



Freedom Network USA

September 29, 2017

Administration for Children and Families
Office of Planning Research and Evaluation
370 L'Enfant Promenade SW
Washington DC 20447
infocollection@acf.hhs.gov

**RE: Request for Assistance for Child Victims of Human Trafficking
OMB no. 0970-0362**

ACF Reports Clearance Officer:

The Freedom Network USA commends the HHS Office on Trafficking in Persons for the release of the Request for Assistance for Child Victims of Human Trafficking form for public comment. The Department's commitment to ensuring child victims of trafficking have expeditious access to the services and support they need in order to process their trauma and heal from the abuse they have suffered is critical. This form is the first step in providing that access and it is important that advocates working with these children are able to provide their expertise and experience in refining this form and process.

The Freedom Network USA, established in 2001, is a coalition of 51 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. Our members include former prosecutors, civil attorneys, criminal attorneys, immigration attorneys, and social service providers who have assisted thousands of trafficking survivors. Together, our members provide services to over 175 trafficking survivors who are under the age of 18 each year.

We are extremely concerned by the highly detailed information that is being requested with this form, which suggests that ACF is using a **higher standard than is legally mandated** and developmentally appropriate for determining a child's eligibility for Interim Assistance. To review, there are **2 separate and independent determinations** to be made by ACF, which seem to be conflated with this form.

First, the TVPA requires Federal, State, or local officials to apply for Interim Assistance within 24 hours of discovering any minors that may have been a victim of trafficking.¹ It is not reasonable to assume that the official would gather extensive information about the child's experience within such a brief window of time. Interim Assistance is to be granted based on any "credible information that a child ... may have been subject to a severe form of trafficking in persons."² The Interim

¹ 22 USC 2015(b)(1)(H)

² 22 USC 7105(b)(1)(G)

Assistance determination process ensures that a child has immediate access to medical, housing, food and other needed support while local officials or other providers work with the child to determine the details of the child's experience. Interim Assistance is granted for a short duration of only 90 days (which can be extended for an additional 30 days).³ It is during this window that ACF should require the Requestor to gather and submit additional information.

Second, *after Interim Assistance has been granted*, ACF must make an "independent determination"⁴ as to whether the child is eligible for long-term assistance as a victim of a severe form of trafficking. ACF is directed to consult with the Attorney General, Secretary of Homeland Security, and nongovernmental organizations with expertise in severe forms of trafficking⁵ and decide whether the information received indicates that the child is a victim of a severe form of trafficking.⁶ If so, ACF **must** issue a Letter of Eligibility. The statute also states that ACF **may not** require that the child cooperate with law enforcement during this process.⁷

ACF, however, has created one form, which seeks to gather extensive details about the trafficking situation, including legal conclusions, in order to issue Interim Assistance. The form makes no distinction between the requirements for issuing Interim Assistance and a Letter of Eligibility. This extensive request is time consuming for the Requestor, poses a high risk of re-traumatization of the child, and contravenes the intent of the statute.

It is critical to understand the role and impact of trauma on the children in question. HHS notes that, "for most victims, the experience of trafficking both follows from, and contributes to, a history of trauma."⁸ In comparing refugee children to child trafficking victims, trafficked children "are more difficult to engage than the average refugee child....and trafficked children can often take up to a year or more to 'settle in' and trust the program."⁹ Therefore, it is neither appropriate nor fruitful to require unnecessary detail about the trafficking experience from children who have been identified by the Requestor less than 24 hours before the application is initiated.

Therefore, Freedom Network USA recommends the following improvements to ensure that ACF is able to fulfil its mandate to "promptly determine if the child is eligible for interim assistance."¹⁰

³ 22 USC 2105(b)(1)(G)(iii)

⁴ 22 USC 2105(b)(1)(G)(i) "A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking."

⁵ 22 USC 2105(b)(1)(G)(iv)(II)

⁶ 22 USC 2105(b)(1)(G)(iv)(III)

⁷ 22 USC 2105(b)(1)(G)(iv)(III)

⁸ HHS Administration for Children, Youth and Families (ACYF) Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States 2013 (hereinafter HHS Guidance), p6, available at https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf

⁹ *Care for Trafficked Children*, United States Conference of Catholic Bishops, April 2006, p4, available at <http://www.usccb.org/about/children-and-migration/upload/care-for-trafficked-children.pdf>

¹⁰ 82 Fed. Reg. 146 (Aug. 1, 2017).

A. Whether the Proposed Collection of Information is Necessary

The collection of *some* information is necessary for ACF to properly grant Interim Assistance to children who are under 18 and *may have been* subject to a severe form of trafficking in persons. However, as noted above, the legal standard established by the Trafficking Victims Protection Act (as amended) is any “credible information that a child ... may have been subject to a severe form of trafficking in persons.”¹¹ Therefore, the Application Form *must be limited* to collection of information that is relevant to the application for Interim Assistance only.

This would properly include the following questions from each section of the form:

- Requestor’s Information section- all questions are appropriate
- Child’s Information- Child’s Name, Date of Birth (or Age if the Date of Birth is uncertain), Gender, Primary Language, Child’s Attorney of Record, and Type of Trafficking Experienced. **All other questions in this section are not necessary for the Interim Assistance application and should, therefore, be removed from this form.**
- Child’s Information should *also include* name and contact information of any other representative of the child that might need to be consulted regarding the application or the child (such as Guardian ad Litem, Parent or Guardian, or other legal representative)
- Details of Trafficking Experience- details are not needed to establish “credible information” that the child *may be* a victim. **Therefore, all questions in this section should be removed from this form.**
- Case Narrative of Trafficking Experience- How, when, and where the child was first identified as a potential victim of human trafficking and How and when this child came to your attention are both appropriate questions to establish “credible information” that the child *may be* a victim. **Interviewing the child and demanding details of her/his trauma should not be required at this stage (less than 24 hours after the child has been identified). All other questions in this section are not necessary for the Interim Assistance application and should, therefore, be removed from this form.**
- Case Narrative of Trafficking Experience should, *instead*, request the limited information that is reasonable to assume a government official of other person may have obtained within 24 hours of identifying a child that may be a victim of a severe form of trafficking, as directed by law.¹² For example: Requestor is a law enforcement agency and Child has been identified as a potential trafficking victim within an active investigation; Requestor is prosecuting agency and Child has been identified as a potential trafficking victim within an active investigation or prosecution; Requestor is a URM program, child is in their care and has disclosed potential commercial sex acts or forced labor.

A **separate form** should be developed for gathering information needed for determining eligibility for long-term assistance and issuance of the Letter of Eligibility, as described

¹¹ 22 USC 7105(b)(1)(G)

¹² 22 USC 7105(b)(1)(H)

above. The law clearly anticipates that this will be a second, separate process. ACF is directed to make this determination “[b]efore the expiration of the period for interim assistance.”¹³ It must be an “independent determination”¹⁴ of eligibility for long-term assistance as a victim of a severe form of trafficking in persons. The Requestor (or a different Requestor who may be in a better position to represent the child) should submit a separate application after the child has access to the supportive services s/he needs.

B. Accuracy of the Estimate of the Burden of Collection

Freedom Network USA believes that **ACF underestimates the burden of collection by over 3,000 hours** by underestimating both the number of responses and the burden hours per response *as currently designed*.

Number of respondents and number of responses per respondent- HHS reported granting a total of 332 Eligibility Letters in FY16, an increase from 239 in FY15¹⁵. The number of applications submitted, which would include those that were denied and the number of children for whom multiple applications were submitted, is not reported.¹⁶ Therefore, it is reasonable to estimate that over 250 applications (perhaps over 350 if the upward trend continues) are likely to be submitted annually. It is likely that agencies that work with high-risk populations, such as Unaccompanied Minors and runaway and homeless youth, will submit applications for multiple children, however ACF has estimated only one response will be filed by each of 80 respondents, estimating a total of only 80 applications.¹⁷ While ACF is in the best position to estimate how many respondents file multiple applications, the total number of applications should be closer to the number of Eligibility Letters awarded in the previous fiscal years.

Average burden hours per response- as written, including the required submission of a detailed narrative including statements from the trafficked child only recently separated from the trafficking situation and factual data on the child’s trafficking experience, it would take over 10-20 hours to complete. This includes at least 4 interviews of 1-2 hours each with the child to establish trust and begin to gather information slowly to minimize the retraumatization of the child. Interviews that require an interpreter would take twice as much time (thus 8-16 hours of interviews). Additional time would be spent gathering documents as requested in the form, such as the child’s passport or other identity documents, police or court documents, medical records (which might require first obtaining a release from the parent or guardian of the child), statements from ‘credible individuals’ or other documents. Additional time would be required (2-4 hours) to obtain translations of any documents or statements that were not in English.

Total burden hours- Using the more conservative estimate of 250 applications with an average 15 burden hours results in an estimate of **3,750 total burden hours**, over 3,000 hours above ACF’s estimate of 80 hours.

¹³ 22 USC 2015(b)(1)(G)(iv)(I)

¹⁴ 22 USC 2105(b)(1)(G)(i) “A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking.”

¹⁵ 2017 Trafficking in Persons Report p417, available at <https://www.state.gov/documents/organization/271339.pdf>

¹⁶ Ibid

¹⁷ 82 Fed. Reg. 146 (Aug. 1, 2017)

If, however, the form were limited to only the legally required information, as reflected throughout these comments, ACF's estimate of 1 burden hour per response would be accurate. A properly limited request would eliminate the need for extensive interviews of the traumatized child; gathering and translation of documents; identification of corroborating individuals, gathering and translation of their statements; and writing an extensive case narrative addressing legal elements and detailed information. **A brief application, as described above, would take an average of 1 hour per response.** Using the more conservative estimate of 250 applications with an average 1 burden hour per response (to a revised request) results in an estimate of **250 total burden hours**, only 170 hours above ACF's estimate of 80 hours.

C. Quality, Utility, and Clarity of the Information to be Collected

The following **information is unnecessary and inappropriate** for the determination of Interim Assistance:

Country of Origin- this information is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons. **Therefore, this question should be removed from this form.**

Town/City/District of Origin- this information is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons. **Therefore, this question should be removed from this form.**

Alien Number- this information is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons. Children may not know if they have an A# and if so, what the number is. **Therefore, this question should be removed from this form.**

Proof of Citizenship and Age- the legal standard established by Congress is "credible information¹⁸," therefore it is not necessary to provide "proof." It may be appropriate to ask the Requestor to state the Child's Age and Citizenship, and basis for their belief, but not to require "proof." **Therefore, this question should be revised.**

Does child have a parent in the US- this information is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons. The location of the parent(s) may or may not be relevant to the trafficking of the child. **Therefore, this question should be removed from this form.**

Child's Relationship to Trafficker- this information is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons. Asking about the relationship to the trafficker within the 24 hour period after identification is likely to cause retraumatization to the child, causing her/him to withdraw and refuse services. **Therefore, this question should be removed from this form.**

Location of Trafficking Incident- this information is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons. There may be multiple locations, locations may be unknown, and details may be difficult or retraumatizing for the child. **Therefore, this question should be removed from this form.**

¹⁸ 22 USC 2015(b)(1)(G)(i)

Case Narrative- this request for a detailed narrative describing the child’s trafficking experience, including factual information and direct statements from the child **is wholly inappropriate and should be completely removed from this application.**

- First, it requests far more information and detail than needed to establish “credible information” that the child is under 18 and *may have been* subject to a severe form of trafficking in persons. A brief statement of relevant indicators or reason for the belief of the Requestor should be sufficient given the credible information standard set forth in the law.¹⁹
- Second, it requires direct interviews of a child victim of trauma within the immediate days after the child has left a trafficking situation, before providing the services, support, time and distance from the trauma that Interim Assistance is designed to provide. This is counter to ACYF’s own instructions to “provide appropriate care including the use of trauma-informed, culturally appropriate, and individualized care.”²⁰
- Third, it asks “[w]hether the trafficking situation was reported to local or state Child Protective Services (CPS), local, state, tribal, or federal law enforcement and follow up action.” This information is both is unrelated to the determination of whether the child is under 18 and *may have been* subject to a severe form of trafficking in persons, and suggests that cooperation with law enforcement is required in direct contradiction of the law. The TVPA clearly states that ACF **may not** require that the child cooperate with law enforcement during this process.²¹
- Fourth, it asks for “Corroboration of trafficking concerns (police reports, clinical records, court documents, accounts from other credible individuals).” Again, this suggests that cooperation with law enforcement is encouraged or required in direct contradiction of the law. The TVPA clearly states that ACF **may not** require that the child cooperate with law enforcement during this process.²²
- Fifth, it asks for “Assessment of the credibility of child’s disclosures and overall credibility of trafficking concerns.” It is unclear what standard ACF is asking Requestor’s to use in determining the credibility of any disclosures made by the child, but the TVPA is clear that the proper standard is “credible information” from any source (not necessarily the child victim) that the child *may have been* subject to a severe form of trafficking in persons.²³ This question seems to imply a much higher standard is required and is wholly inappropriate in determining eligibility for crime victim services.

Minor’s Signature- the application is being filed by a Requestor, who is not a minor, who is responsible for the information included on the form.

D. Ways to Minimize the Burden of Collection

The collection of *some* information is necessary for ACF to properly grant Interim Assistance to children who are under 18 and *may have been* subject to a severe form of

¹⁹ 22 USC 7105(b)(1)(G)

²⁰ HHS Guidance p6

²¹ 22 USC 2105(b)(1)(G)(iv)(III)

²² 22 USC 2105(b)(1)(G)(iv)(III)

²³ 22 USC 2105(b)(1)(G)(i)

trafficking in persons. However, as noted above, the legal standard is any “credible information that a child ... may have been subject to a severe form of trafficking in persons.”²⁴ Therefore, the Application Form must be limited to collection of information that is necessary for ACF to properly award Interim Assistance only. This will eliminate the need for extensive interviews of the child while the child does not have access to needed services and support and is close in time to the traumatic experience; gathering and translation of documents; identification of corroborating individuals, gathering and translation of their statements; and writing an extensive case narrative addressing legal elements and detailed information. **A brief application, as described above, would take an average of 1 hour per response.**

Additionally, the following approaches will also reduce the burden of the collection:

- Clearly indicate which fields are mandatory and which are optional, or may not apply to all responses.
- Give additional information, in the instructions, about the next steps in the process to clarify that only basic information is needed for the Interim Assistance grant, but that more details may be requested during the 90 day period of the Interim Assistance.
- Give additional information, in the instructions, about the process ACF will follow if the information is insufficient for a decision on the Interim Assistance application. If Requestors understand that they will be given an opportunity (in writing, by phone, or by other means) to supplement the information and answer questions posed by ACF, it will encourage them to more promptly submit the application.

Freedom Network USA recognizes the important role of ACF in the support of foreign national victims of severe forms of trafficking. We appreciate your dedication to ensuring that the law is fairly and faithfully executed. We also applaud your dedication to ensuring that child victims have access to needed services and support as soon as possible to support their safety and healing. We believe that the recommended changes will help to ensure that children are supported and that an ethical, legal, and expeditious process is put into place.

I can be reached at jean@freedomnetworkusa.org if you have any questions or need any further information or explanation.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA

²⁴ 22 USC 7105(b)(1)(G)