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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 04-10, Change 4

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Emergency Unemployment Compensation Program Extension and Modification

1. Purpose. To respond to questions about the extension of and modifications to the Emergency Unemployment Compensation, 2008 (EUC08) program and to advise states of a change to Unemployment Insurance Program Letter (UIPL) No. 04-10, Change 3, about states' responsibilities when individuals are entitled to unemployment benefits in more than one state.
2. References. The Unemployment Compensation Extension Act of 2010 (Extension Act), Public Law (P.L.) No. 111-205, enacted July 22, 2010; the Continuing Extension Act of 2010, P.L. No. 111-157; the Supplemental Appropriations Act of 2008, P.L. No. 110-252; Sections 2002 and 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, P.L. No. 111-5; Section 303(a)(1), Social Security Act; UIPL No. 04-01; Nos. 23-08 and 23-08, Changes 1, 2, 3, 4, 5, and 6; No. 07-09; Nos. 11-09 and 11-09, Change 1; Nos. 12-09 and 12-09, Change 1; and Nos. 04-10 and 04-10, Changes 1, 2, and 3.
3. Background. P.L. No. 111-205 modified, in limited situations, the EUC08 requirement that individuals must exhaust all regular UC¹ entitlement before receiving EUC08. As of the date of enactment of the Extension Act, continued payment of EUC08 is permissible when an individual qualifies for regular UC in a subsequent benefit year if the regular UC weekly benefit amount (WBA) payable on that subsequent benefit year is sufficiently lower than the EUC08 WBA, and all of the requirements, specified below, are met.

Individuals may be eligible to continue to receive EUC08 instead of regular UC, but only when the following four "threshold" criteria are met:

- 1) the individual is entitled to EUC08 with respect to a benefit year;
- 2) that benefit year has expired after the date of enactment (July 22, 2010) of the Extension Act;
- 3) the individual has remaining entitlement to EUC08 with respect to that benefit year; and

¹ While the Supplemental Appropriations Act uses the term "regular compensation" to refer to state unemployment compensation, this guidance will, for brevity, use the term "regular UC."

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- 4) the individual would qualify for regular UC in a subsequent (new) benefit year and the regular UC WBA on the new benefit year would be at least either \$100 or 25 percent less than the individual's EUC08 WBA.

States must determine whether these individuals will be paid EUC08 or regular UC by selecting one of four options (State EUC08 Option) specified in UIPL 04-10, Change 3.

Note: This new provision of Federal law is not retroactive, and the selected State EUC08 Option is not subject to appeal by affected individuals. State Appeal Tribunals do not have jurisdiction in this matter.

4. Individuals with Potential Entitlement to Regular UC in another State. For the purposes of this guidance, the "EUC08 State" is the state in which the individual is currently collecting EUC08. The "Regular UC State" is the state(s) in which the individual has potential eligibility for regular UC.

In administering the State EUC08 Options under the Extension Act for individuals who have potential entitlement to regular UC in a state other than the EUC08 State, some new special procedures are required. However, generally, EUC08 States will still continue to follow existing state processes and procedures in advising individuals of potential new entitlement to regular UC in another state, including established state procedures for combined wage claims (CWC). This guidance takes into account the following:

- Only the Regular UC State can accurately determine the WBA for individuals who may qualify for regular UC in that state. Therefore, for those individuals who meet all four threshold criteria, the Regular UC State's EUC08 Option will determine whether or not these individuals continue receiving EUC08.
- As mentioned above, existing state procedures must be followed by the EUC08 State in notifying individuals that they have potential entitlement to regular UC in another state. To continue receiving benefits (in this case, either EUC08 or regular UC) individuals who have potential eligibility in another state must contact the Regular UC State within 10 business days from the date of the notification sent to the individual and the Regular UC State will determine whether they qualify for the State EUC Option.

When an individual has potential eligibility in two or more other states, the EUC08 State will follow existing CWC procedures in allowing the individual to select the "paying state," which will become the Regular UC State. That state must determine the individual's entitlement for regular UC on the basis of wages reported to that state alone and on the basis of combining all states' wages for the individual (if combining wages would increase the WBA) during that state's base period. The Regular UC State will then determine whether the WBA threshold criterion (criterion #4 in Item 3 above) is met, using the CWC WBA if it is higher than the "uncombined" WBA. The Regular UC State (called the "paying state" for CWC purposes) will advise the EUC08 State of whether or not the State EUC Option applies to the individual.

Note: This is a change from what was stated in UIPL 04-10, Change 3 (see Q&A C.2.). In order to qualify under the State EUC08 Option for continued payment of EUC08, an individual must meet all four criteria in only one state, i.e., the "paying state," which is selected by the individual under the existing CWC rules. However,

to continue to receive benefits (either EUC08 or regular UC) the individual must contact the Regular UC State (paying state) within 10 business days, as noted above.

- EUC08 States may only temporarily suspend (within a very limited window of time; i.e., until the end of the week in which the payment “is due”) EUC08 payments pending the Regular UC State’s determination of whether or not the fourth threshold criterion is met (i.e., the new regular UC WBA is at least \$100 or 25 percent lower than the EUC08 WBA). However, if the Regular UC State does not make a prompt determination whether EUC08 payments will continue (and then advise the EUC08 State), the EUC08 State must pay EUC08 when due (based on the previous determination of eligibility) and inform the individual that these benefits may later become overpaid if the individual is not eligible to continue receiving EUC08 under the State EUC08 Option (see UIPL No. 04-01, dated October 27, 2000).
- Regular UC States that have selected either Option A or Option B as the State EUC08 Option must advise the EUC08 State to continue paying EUC08 if the threshold criteria are met. (These states must either defer payment on the regular UC claim or “put wages on hold” depending on the selected State EUC08 Option). (Refer to UIPL No. 04-10, Change 3.)

As previously mentioned, the selected State EUC08 Option is not subject to appeal by affected individuals.

- Regular UC States that have selected Option D as the State EUC08 Option must advise individuals who have been referred by the EUC08 State (and who meet all four threshold criteria) of their option to either continue receipt of EUC08 or establish the new benefit year and begin certifying for regular UC in that state. The individuals must advise the Regular UC State of their option within 10 business days and the state must document the individual’s selected option. Only those states that selected Option D must provide affected individuals a choice of whether to continue EUC08.

Note: The responsibility to advise these individuals of their options lies with the Regular UC State that has selected Option D because: 1) Regular UC States will have the new benefit year claim information necessary to inform individuals of their options, and 2) Regular UC States that selected Option D, will already have established procedures in place to provide all affected individuals in the state this same option.

As previously mentioned, the selected State EUC08 Option is not subject to appeal by affected individuals.

- Administering this new provision will require new data exchanges between states and all states should consider using “UI Mail,” the secure unemployment insurance application on the states’ Interstate Connection (ICON) network for this purpose.

Attachment 2 to this UIPL provides additional information to help clarify the roles of the EUC08 State and the Regular UC State. Attachment 3 to this UIPL lists the state’s selected State EUC08 Options. No State chose Option C.

The EUC08 State must notify (through any existing means used by the state) those individuals who have potential entitlement to regular UC in another state that:

- 1) the benefit year on their claim either has expired or will expire;
 - 2) they have remaining EUC08 entitlement (states may also include the amount of the remaining balance in the individual's EUC08 account);
 - 3) continued receipt of benefits (whether EUC08 or regular UC) requires that individuals contact the Regular UC State within 10 business days;
 - 4) failure to contact the Regular UC State within 10 business days may result in a suspension of EUC08 payments. The EUC08 State may make this notification through any methods currently used by the state to provide similar notifications to individuals receiving benefits;
 - 5) the Regular UC State will determine whether individuals qualify for a new claim and whether they meet the criteria to qualify for the State EUC Option; and
 - 6) EUC08 benefits may become overpaid if the individual does not qualify for the State EUC08 Option (i.e., the regular UC WBA is not at least \$100 or 25 percent less than the EUC08 WBA).
5. Administrative Funding. Each state will receive \$40,000 to cover administrative costs to implement changes under the Extension Act. These funds will be made available with the third quarter above base funds anticipated to be released around the first week in September, 2010.
 6. Interpretation. This document is issued to the states and cooperating state agencies as guidance provided by the Department in its role as the principal in the EUC08 program. As agents of the Federal government, the states and cooperating state agencies shall not deviate from this guidance without the prior approval of the Department. To the extent that the prior guidance (as outlined in 2. *References* above) is inconsistent with this UIPL, this UIPL supersedes that guidance.
 7. Action Requested. State Administrators are requested to provide this guidance to appropriate staff.
 8. Inquiries. Questions should be directed to the appropriate Regional Office.
 9. Attachments.

Attachment 1—Questions and Answers

Attachment 2—Potential Entitlement to Regular Unemployment Compensation (UC) in Another State

Attachment 3—List of Selected State EUC08 Options by Individual State

Questions and Answers

A. Weekly Benefit Amounts – Calculation of Differences

- 1) **Question:** Is rounding permitted by states in determining whether individuals qualify for a WBA that is at least \$100 or 25 percent lower than their EUC08 WBA?

Answer: No. To determine the percent difference between a new regular UC WBA and the EUC08 WBA, no rounding is permitted because the statute makes no provision for rounding. To determine if a new regular UC WBA is at least 25 percent lower than the EUC08 WBA, the following computation is made:

(One minus (new regular UC WBA / EUC08 WBA)). If the result is 0.25 or greater, the individual will continue to receive EUC08, if otherwise eligible. No rounding or truncating is permitted.

Example: A regular UC WBA of \$150 compared to an EUC08 WBA of \$199 is 24.62 percent less (i.e. one minus (150 divided by 199)) and would not meet the threshold criteria triggering the State EUC08 Option. Conversely, the regular UC WBA of \$150 compared to an EUC08 WBA of \$201 is 25.37 percent less and would meet the criteria triggering the State EUC08 Option.

Note: Rounding is not a factor with regard to the \$100 criterion, since states generally round the WBA either up or down in accordance with their state UC law and the result is a whole dollar amount. If the result is not a whole dollar, rounding is not permitted in determining whether the new regular UC WBA is \$100 less than the EUC08 WBA.

B. Requirements for Continued Claims during the “Gap”

- 1) **Question:** In order to receive retroactive EUC08 payments for the “gap” weeks between June 2, 2010 and the enactment of the Extension Act (July 22, 2010), must individuals meet state requirements on ability to work, availability for work, and work search?

Answer: Yes. In order to be eligible for any week of EUC08, individuals must meet state eligibility requirements (including, but not limited to, requirements on ability to work, availability for work, and work search) that apply to regular UC claims. Section 3(c) of the Extension Act specifically amended section 4001(d)(2) of the Supplemental Appropriations Act, 2008 in order to reinforce this point. (See also UIPL 23-08, Change 1, Q&A section H).

- 2) **Question:** If an individual correctly began receiving Trade Readjustment Allowances (TRA) after the expiration of the EUC08 program on June 2, 2010, does the state need to change the payments from TRA to EUC08 and adjust all funding accordingly for weeks of unemployment paid before the enactment of the Extension Act, if the individual is now eligible for EUC08 for those weeks because of the Extension Act?

Answer: Yes, because TRA is payable only on exhaustion of all other compensation, including EUC08. (20 CFR 617.11(a)(2)(v)). The state must make payment adjustments from the TRA grant accounts to the EUC08 grant accounts and submit amended financial reports as necessary.

C. Individuals Who Qualify for Regular UC in another State

- 1) **Question:** How will the EUC08 State know whether individuals met the fourth threshold criterion (i.e., the regular UC WBA is at least \$100 or 25 percent less than the EUC08 WBA) to qualify for the State EUC08 Option in the Regular UC State?

Answer: Once the Regular UC State determines that the WBA criterion is met, it must promptly notify the EUC08 State. Some states that have chosen Option D may not actually establish a benefit year (regular UC claim); however those states must still notify the EUC08 State of the result of their determination or findings. The Regular UC State(s) may contact the EUC08 State via any established or new communications protocols that may be arranged. However, states should consider using the “UI Mail” application on ICON to communicate for this purpose.

- 2) **Question:** What is required of the EUC08 State when individuals have potential entitlement in more than one state?

Answer: The EUC08 State must notify individuals who qualify for regular UC in more than one state that:

- to continue to be eligible for benefits (either EUC08 under its law or regular UC under another state’s law) individuals must “select” a Regular UC State (i.e., the “paying state”) in accordance with existing CWC procedures;
- they must contact that Regular UC State within 10 business days from the date of the notification sent to the individual; and
- the Regular UC State will determine the individual’s actual WBA, on the basis of wages reported to that state alone as well as on the basis of combining wages for the individual from all states where the individual worked in that state’s base period, and advise the individual and the EUC08 State of whether or not they qualify for the State EUC Option, based upon the CWC WBA, if it is higher than the “uncombined” WBA.

Note: The information contained in item 4 of this UIPL also apply to claims filed under the CWC program.

- 3) **Question:** May states suspend payment of EUC08 pending receipt of information from the Regular UC State about the claimants’ new regular UC WBA and continued EUC08 entitlement?

Answer: Only for a limited period (i.e., states may suspend payment only until the last day in the week in which the payment “is due”). States must make timely EUC08 payments consistent with the “when due” requirement of Section 303(a)(1), Social Security Act. States may suspend payment of EUC08 until a determination of eligibility for continued EUC08 is made by the Regular UC State only if the determination is timely. The Regular UC State must advise the EUC08 State of its determination. If the Regular UC State does not make a timely determination whether (or not) EUC08 will continue (states generally have a very limited window of time in which to pay when due), the EUC08 State must pay EUC08 based on the previous determination of EUC08 eligibility and inform the individual that these benefits may be overpaid if it is determined that s/he does not meet the threshold requirements to continue receiving EUC08. (See UIPL No 04-01).

- 4) **Question:** Must states suspend EUC08 payments when individuals fail (within 10 business days) to contact the (other) Regular UC State in which they have potential regular UC entitlement?

Answer: Yes, provided that the EUC08 State has notified the individuals that benefits will be suspended for failure to contact the Regular UC State within 10 business days.

- 5) **Question:** May states that selected Option A file a regular UC initial claim on behalf of the individual claimant?

Answer: Yes, if state law permits the state to file a claim on behalf of the individual. However, the Regular UC State must provide proper notification of the claim that was filed to the individual.

D. Multiple EUC08 Claims/Accounts

- 1) **Question:** An individual has EUC08 accounts with respect to more than one benefit year. Which benefit year is used when applying the State EUC08 Options?

Answer: Only benefit years that expire after enactment (July 22, 2010) of the Extension Act may be used. If an individual received EUC08 on or before July 22, 2010, with respect to a benefit year that has expired or will expire after July 22, 2010, they may qualify for the State EUC08 Option, if otherwise eligible.

- 2) **Question:** A claimant established Benefit Year 1 (BY1), exhausted regular UC on that benefit year, and then began receiving EUC08 based upon it. When the claimant established a second benefit year, payment of EUC08 on BY1 was suspended, and s/he began receiving regular UC on Benefit Year 2 (BY2). The claimant then exhausted the regular UC on BY2, and resumed EUC08 based on BY1 (EUC08 claim was never established on BY2). BY2 now expires after the enactment of the Extension Act, and the claimant has sufficient wages to establish Benefit Year 3 at a WBA that is at least \$100 or 25 percent less than the EUC08 WBA. BY1 expired before enactment of the Extension Act which does not meet the first

criterion threshold. Does the State EUC08 Options provision apply to this claimant, allowing her/him to continue the receipt of EUC08 based upon BY1?

Answer: No. The State EUC08 Options provision only applies to benefit years that expire after enactment of the Extension Act. Since BY1 expired before enactment of the Extension Act, the State EUC08 Options provision does not apply to it. Although BY2 meets the condition of expiring after the enactment (criterion #1), the State Option provision still does not apply because the claimant never established entitlement to EUC08 with respect to BY2 since s/he still has entitlement to EUC08 with respect to BY1.

E. Extended Benefits Paid During the “Gap” Period; Instead of EUC08

1) Question: An individual exhausted regular UC during the “gap” period (June 2, 2010 through July 22, 2010) before enactment of the Extension Act when no new EUC08 claims could be established and s/he began receiving Extended Benefits (EB). The individual continued to receive EB after enactment of the Extension Act and did not receive EUC08 before her/his benefit year (BY1) ends. BY1 now ends after the enactment of the Extension Act. The claimant has sufficient wages to establish a subsequent benefit year (BY2) and the WBA is at least \$100 or 25 percent less than the EUC08 WBA based upon BY1. Does the State EUC08 Options provision apply, allowing the individual to receive regular EUC08 on BY1 instead of regular UC based upon BY2?

Answer: Yes. First of all, because the individual has a new entitlement to a regular UC claim, the payment of the EB must be stopped (Section 202(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970) and the State EUC08 Option must be examined.

- The individual was entitled to EUC08 with respect to BY1 upon exhaustion of regular UC. The receipt of EB instead of EUC08 does not affect the potential EUC08 entitlement based on BY1.
- BY1, upon which the EUC08 claim was based, expired after enactment of the Extension Act;
- the individual has remaining EUC08 entitlement on that benefit year (BY1); and
- the WBA on the new benefit year is at least \$100 or 25 percent less than the WBA on the EUC08 based upon BY1.

Therefore, the individual meets all four of the criteria for application of the State EUC08 Options provision.

Note: This answer only applies to those states that elected to pay EUC08 before EB under section 4001(e) of the Supplemental Appropriations Act, 2008.

F. Changes in Wages and/or Monetary Entitlement for Regular UC

- 1) **Question:** If a state determines that the WBA for regular UC was in error and the corrected WBA changes whether or not the individual qualifies under the State EUC08 Option, must the state correct the error?

Answer: Yes. States must correct erroneous monetary determinations and use the new corrected WBA to determine whether or not the State EUC08 Option applies to the individual. States must establish EUC08 benefit overpayments or issue supplemental payment(s) for any underpayments that may result.

- 2) **Question:** My State has chosen Option A. An individual's benefit year ends after the enactment of the Extension Act and the individual has remaining EUC08 entitlement on that benefit year. The individual becomes eligible for regular UC and the new WBA is at least \$100 or 25 percent less than EUC08 WBA. However, the individual could qualify for a substantially higher WBA if s/he waits to file after the calendar "quarter change" due to the new base period. May the state allow the claimant to choose to wait to file the new regular UC claim until after the quarter change?

Answer: No. Individuals who qualify for the State EUC08 Option must (to continue receipt of EUC08) file a new regular UC claim effective the week following the benefit year exhaustion date. The State EUC08 Option is an exception to the general EUC08 rule that new regular UC entitlement suspends EUC08 payments. The exception only applies (except in an Option D state, where the claimant may elect to not file a new claim) if the individual files a claim for the new regular UC entitlement, and the WBA on that claim is at least \$100 or 25 percent less than the EUC08 WBA. Accordingly, individuals may not continue receiving EUC08 after becoming eligible for new regular UC entitlement if they do not file a new regular UC claim effective the week following exhaustion of the "old" benefit year (except in an Option D state).

- 3) **Question:** My state has selected Option D. An individual who is receiving EUC08 becomes eligible for regular UC when his/her benefit year expires and the new WBA is 30 percent less than the EUC08 WBA. Under Option D, s/he declines to file a new regular UC claim and chooses to continue EUC08. At the next quarter change, due to a change in the state's base period, s/he is now eligible for a new WBA that is only 10 percent and \$50 dollars less than the EUC08 WBA. Is the state permitted or required to terminate the EUC08 payments and require that the claimant commence a regular UC claim to continue receiving benefits (either EUC08 or regular UC)? Alternatively, is the state required or permitted to continue EUC08 payments?

Answer: Once the individual has opted to continue to receive EUC08, the state must continue paying EUC08 until exhaustion or until the individual opts to file a new claim and establishes a new benefit year (which thus terminates any future choice by the individual under the State EUC08 Option).

Note: This result is the same for Options A and B, in that the individual may continue receiving EUC08 regardless of whether subsequent quarter changes increase or decrease the regular UC WBA.

G. Regular UC Entitlement When Benefit Year Has Not Expired

- 1) **Question:** Does the State EUC08 Option apply to individuals with entitlement to a new benefit year in another state (e.g., when individuals have CWC entitlement), even though the current benefit year in the EUC08 State (on which the EUC08 benefits were paid) has not expired?

Answer: No. The State EUC08 Option does not apply because the current benefit year has not expired. EUC08 must be suspended because the individuals are no longer exhaustees of regular UC, and existing state procedures must be followed to assist and advise these individuals of their claim status.

H. Waiting Week Requirement for Regular Compensation

- 1) **Question:** States that selected Option A will establish a claim for regular UC but defer payments when individuals qualify for relief under the State EUC08 Option. My state requires that a waiting week be served before establishing a claim for regular UC. Does this mean Option A is not available to the state if the waiting week cannot be served after individuals exhaust EUC08?

Answer: States will not require individuals to serve a waiting week under the State EUC08 Option A until after exhaustion of EUC08. If this delay in serving the waiting week is not permitted under the Regular EUC State's UC law, the state may not choose Option A.

Potential Entitlement to Regular Unemployment Compensation (UC) in Another State

Coordination of Emergency Unemployment Compensation, 2008 (EUC08) with Regular UC for Individuals Who Have Potential Regular UC Entitlement in Another State		
Regular UC State Option:	EUC08 State Actions	Regular UC State Actions
A ¹ The State will defer regular UC payments; see UIPL 04-10, Change 3	<ul style="list-style-type: none"> Notify individuals with potential entitlement to regular UC in another state that in order to continue receipt of benefits (either EUC08 or regular UC) they must contact the Regular UC State within 10 business days from the date of the notification sent to the individual (follow guidance in Item #4 of this UIPL). 	<ul style="list-style-type: none"> Once contacted by the claimant, determine whether the regular UC WBA is at least \$100 or 25 percent less than the EUC08 WBA. If the criterion is met, defer regular UC payments and advise the EUC08 State to continue EUC08, If not met, advise the EUC08 State to stop EUC08 payments; regular UC may commence.²
B ¹ The State will put wages on “hold;” see UIPL 04-10, Change 3	<ul style="list-style-type: none"> Same as above 	<ul style="list-style-type: none"> Once contacted by the claimant, determine regular UC eligibility and whether WBA is at least \$100 or 25 percent less than the EUC08 WBA. If the criterion is met, “put wages on hold” and advise the EUC08 State to continue EUC08 payments If not met, advise the EUC08 State to stop EUC08 payments; regular UC may commence.²
D ¹ The State will provide Affected Claimants the Option to continue EUC08; see UIPL 04-10, Change 3	<ul style="list-style-type: none"> Same as above 	<ul style="list-style-type: none"> Once contacted by the claimant, determine new entitlement and WBA. If the new WBA is at least \$100 or 25 percent less than the EUC08 WBA, provide sufficient information to allow the individual to make an informed choice whether to remain on EUC08.³ Advise the EUC08 State whether or not to continue EUC08 payments.²

1 State EUC08 Options are not subject to appeal by the affected individuals.

2 States may use the ICON “UI Mail” application to communicate.

3 Responsibility for advising individuals of their options under Option D lies with the Regular UC State. Regular UC States have the information necessary to advise individuals of their options and under Option D, these states will be providing such option(s) to all other qualifying individuals in the state.

Attachment 3 to UIPL No. 04-10, Change 4—Selected State EUC08 Options by Individual State

State	Option	State	Option
Alabama	A	Nevada	D
Alaska	A	New Hampshire	A
Arizona	A	New Jersey	A
Arkansas	A	New Mexico	A
California	A	New York	A
Colorado	B	North Carolina	A
Connecticut	A	North Dakota	D
Delaware	A	Ohio	D
District of Columbia	A	Oklahoma	A
Florida	A	Oregon	A
Georgia	D	Pennsylvania	A
Hawaii	D	Puerto Rico	A
Idaho	A	Rhode Island	A
Illinois	A	South Carolina	A
Indiana	A	South Dakota	D
Iowa	A	Tennessee	D
Kansas	A	Texas	A
Kentucky	A	Utah	D
Louisiana	A	Vermont	A
Maine	A	Virgin Islands	A
Maryland	A	Virginia	A
Massachusetts	A	Washington	A
Michigan	D	West Virginia	A
Minnesota	A	Wisconsin	A
Mississippi	A	Wyoming	A
Missouri	A		
Montana	A		
Nebraska	A		

State Counts:

Option A— 43 Option B— 1 Option C— 0 Option D— 9