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October 28, 2014

Stacey Becker

Internal Revenue Service

Room 6526

1111 Constitution Avenue NW.

Washington, DC 20224

RE: Draft Form 1095-C 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-C and the associated instructions. We appreciate that the IRS has released draft forms for comment.

1. The regulations at 26 CFR §1.6056-1(d)(1)(viii) state that applicable large employers must report to the IRS the Taxpayer Identification Numbers (TIN) of each full-time employee and the months, if any, in which the employee was covered under an employer-sponsored health insurance plan. However, the draft Form and instructions refer to the employees' Social Security Numbers (SSN). 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.

2. Part III of Form 1095-C requests that large employers report the SSN or date of birth (DOB) for all covered individuals if the employer offers a self-insured plan to employees. We appreciate that the form incorporates the regulations' flexibility to provide a DOB for covered individuals who may not have an SSN or other TIN, or for whom those numbers are not readily available. 26 C.F.R. § 1.6055-1(e)(iii). However, the regulations state that covered individuals must provide TINs, or dates of birth, not SSNs. The Form and instructions should request a TIN for consistency with the regulations. In addition to accurately implementing the agency's

regulations, this change would recognize that 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-C to taxpayers' households. It also recognizes the intent of Congress and IRS to ensure that individuals who are offered employer-sponsored health insurance for family members are able to access that insurance coverage, even in the case of family members who do not have an SSN, including many lawfully present immigrants.

3. The instructions for Part III, in addition to changing the language from SSN to TIN, should state more clearly that some individuals may not have a TIN/SSN, and that a date of birth is to be provided as an alternative. For example:

Column 9(b). Enter the 9-digit TIN, without the dashes, for each individual for whom one is available.

Column 9(c). Enter a date of birth (MM/DD/YYYY) for each individual for whom a TIN is unavailable.

3. The draft Form 1095-C "Instructions for Recipient" also needs to replace requirements for covered individuals to request a TIN (instead of SSN) to address mixed-immigration status families that include individuals without SSNs. Italicized text next to an exclamation point over the word CAUTION states:

*If you do not provide your SSN and the SSNs of all covered individuals to the plan administrator, the IRS may not be able to match the Form 1095-C to determine that you and the other covered individuals have complied with the shared responsibility provision.*

This text could be threatening to families worried about family members' ability to adjust their immigration status, and should be modified to acknowledge that some family members may not have SSNs or TINs. The language should reflect that it may require more follow-up verification of their coverage by IRS, but that a lack of a TIN does prevent enrollment or authorize termination of coverage. See 79 Fed. Reg. 13220, 13222 (March 10, 2014).

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