lot loans, home equity loans, home improvement loans, refinances and purchase money loans.

HELOCS, reverse mortgages, and loans secured by a mobile home are specifically exempted from the TRID rule.

4. Are investment properties covered by TRID?

The rules regarding coverage of TILA and RESPA for investment properties have not changed with the new TRID rules. If a property is purchased for a "business purpose" (for example, an investment duplex) and the applicant does not intend to live in the property for more than 14 days during the coming year, the loan is for a business purpose. (Reg. Z §1026.3(a)(1) and Official Interpretation 3(a)-4).

5. What is a LE and CD?

The LE is the "*Loan Estimate*" that must be mailed/delivered to the loan applicant within 3 business days after creditor receives the consumer's application.

The CD is the "*Closing Disclosure*" that must be received by the borrower at least 3 business days before loan closing.

6. What is a "*business day*"?

There are two definitions of "*business day*." For timing purposes regarding the Loan Estimate, "*business day*" is any day on which the creditor's offices are open to the public for carrying out substantially all of its business functions (Reg. Z Official Interpretation 19(e)(1)(iii)-1). For example, if a creditor's retail locations are open only Monday through Friday, those are the "*business days*" for purposes of delivering the loan estimate and Saturday and Sunday would not count as "*business days*".

For timing purposes regarding the Closing Disclosure, "*business day*" is all calendar days except Sundays and 10 federal holidays (Reg. Z Official Interpretation 19(f)(1)(ii)-1).

7. How do we "*assume receipt*" of the LE and CD?

You must document the timing of delivery of both disclosures. If the LE or CD is hand delivered, have the applicant sign to verify delivery.

If LE or CD is mailed or e-mailed, make a note in the file when it was sent. This note will be your proof that the disclosure was sent and the applicant received it 3 business days after it was sent. (Note that e-mails are also subject to 3 day "*mailbox rule*", unless the applicant acknowledges receipt of email).

8. Because creditors may not require documentation prior to the borrower's receiving the LE and giving their "*Intent to Proceed*", is the pre-approval dead?

A creditor cannot require documents until the LE has been issued and the borrower has given their intent to proceed. However, if the applicant requests a pre-approval, they can voluntarily provide information necessary for the pre-approval.

9. What and when is "*consummation*" of the loan under Texas law?

"*Consummation*" is the day on which the borrower becomes contractually obligated on a credit transaction. (Reg. Z §1026.2(a)(13)) In Texas, the applicant becomes contractually obligated on the day of closing. Therefore, Texas treats consummation as the day of closing, even on refinances or home equity loans where funding occurs 3 days after closing.

10. Does the LE need to be re-disclosed if the escrows change?

No. Escrows can change any amount without regard to tolerance considerations and changes in escrow do not require re-disclosure of the LE. (Reg. Z §1026.19(e)(3)(iii)(A)-(C)).

11. If the borrower's name does not fit on the limited space provided on LE/CD, can the creditor use an Addendum?

Yes. An Addendum may be used when required information for each consumer and seller does not fit in the space provided. The Addendum should comply with model forms. The CFPB has not released a sample addendum yet. (Reg. Z §1026.38(t)(3), Official Interpretation 38(a)(4); 37(a)(5)-1)

12. Can the Creditor use 4 signature lines on LE/CD?

A signature Addendum page should be added if there are more than 2 borrowers. The Addendum page must contain the liability after foreclosure heading and warning. (Reg. Z Official Interpretation 37(n)-2)

13. If there is more than one borrower, who receives copies of the LE/CD?

Each consumer who has the "right to rescind" under Federal law must receive a separate copy of the LE/CD. If the loan is not rescindable, the creditor may provide the disclosures to any consumer who is primarily liable on the obligation. §1026.17(d).

14. Who has the Right to Rescind under Federal Law?

If the loan is on the consumer's principal dwelling, each consumer who has an ownership interest in the dwelling has a right to rescind.

The following transactions are not subject to rescission:

- **Purchase transaction**
- **Re-finance where the creditor remains the same from the old loan to the new loan**

15. If the borrower and co-borrower on a rescindable transaction share an email address, is it acceptable to send TRID disclosures electronically to one email address?

It is acceptable under both the eSign Act and TRID to send two notices to the same email address: one addressed to each spouse. There is a potential for one spouse to claim they never received the disclosure. To avoid this potential issue, creditors should use paper disclosures for spouses with shared email addresses (or ask them to set up a new email so they each have their own address for purposes of the loan).

16. If the Loan Estimate is sent electronically to the applicant within 3 business days of loan application, does the applicant need to sign an acknowledgment that they have received the LE?

No. The creditor can rely on the "*Mailbox Rule*" that assumes the Loan Estimate was received by the applicant three business days after it was mailed or sent by email. (Reg. Z Official Interpretations 1026.19 (f)(1)(iii))

For example, if the creditor sends the Loan Estimate via email on Monday, the creditor can assume the applicant received it on Thursday.

17. The Loan Estimate is sent electronically within 3 business days of application but the applicant does not respond. Should the creditor also send the Loan Estimate by regular mail?

It is not required under TRID that the applicant acknowledge receipt of the Loan Estimate, although creditors may require it under their own internal procedures. TRID does require proof that the creditor "provided" the Loan Estimate within 3 business days after application.

A creditor "*provides*" the Loan Estimate by delivering or placing it in the mail or e-mail within 3 business days of application. (Reg. Z §1026.19(e)(iii)(A)). The creditor should note in the loan file when, by whom and how the Loan Estimate was provided.

The 7-day waiting period before "*consummation*" commences when the Loan Estimate is "*provided*". 12 CFR §1026.19(e)(iii)(B). For the Closing Disclosure, a creditor can assume receipt by the applicant three days after emailing the

disclosure. If the applicants do not respond, the creditor does not need to send a paper copy. For Auditors, creditors should be able to demonstrate that they "*provided*" the CD and that the creditor was relied on the mailbox rule.

18. In the projected payments table, is the creditor required to disclose the monthly payments of taxes, insurance and assessments even if the creditor is not escrowing for them?

Yes. The creditor must disclose the projected escrow amount even if the creditor is setting up an escrow account. This is true even if the creditor is creating a second lien and the first lien holder has already established an escrow account.

19. Who is entitled to get copies of the Loan Estimate and Closing Disclosure when there is more than one consumer?

Copies of the TRID Disclosures may be provided to any consumer who is primarily liable on the loan. If the transaction is rescindable under Federal law, the LE and CD should be given to each consumer who has the right to rescind – this means anyone who is an owner of the property and lives in the house. This does not include spouses of owners, unless the spouses are owners themselves. Even though non-titled spouses have the right to rescind Home Equity loans under Texas law, they do not have the right to rescind under Federal law. (Reg. Z §1026.17(d), §1026.23)

20. If creditor fails to provide the Loan Estimate within 3 business days of application, what recourse/solution is available to the creditor?

The answer to this question remains unclear. The creditor's failure to provide the Loan Estimate within 3 business days of application is a violation and there is no remedy in the TRID rule.

This same issue arose under the previous RESPA requirements and creditors took two different approaches:

- **The conservative approach – by not providing the LE within 3 business days, the creditor disclosed zero fees. If the LE was not provided within 3 business days, the "solution/cure" for the creditor is to provide the borrower with the loan with no closing costs.**

- **The other approach – There is no cure for this violation. The creditor does not need to refund/pay the borrower's closing costs but must make sure there is not a pattern or practice of this mistake.**

21. Why does the "*purpose*" on a Home Improvement loan show as "*Home Equity*" on the Closing Disclosure?

Under TRID guidelines, there are four possible loan purposes: "*Purchase*", "*Refinance*", "*Construction*", and "*Home Equity Loan*". The rule requires a waterfall analysis to determine the purpose, beginning with the "*Purchase*"- if any of the proceeds are used to purchase the lot, the loan will be labeled a "*Purchase*". This designation is correct even if the loan is a construction loan and the first construction draw will used to purchase the lot.

If none of the loan proceeds will be used to purchase the lot, the next loan designation under the TRID waterfall analysis would be as a "*Refinance*". If any of the loan proceeds are used to extinguish an existing lien on the lot, it is labeled a "*Refinance*".

If the loan is neither a "*Purchase*" nor a "*Refinance*", then the next choice is "*Construction*". If the occupancy permit has not yet been issued on the property, the loan is a "*Construction*" loan.

Finally, if none of the previous three designations apply, the loan will be designated a "*Home Equity Loan*" for TRID purposes. (Reg. Z §1026.37(a)(9)).

22. What is considered a "*changed circumstance*" that would trigger the requirement for a new Loan Estimate in order to change the tolerance?

"*Changed circumstances*" are governed by Reg. Z §1026.19(e)(3)(iv). The following would all be acceptable changed circumstances, allowing the Creditor to re-issue a Loan Estimate and re-baseline tolerances:

- **Extraordinary Event (e.g. hurricane)**
- **Info relied upon by Creditor is subsequently revealed as inaccurate (e.g. borrower overstated income)**
- **New info about transaction is revealed subsequent to application (e.g. property is acreage and the appraisal cost would therefore be higher)**
- **Borrower's creditworthiness changes**
- **Borrower requests changes**
- **Loan Estimate expires (e.g. borrower does not give Intent to Proceed w/in 10 business days of receiving LE)**
- **Interest Rate Lock – interest rate dependent charges can change**

23. If there is a changed circumstance but the creditor has already provided the preliminary Closing Disclosure, what should the creditor do?

A Loan Estimate may <u>not</u> be issued after the Closing Disclosure has been issued nor may it be issued on the same day as the Closing Disclosure. If there is a changed circumstance after the preliminary Closing Disclosure has been issued, the creditor may revise the CD and the revised CD becomes the baseline for tolerance purposes. (Reg. Z §1026.19(e)(iv)(4))

24. What date should be shown on the "*Date Issued*" field on the Loan Estimate and Closing Disclosure?

The "*Date Issued*" is the date the creditor delivers the Loan Estimate to the applicant. For example, if the LE is sent electronically to the applicant on August 14, then August 14 should be the date issued, even if the applicant does not acknowledge receipt until August 15. If the LE is mailed on August 14, the date issued is August 14, even if the applicant does not receive the disclosure for several days. If the disclosure is hand-delivered on August 14, the disclosure date is August 14. (Reg. Z §1026.37(a)(4) and §1026.38(a)(3)(i))

25. If the creditor will require the current year's taxes to be paid by the borrower at closing but that expense is not disclosed or is under-disclosed on the Loan Estimate, is there a tolerance violation?

No. There was initially disagreement in the mortgage industry about whether property taxes were subject to good faith tolerance requirements. In February of 2016, the CFPB clarified that Property Taxes are not subject to any tolerance limitations. The CFPB also corrected a typo in the Supplementary Information to the TILA-RESPA Final Rule to clarify the ambiguity.

LOAN ESTIMATE

26. How can the creditor prove they allowed the borrower to shop?

For a settlement service required by the creditor but one for which the applicant can shop, the creditor lists the service in the Section C of the Loan Estimate- "Services You Can Shop For" on the Loan Estimate and provides the applicant with a Written List of Settlement Service Providers (Reg. Z § 1026.19(e)(3)(ii)(C) and (e)(1)(vi)(C)).

The Written List of Settlement Service Providers should have at least one service provider for each service for which the applicant is allowed to shop. If the applicant chooses a service provider from the list, that fee is subject to a 10% tolerance (Reg. Z §1026.19(e)(3)(ii)). If the applicant chooses their own service provider not on the list, the creditor is not bound by the fee listed on the Loan Estimate and the fee can vary any amount without regard to tolerance issues (Reg. Z §1026.19(e)(3)(iii)(D)).

By listing the fee as a service the applicant CAN shop for on the loan estimate, and providing the Written List of Service Providers to the applicant, the creditor has shown that they allowed the applicant to shop.

27. What if the creditor does not know if a survey will be needed when they provide the Loan Estimate?

If a creditor requires a survey and chooses the survey company for the applicant, the applicant was not allowed to shop. This is true regardless of whether a creditor has established relationships with any particular survey company.

A creditor should include the survey fee in the loan estimate. If no new survey is needed, the estimate for the survey fee won't be included in any tolerance calculation. (Comment 19(e)(3)(ii)-5).

If a creditor requires a survey, lists the survey fee in "Services You Can Shop For", provides a survey company on the Written List of Service Provides, and the applicant to selects their own survey company, the applicant has shopped.

28. What is considered an "Application" that triggers the creditor's duty to provide the Loan Estimate?

Once a creditor has the following 6 pieces of information, they have received an Application under the TRID rule:

1. **consumer's name**
2. **consumer's income**
3. **consumer's SSN**
4. **property address**
5. **estimated value of property**
6. **loan amount sought**

If a creditor wants to show prospective borrowers their potential fees/costs, they should use the optional "Cost Estimate." The Cost Estimate should not resemble the Loan Estimate and should contain this disclosure:

> **"*Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan."***
>
> **(Reg. Z §1026.19(e)(2)(ii); Official Interpretation 19(e)(2)(ii)-**1).

29. How much business must be done at the creditor's office to be considered a "*business day*" for purposes of the LE?

Activities that indicate the creditor should count the business day include availability of personnel to make to loan disbursements, open new accounts and handle credit transaction inquiries.

Activities that indicate the creditor is not open include a creditor merely having its customer-service windows open only for limited purposes as deposits and withdrawals, bill paying, and related services.

30. When can the creditor reset tolerance baselines when a fee changes in the 10% tolerance bucket?

Only when a changed circumstance has pushed fees in the 10% bucket cumulatively beyond 10% is the creditor allowed to reset tolerance baselines. (Reg. Z Official Interpretations 19(e)(3)(iv)(A)-1.ii)

For example, assume that a creditor's 10% tolerance bucket has a total of $400 in fees on the Loan Estimate. Changed circumstances push fees in that bucket up to $430. Because the fees have not changed by more 10%, the creditor must compare the final fees in 10% bucket to the $400 initially provided. The creditor is allowed to reissue a Loan Estimate but cannot reset tolerance baselines – so the creditor must compare final fees with the initial Loan Estimate, not the revised Loan Estimate.

In our example, if changed circumstances pushed fees in the 10% bucket to $450, the creditor can reset tolerance baselines and re-issue a Loan Estimate with $450 as the new baseline for the 10% tolerance bucket.

31. What happens if the creditor discloses a credit on the Loan Estimate for a particular service, but the fee for that service is later reduced or eliminated?

A creditor may not reduce the credit to the borrower initially disclosed, even if the cost of the service the credit was meant to pay for is reduced or eliminated. (Reg. Z Official Interpretation 37(g)(6)(ii)1&2)

32. Does aggregate adjustment need to be shown on LE (Section G)?

No, it should not be shown. "*The aggregate escrow account adjustment required under §1026.38(g)(3) and 12CFR 1024.17(d)(2) is not included on the Loan Estimate.*" (Reg. Z Official Interpretation 37(g)(3)-2)

33. If there is a surprise recording fee at closing (such recording a previously unknown Power of Attorney) and the extra recording charges (which are in the 10% tolerance bucket) exceed tolerance limitations, is the creditor required to credit the borrower with the amount of the increased cost?

Probably not. Recording fees are included in the 10% tolerance bucket and are cumulative. If we assume total fees in the 10% bucket are $500, including recording fees of $100 and a $34 Power of Attorney recording charge is added, the creditor would still be in tolerance (10% of $500 = $50, not 10% of $100).

If the usage of the Power of Attorney is considered a "changed circumstance" the creditor may either revise the Loan Estimate (if the Closing Disclosure has not already been issued) or revise the Closing Disclosure (if it had already been issued),

Reg. Z §1026.19(e)(4) allows the creditor to reset tolerance baselines on a revised Closing Disclosure when the preliminary Closing Disclosure has already been delivered to the borrower.

34. Can a mortgage broker prepare the Loan Estimate on behalf of a creditor?

Yes, but the creditor remains responsible for the contents and accuracy of the Loan Estimate. (Reg. Z § 1026.19(e)(1)(ii))

CLOSING DISCLOSURE

35. Can the borrower waive the 3 business days review period before consummation?

Technically, yes. If the borrower has a "*bona fide personal financial emergency*", they can close their loan before they have had three business days to review the Closing Disclosure. However, the only example the CFPB has given of a "*bona fide personal financial emergency*" is where the borrower will be foreclosed on and lose their home if they do not close their new loan immediately.

Presumably, any transaction that includes a waiver of the three day review period will be toxic and likely unsellable into the secondary market. Further, it will be scrutinized by regulators.

36. Can a Closing Disclosure be sent out before the 7 business days of the Loan Estimate waiting period has expired – OR – do we have to wait the 7 days, issue the Closing Disclosure, then wait the 3 business days before closing?

There is no prohibition under TRID rules to issuing the Closing Disclosure prior to the 7 day Loan Estimate waiting period.

37. Will investors require alternative Closing Disclosure for Refis/Home Equities?

Fannie Mae encourages creditors to use the alternate Closing Disclosure form for transactions without a seller but will accept the regular Closing Disclosure form for refinance/home equity transactions until the Uniform Closing Dataset (UCD) is implemented in 2017.

38. What happens when fees do not fit onto Page 2 of the Closing Disclosure?

The number of lines in the Loan Costs and Other Costs tables can be expanded and deleted to ensure that the Loan Costs and Other Costs tables fit onto page 2 of the Closing Disclosure. (Reg. Z § 1026.38(t)(5)(iv)(A))

However, items that are required to be disclosed, even if they are not needed (such as Points in the Origination Charges subheading), cannot be deleted. (Reg. Z Official Interpretation 38(t)(5)(iv)-1)

The Loan Costs and Other Costs tables can be disclosed on two separate pages of the Closing Disclosure. (Reg. Z § 1026.38(t)(5)(iv)(B)) When used, these pages are numbered page 2a and 2b. (Reg. Z Official Interpretation 38(t)(5)(iv)-3) For an example of this permissible change to the Closing Disclosure, see form H-25(H) of appendix H to Regulation Z.

39. What happens if a fee changes just before closing?

A fee change before closing does not reset the closing clock except in limited circumstances. In most cases, the creditor can make the correction to the Closing Disclosure and provide the corrected Closing Disclosure to the borrower at closing.

Only in three circumstances does a change trigger a reset of the closing clock:

1. **APR increases by more than 1/8 of 1%**
2. **Prepayment penalty is added**
3. **Loan product changes.**

40. Does a decrease in the APR trigger a new 3 day waiting period?

No. The APR can decrease without resetting waiting periods. Changes to APR are only sensitive to increases in APR. See the CFPB's fact sheet for additional detail (http://files.consumerfinance.gov/f/201506_cfpb_factsheet_will-the-new-mortgage-disclosures-delay-my-closing.pdf).

41. Do we list the Buyer's/Seller's Real Estate Agent on the Closing Disclosure as they are on the contract or how they are listed with their state licensing agency?

The creditor may use the broker's legal name, trade name, if any, or an abbreviation of either, as long as the name used uniquely identifies the broker. (Reg. Z §1026.38(r)-2) Example: legal name is "Alpha Beta Chi Bank and Trust Company, N.A." and its trade name is "ABC Bank" then the full legal name, the trade name or an abbreviation such as "ABC Bank & Trust Co." may be used.

42. How should FHA and VA non-allowable fees be disclosed on the Closing Disclosure?

The FHA and VA non-allowable fees should be disclosed on Page 2 of the Closing Disclosure under the seller-paid column or paid by others column. The seller credits in Section L on Page 3 of the Closing Disclosure is for non-specific seller credits and should not be used to disclose specific seller paid non-allowable fees.

43. Why is the disclosure of title premiums on the Closing Disclosure for purchase money transactions so confusing, especially in Texas?

In Texas, it is customary for the Seller to purchase the Buyer's title insurance AND for the Buyer to purchase the creditor's title insurance at a discounted rate.

When both the owner's title insurance policy and the creditor's title insurance policy are issued at the same time, there is a "*Simultaneous Issue*".

Example from Texas: Buyer purchases $200K home, borrows $160K from creditor. Seller pays for buyer's $200K title policy at a cost of $1,429 and the Buyer pays for his creditor's $160K creditor's title policy at a cost of $100. Title policy premiums are set by the State of Texas and are based off the loan/sales amount and whether there is a simultaneous issue.

Under the Loan Estimate and Closing Disclosure, the CFPB requires these title fees to be disclosed as if there was no simultaneous discount; $1,207. To calculate the Owner's title premium, you must use this formula: (Full Owner's Premium + Simultaneous Issue Premium – Full Creditor's Premium). In this case, that is:

$1,429 + $100 - $1,207 = $322. So the Creditor's title premium is disclosed as $1,207 and the Owner's Title Premium is disclosed as $322. (Reg. Z §1026.37(f)(2)-4)

In Texas, because the creditor is required to misdisclose the title premiums to be paid, the creditor then must make an adjustment so that there is a correct Cash to Close for the borrower and seller. In our example, the borrower will actually pay only $100 for the creditor's title policy but the creditor has disclosed that the borrower will pay $1,207.

Consequently, the creditor must give the borrower a $1,107 credit on the Closing Disclosure ($1,207.00 minus $100.00) to reflect that they will only pay $100. On the seller's side, the seller will actually pay $1,429 for the owner's title policy but only $322 was disclosed, so the Closing Disclosure must charge them ($1,429 – $322) $1,107 to get the correct Cash to Close. (Reg. Z §1026.37(g)(4)-2)

44. For a Purchase Money Transaction, where the seller is paying the Owner's Title Policy (OTP), should the OTP premium go in the seller's or buyer's column?

The general rule is that borrower-paid fees should go in the borrower-paid column and seller-paid fees should go in the seller paid column (Reg. Z §1026.38(f). There is nothing in the regulation that changes this general rule for seller-paid Owner's Title Insurance.

This issue was specifically addressed in a CFPB Webinar, dated May 26, 2015 (https://www.consumercomplianceoutlook.org/outlook-live/2015/TILA-RESPA-Integrated-Disclosures-Rule-5/) – slide 21. In that webinar, the CFPB instructs creditors, in cases where the seller is contractually obligated to pay the owner's title insurance (95% of purchase transaction in Texas), to move the owner's title policy premium to the seller paid column.

45. When a creditor inaccurately disclose the title premiums as required under the TRID rule, how does the creditor give the borrower a credit so the correct Cash To Close is shown on the CD?

In the CFPB webinar from May 26, 2015 referenced above, the Bureau gave three permissible options for giving the borrower a credit to result in the correct cash to close:

- **Credit applied toward any other borrower-paid title fees.**
- **Credit given as a general seller credit on Line L.05, Summaries of Transaction, Page 3 of the CD**
- **A specific credit given on Summaries of Transaction table, labeled "Title Premium Adjustment" or something similar.**

46. When should the creditor use the "Title – " designation on the LE and CD?

Any fees required for the issuance of title insurance or conducting the closing. This would include, for example: title insurance premiums, title escrow fees, title tax certificates, title eRecording fees, title courier fees, any curative work performed to satisfy conditions on Schedule C of Title Commitment, etc.

47. Does the rule allow a creditor to omit all the seller-paid fees from the Closing Disclosure?

No. The Rule generally requires a disclosure of all fees paid in connection with the transaction, whether borrower-paid, seller-paid, or paid by others. That said, the rule allows the Borrower's Closing Disclosure and Seller's Closing Disclosure to be separated. On the borrower's Closing Disclosure, the Seller's Summary of Transaction, Section M and Section N, may be omitted. (Reg. Z §1026.38(t)(5)(v).A)