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November 3, 2014

Stacey Becker
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

RE:

**Form 1095-A, Health Insurance Marketplace Statement;
OMB Number: 1545-2232**

Form 1095-B, Health Coverage; OMB Number: 1545-2252

**Form 1095-C, Employer-Provided Health Insurance Offer
and Coverage; OMB Number: 1545-2251**

Dear Ms. Becker:

The National Health Law Program (NHeLP) is a public interest law firm working to protect health rights and advance access to comprehensive, quality health care for low-income and underserved people. The oldest non-profit of its kind, NHeLP advocates, educates, and litigates at the federal and state levels.

We appreciate the opportunity to provide comments in response to the draft IRS Forms 1095 A–C and instructions. As requested, the following comments address ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents.

Tax filing requirements and reconciliation

The Affordable Care Act's individual shared responsibility provision requires individuals to have minimum essential health coverage (MEC), qualify for an exemption, or pay a penalty. Tax filers must indicate on the IRS Form 1040 that all members of the tax household had MEC for the full tax year. Issuers send proof of MEC to policy holders and the IRS for each member of the tax

household. In addition, recipients of Advance Premium Tax Credits (APTCs) are required to reconcile overpayments or underpayments at the time of tax filing.

NHeLP recognizes the unique challenges presented by the ACA's tax filing and reconciliation requirements. However, we have concerns and questions regarding how the forms and filing processes will be operationalized.

When and how to use these forms

IRS Forms 1095 A-C all document MEC, but are used in different ways. We are concerned that these reporting forms and processes may be confusing to tax filers, particularly in the 2014 tax year when not all forms will be issued.

- IRS Form 1095-A is issued by Marketplaces and documents MEC obtained through the Marketplace, as well as APTC payment amounts. The information provided in IRS Form 1095-A must be reported in the reconciliation IRS Form 8962 beginning in tax year 2014.
- IRS Form 1095-B is issued by health insurers for plans sold outside the Marketplace and other coverage entities, including government sponsored programs such as Medicaid, as well as employer sponsored coverage. IRS Form 1095-B provides proof of MEC. However, IRS Form 1095-B may not be issued by all health coverage entities for the 2014 tax year, and tax filers are not required to attach this form to their 2014 federal income tax returns.
- IRS Form 1095-C documents large employer coverage and affordability. The IRS does not require employers to issue this form until the 2015 tax year.

Tax filers would greatly benefit from more detailed instructions on when and how to use these forms. Instructions with examples should explain to tax filers which forms will be issued in the 2014 tax year; identify the forms that contain information, such as APTC amounts, that must be reported at tax filing and reconciliation; and indicate which forms should be retained by the tax filer, but need not be submitted with the tax return.

We also recommend that IRS produce a low-literacy, consumer-tested document that includes a combined explanation of the reconciliation process and relevant forms. This should be linked to in each of the instructions of Form 1095 A-C and also provided independently to consumers prior to the receipt of these forms. Such a document would explain and outline the entire process and the role of each of these forms. This is particularly important this year when not all issuers will be issuing all the forms, consumers may receive IRS Form 1095-A but not 1095-B and question whether a form is missing or how to document coverage outside the Marketplace. But even in future years, providing an overview of the entire process and scope of forms that consumers may need to file and forms that should be retained would be helpful to elucidate the “big

picture” of reconciliation rather than receiving piecemeal information depending on the form a consumer receives.

Mixed coverage households

The instructions should also explain that a tax filer may receive multiple IRS Forms 1095-B and 1095-C for an individual household member if that individual received health coverage from more than one source during the tax year. Tax filers may be required to manage multiple forms to document MEC or exemptions for each member of the tax household. Individual household members may have different forms of coverage (e.g., parents with Marketplace coverage, children enrolled in Medicaid or CHIP), or may be otherwise eligible for an exemption. Some individuals may have coverage for part of the year and an exemption for part of the year. In addition, a single household member may have multiple sources of health coverage during the course of the year (e.g. Medicaid for six months and Marketplace or ESI coverage for six months).

Tax filers would greatly benefit from clear and detailed instructions that include common household scenarios illustrating mixed and complex coverage and reporting requirements.

The following example shows a typical mixed coverage household that could be included in the instructions:

Mike and Amy are married and filing jointly, and receive APTCs through the health insurance Marketplace. Their two children, Tony and Tina, are enrolled in CHIP.

The Marketplace sends them an IRS Form 1095-A showing they had MEC for Mike and Amy, and the APTC amounts for each month of the previous tax year. The state CHIP agency sends them an IRS Form 1095-B documenting that their children Tony and Tina had MEC for the previous tax year.

Mike and Amy should indicate on their IRS Form 1040 that all members of the tax household had full-year health coverage.

Mike and Amy should take the information reported on the IRS Form 1095-A to complete an IRS Form 8962 to reconcile APTCs. They should retain a copy of the IRS Form 1095-B in the event they need to prove the children had MEC during the previous tax year.

The following is an example of a household with more complex health coverage:

Mike and Amy are married. Mike receives employer sponsored coverage for six months, and APTCs from the Marketplace for six months. Amy receives

coverage from Mike's employer plan six months, and coverage through Medicaid for six months. Their child Tina received coverage from Mike's employer plan for six months, and is enrolled in CHIP for six months. Their child Tony is enrolled in Medicaid for the full year.

The Marketplace sends an IRS Form 1095-A showing that Mike had Marketplace coverage for six months with APTCs. Mike's employer plan sends an IRS Form 1095-B showing that Mike, Amy, and Tina had MEC for six months. The state's separate CHIP agency sends an IRS Form 1095-B showing that Tina had MEC for six months. The state Medicaid agency sends an IRS Form 1095-B showing that Amy had MEC for six months and Tony had MEC for the full year.

Mike and Amy should indicate on their IRS Form 1040 that all members of the tax household had full-year health coverage.

Mike and Amy should take the information reported on the IRS Form 1095-A to complete an IRS Form 8962 to reconcile APTCs. They should retain copies of the IRS Form 1095-A and all three IRS 1095-B forms in the event they need to prove MEC during the previous tax year.

Scenarios with mixed-coverage households can get even more complex when claiming exemptions and addressing coverage gaps that could result in penalties. We therefore urge the IRS to provide examples in the instructions to better assist tax filers in understanding the ACA reporting and reconciliation requirements.

Complex MAGI households

One feature of Modified Adjusted Gross Income (MAGI) not adequately reflected in the proposed IRS forms is that the tax household and the health coverage household are not necessarily the same. The Proposed IRS Forms 1095 B and C documenting MEC are provided to the "policy holder" and "covered individuals." However, the policy holder is not necessarily the tax filer.

For example, a divorced couple with two children can agree that the ex-husband claims the children as tax dependents, and that the ex-wife provides the children health insurance through her employer sponsored health plan. IRS Forms 1095 B and C are used to show the health coverage for the policy holder and covered individuals. However, to demonstrate that his tax dependents have MEC, the ex-husband will need to obtain from his ex-wife either an IRS Form 1095-B or IRS Form 1095-C to include in his tax filing to avoid a penalty.

In addition, under MAGI rules dependent relatives who are "neither the spouse nor the child" of the tax filer are in their own households for Medicaid eligibility determinations. The tax filer who claims the relative as a dependent needs documentation that the

dependent has MEC. However, IRS Forms 1095 B and C will be sent to the dependent relative, not the tax filer.

The instructions for the forms urge form recipients to cooperate:

As the recipient of this Form 1095-C, you should provide a copy to any family members covered under a self-insured employer-sponsored plan listed in Part III if they request it for their records.

As the recipient of this Form 1095-B, you should provide a copy to individuals covered under the policy if they request it for their records.

While we appreciate these instructions, it is not clear from the proposed forms or instructions exactly how these needed forms will be provided to tax filers who cannot otherwise obtain them, for example, if the recipient is uncooperative in providing them to the tax filer. Tax filers, policy holders, and covered individuals need assurances and processes in place that ensure the prompt reporting of MEC that does not rely on the beneficence of an ex-spouse.

We recommend the IRS permit tax filers to access IRS Forms 1095 B and C where the coverage household differs from the tax household. According to IRS' Internal Revenue Manual (IRM) 21.6.3.4.2.16.4.1, Form 1095-A data belonging to another taxpayer may be disclosed to the taxpayer that is required to reconcile the APTC. This policy should also extend to IRS Forms 1095 B and C. Since completed IRS Forms 1095 B and C must be transmitted to the IRS, tax filers should be able to obtain these forms directly from the IRS by supplying the dependents' Social Security or tax identification numbers.

Streamlining and simplifying ACA-related tax filing

We encourage the IRS to develop a streamlined system for the increasing number of persons who file their federal income taxes electronically. The information contained IRS Forms 1095 A-C documenting MEC and reconciling APTCs should be easily accessible and importable through online filing. The ACA's single streamlined application provides a useful model, auto-populating forms based upon information provided and using existing electronic data sources to the maximum extent possible.

Although the promise of the single streamlined application has yet to be fully realized, it offers efficiencies and convenience for consumers. We urge the IRS to work toward a similar, simplified, streamlined process whereby tax filers can demonstrate compliance with the ACA's individual shared responsibility and other requirements without multiple forms and data inputs.

If you should have any questions regarding our comments, please contact Wayne Turner (202-289-7661 or turner@healthlaw.org) at the National Health Law Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth G. Taylor". The signature is fluid and cursive, with the first name "Elizabeth" written in a stylized script, followed by a middle initial "G", and the last name "Taylor" in a more legible cursive.

Elizabeth G. Taylor
Executive Director