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October 29, 2014

Stacey Becker

Internal Revenue Service

Room 6526

1111 Constitution Avenue NW.

Washington, DC 20224

RE: Draft Form 1095-B and Instructions

Dear Ms. Becker:

The National Immigration Law Center (NILC) specializes in the intersection of health care and immigration laws and policies, offering technical assistance, training, and publications to government agencies, labor unions, non-profit organizations, and health care providers across the country. For over 30 years, NILC has worked to promote and ensure access to health services for low-income immigrants and their family members.

NILC submits the following comments concerning draft Form 1095-B and the instructions for forms 1094-B and 1095-B. We appreciate that the IRS has released draft forms for comment.

1. The regulations at 26 CFR §1.6055-1(e)(1)(ii) and (iii) state that health insurance issuers and other required entities must report the Taxpayer Identification Numbers (TIN) of the responsible and covered individuals to the IRS. See *also* 26 U.S.C. § 6055. The draft Form and instructions consistently refer to the individuals' social security numbers (SSN), which excludes IRS-issued Individual Taxpayer Identification Numbers (ITIN). The Form and instructions should request a TIN for consistency with the regulations. To assist taxpayers who are not familiar with the term TIN, the first request for a TIN should provide an SSN or ITIN as examples.

The statute's and regulations' acceptance of ITINs, in addition to dates of birth when no ITIN is available, supports the integrity of the mandate that individuals obtain minimum essential coverage by facilitating the IRS's ability to match Forms 1095-B to taxpayers' households. This change also recognizes the intent of Congress and IRS to ensure that individuals who are eligible for health insurance coverage are able to access that insurance coverage despite being ineligible for a Social Security number, as is the case with many lawfully present immigrants.

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2. The regulations at 26 CFR §1.6055-1(e)(1)(ii) provide that a reporting entity is not required to provide a TIN for a responsible individual if that individual is not enrolled in the coverage. Neither the draft form nor the instructions communicate this point, which is an important protection for families with mixed immigration status where the responsible individual may be ineligible for coverage but enrolling a household member, such as a child, who is eligible. If this exception is not made clear, reporting entities will attempt to obtain SSNs from non-applicant immigrant heads of households, who will be deterred from seeking coverage for their family members.

3. Part I of Form 1095-B requests the Responsible Individual's Social Security Number (SSN) or date of birth. We appreciate that the form incorporates the option to provide a date of birth (DOB) for individuals who may not have an SSN, or whose SSN is not readily available. However, the instructions on the use of a date of birth do not state this option clearly.

The instructions say:

**Line 2.** Enter the nine-digit social security number (SSN) of the responsible individual (111-11-1111). See *Information Furnished to Individuals*, earlier, for information on truncating the SSN.

**Line 3.** Enter the responsible individual's date of birth (MM/DD/YYYY) only if Line 2 is blank.

In addition to the discussion above that the form and instructions should request a TIN instead of SSN, and should only require one in the case where the responsible individual is obtaining insurance, the instruction for Line 1 should also indicate that it applies if the TIN is available. The instruction for Line 2 should indicate that the DOB is entered if the TIN is not available.

3. Similarly, the instruction for Part IV, column (b) should change the term to TIN instead of SSN and indicate that a TIN may not be available.

4. The draft Form 1095-B "Instructions for Recipient" are problematic for mixed-immigration status families, who may be deterred by requests for SSNs. The instruction for Part I, Lines 2 and 3 states that "your issuer is required to report your complete SSN to the IRS." This text is followed by an exclamation point over the word CAUTION, and italicized text about the importance of providing SSNs. As noted above, the regulations do not require a reporting entity to report a responsible individual's SSN or TIN if that individual is not covered. The instruction should be rephrased to state: "your issuer is required to report your complete TIN to the IRS, if you have one and are enrolled in the issuer's health plan."

Thank you for your consideration. Please contact me, [lessard@nilc.org](mailto:lessard@nilc.org) or (213) 674-2814, for additional information.

Sincerely,

Gabrielle Lessard  
Health Policy Attorney