



Freedom Network USA

October 30, 2020

OMB

RE: Proposed Information Collection Activity; National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC) Recommendations and State Self-Assessment Survey (NEW), OMB No.: 0970-XXXX

Submitted via reginfo.gov

OMB Officer:

The Freedom Network USA (FNUSA) commends the HHS Office on Trafficking in Persons for working diligently to support the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC), and to comply with the responsibilities outlined in the Preventing Sex Trafficking and Strengthening Families Act. Providing guidance to states on addressing the sex trafficking of children and youth, and supporting their efforts to address and prevent such abuse, is a critical task.

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. Our members include survivors themselves as well as 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 2,000 trafficking survivors each year.¹ FNUSA is providing comments on the Recommendations and State Self-Assessment Survey from the perspective of service providers, survivors, and policy advocates from across the US who are committed to this shared goal.

1. Insufficient Public Comment Period

As a preliminary matter, FNUSA strongly objects to OMB's approval of the NAC Recommendations and State Survey at this time. According to the NAC's February 20 Notification to State Governors and Child Welfare Agencies Regarding Implementation of Best Practice Recommendations², HHS should have released the NAC's final report including

¹ FNUSA, *Freedom Network USA 2018 Member Report*, available at <https://freedomnetworkusa.org/app/uploads/2018/04/FRN-Member-Report-Digital-FINAL.pdf>.

² National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, *Notification to State Governors and Child Welfare Agencies Regarding Implementation of Best Practice Recommendations*, February 20, 2020, available at https://www.acf.hhs.gov/sites/default/files/otip/notification_to_state_governors_and_child_welfare_agencies_final.pdf.

definitions for Tier 1 and Tier 2, in April 2020. "The Preventing Sex Trafficking and Strengthening Families Act of 2014 (P.L. 113-183) established the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. The Committee is responsible for two Congressional reports (42 U.S.C. § 1314b(d)(3)): • Two tiers of recommended best practices for States to follow in combating the sex trafficking of children and youth. The Committee released Preliminary Recommendations to Strengthen the Nation's Response to the Sex Trafficking of Children and Youth in the United States in January 2019. ***The Committee will release its full report of recommended best practices in April 2020.***"³ (emphasis added)

However, the report was not released until September 15, 2020⁴, only days before the survey form was released for public comment by HHS⁵. What was released for public comment was the form used to collect data from the states, without any of the substance regarding the recommendations or the metrics that the states will use for their self-assessment. In other words, all that was released for comment was a blank form. ***It was impossible to meaningfully comment on recommended practices and definitions without the actual practices and definitions. Thus, there has been no meaningful public comment period.***

FNUSA strongly urged ACF to extend the comment period, or to begin a new comment period once the Final Report was released, to allow meaningful comment on the substance of the data collection, and not on the formatting. In the absence of the Final Report, FNUSA provided comments⁶ on the Preliminary Recommendations released by the NAC on January 17, 2020.⁷

FNUSA renews this recommendation now. OMB should refuse to finalize this form at this time. ACF should be required to provide the full form for meaningful public comment before the OMB considers the form for approval. The full form, with all of the explanatory materials and information, has not yet been made available for public comment by ACF. Thus, they have not incorporated public feedback before submitting the form to the OMB for approval, to ensure compliance with the Administrative Procedure Act.

³ Id.

⁴ National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, *Best Practices and Recommendations for States*, September 2020, available at https://www.acf.hhs.gov/sites/default/files/otip/nac_report_2020.pdf

⁵ Proposed Information Collection Activity; National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC) Recommendations and State Self-Assessment Survey (NEW), 85 Fed. Reg. 20280, published April 10, 2020.

⁶ FNUSA, *Comments on NAC State Survey on Child and Youth Sex Trafficking*, available at <https://freedomnetworkusa.org/app/uploads/2020/07/FNUSACommentsStateSurveyNACChildYouthSexTraffickingJune2020.pdf>.

⁷ National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, *Preliminary Recommendations to Strengthen the Nation's Response to the Sex Trafficking of Children and Youth in the United States*, January 17, 2019, available at https://www.acf.hhs.gov/sites/default/files/otip/preliminary_recommendations_to_strengthen_the_nations_response_to.pdf

2. Include Labor Trafficking Throughout the Survey

Although FNUSA is sensitive to the fact that the Preventing Sex Trafficking and Strengthening Families Act of 2014 directed the NAC to focus on child and youth sex trafficking, it did not preclude the NAC from also including recommendations regarding labor trafficking. By creating a system, policies and procedures, and data limited to sex trafficking, the NAC runs the risk of implying that labor trafficking of children and youth does not exist or is not important. The same systems must address all forms of trafficking, and FNUSA strongly recommends adding labor trafficking to all sections of the survey to ensure that all child and youth victims receive protection, services and support, regardless of the form of exploitation they have endured. FNUSA notes, with great enthusiasm, that Question 4 in the Screening and Identification section specifically requires screening for labor trafficking. Failing to also require that systems are able to then appropriately support and document labor trafficking makes no sense. **The NAC could, and should, simply replace “sex trafficking” with “human trafficking” throughout the survey and recommendations.**

Additionally:

- I. Multidisciplinary Response, A. Training, Question 1 limits training to members of “sex trafficking-specific multidisciplinary teams.” This framing suggests that the standard does **not** apply to MDTs that address labor trafficking as well as sex trafficking, a counter-productive result. This should be revised to apply to members of “all multidisciplinary teams that address human trafficking, including sex and/or labor trafficking”.

3. Clarify or Strengthen Standards

Some of the standards for dividing Tiers I and II are not clear or are not based on the best indicators for the standard. Some provide requirements that are insufficient to demonstrate achieving either Tier I or Tier II standards as described.

Specifically:

- I. Multidisciplinary Response, A. Training, Question 1 is based on the extent of training provided to MDTs statewide. However, the Tier standards are based on the percentage of MDTs that receive training, without specifying the number or percent of MDT members that have to be trained. Thus, if only one person in each MDT is trained, a state would report that they have achieved Tier II, even though the full teams have not achieved the “shared understanding” that the standard is attempting to measure. These Tiers should be revised to measure the “percent of MDTs *that address trafficking* that train *all of their* members.”
- I. Multidisciplinary Response, B. Policies and Procedures, Question 3 sets too low of a threshold for Tier I. In a large state, the fact that one MDT participates in a statewide response is not a meaningful indicator of initial steps. FNUSA recommends revising Tier I to read: “Document that at least 10% of the MDTs in the state to have implemented a multidisciplinary response to the trafficking of children and youth and that the state has a documented plan for increasing participation in MDTs in the state.”
- I. Multidisciplinary Response, B. Policies and Procedures, Question 4 requires an MOU, but does not state that the MOU be specific to trafficking. FNUSA recommends revising

the question to read: “Develop memoranda of understanding (MOUs) for MDTs that serve child and youth trafficking victims that outline shared principles, membership terms, roles and responsibilities for team members, and confidentiality policies that are specific to human trafficking.”

- I. Multidisciplinary Response, C. Implementation, Question 6 is meant to measure the capacity of MDTs to respond to trafficked children and youth, but the Tiers measure the percentage of MDTs that have at least one team member with expertise on sex trafficking. FNUSA does not believe that having a single team member with an undefined ‘expertise’ without any specific requirements to demonstrate such ‘expertise’ is meaningful. FNUSA recommends adding a definition for ‘expertise on the topic of trafficking of children and youth’ and specifying which MDT members should have such expertise.
- II. Screening and Identification, A. Training, Question 2 attempts to set requirements for the training of “all law enforcement, prosecutors, defense attorneys, and judges.” The Tier II rating requires “75 percent of employees have received the initial training.” It is unclear what ‘employees’ this question refers to. Law enforcement, prosecutors and judges may be city, county, state, or federal employees. Defense attorneys include those in private practice and those employed by nonprofit legal aid and defender agencies. FNUSA recommends further clarifying which ‘employees’ are being referred to in this question, and ensuring that the definition is limited to people that the responding agencies have the authority to train.
- III. Child Welfare, B. Policies and Procedures, Question 9 requires “policies and procedures that address running away, peer recruiting, external safety threats, and other safety risks to residents” without any guidance about the goal of these policies. FNUSA strongly recommends adding that the policies and procedures should (echoing the question that precedes this one) be designed to provide the least restrictive program, honors the personal autonomy of each participant, and supports flexibility and individuality in safety planning for all involved.
- IV. Service Provision, A. Training. Throughout this section are requirements for training mandates for programs including “public agencies” and those “contracted and credentialed by public agencies.” First, the term “public agencies” is not defined in the report or the survey, but should be. Second, it is not clear that the state or any state agencies have the authority to require training for the listed providers and professionals. The survey should more clearly identify how the state can achieve success when they have no authority to implement the recommendations.
 - Question 1. This question presents a policy or statute as Tier 1 and training of 75% of public agency employees as Tier 2. What about a state without a formal mandate which has implemented universal training? What is the standard for ‘initial training’? Is a paragraph in the employee onboarding materials sufficient? A poster in the building?
 - Question 2 expands training requirements to all contracted and credentialed providers. Does this include all providers paid under a one time contract, or only those with an ongoing contract? Is sending them a pamphlet sufficient?
 - Question 3 goes even farther, with statutory requirements for professionals

working in fields that intersect with trafficking. However, these professionals are not all credentialed by the state, nor are their credentials subject to state statutes. Social workers are credentialed, in most states, by the National Association of Social Workers. Caseworkers is a vague category that is generally not credentialed by anyone. Setting up requirements that are not possible to attain in a practical way undermines the value of the survey. This question should be revised to be practical or removed.

- V. Housing, A. Training, Question 1 requires initial and ongoing training for all staff of publicly funded housing programs. This is overly broad. This would require the administrative staff and accountants to receive training on the effects of trauma. FNUSA recommends revising this question to apply to staff in direct contact with service recipients, and focusing the training on eligibility for housing programs, available community resources rather than state statutes and victims' rights broadly. The training should be developed to increase access to housing and other services for survivors and to reduce their likelihood of being dismissed from the program due to the impact of their victimization and trauma.
- V. Housing, B. Policies and Procedures, Question 2 requires reviewing licensing requirements for housing programs but does not clearly state what the goal of policies should be. FNUSA recommends that this question be revised to clearly state that the policies should ensure trafficking survivors can access mental and physical healthcare (including substance use treatment), without losing eligibility for housing, and that youth cannot lose eligibility based on their prior departure from services (running away).
- V. Housing, B. Policies and Procedures, Question 4, again, requires policies and procedures but does not clearly state what the goal of policies should be. FNUSA recommends that this question be revised to clearly state that the policies should ensure trafficking survivors can comprehensive services and support without losing eligibility for housing, and that providers provide the least restrictive environment while engaging in individualized safety planning.
- V. Housing, C. Implementation, Question 11 requires developing "a list of housing options with staff who are trained and able to support and house children and youth who have experienced sex trafficking" but does not provide a definition or standard for 'trained and able'. Without establishing some standards, this element is meaningless as any program that has read the NAC's recommendations could consider themselves to be 'trained and able'.
- VII. Judiciary, B. Policies and Procedures, Question 9, similar to Q2 in the Housing section, above, requires reviewing licensing requirements for juvenile justice and community-based programs but does not clearly state what the goal of policies should be. FNUSA recommends that this question be revised to clearly state that the policies should ensure trafficking survivors can access mental and physical healthcare (including substance use treatment), without losing eligibility for services or reduced sentences, and that youth cannot lose eligibility based on their prior departure from services (running away).
- VIII. Demand Reduction. This section is problematically, incorrectly, and dismissively

uses the term “buyers” when referring to those who commit child sex trafficking. This is inappropriate and inaccurate. This is offensive to survivors of trafficking and hides the reality of the exploitation and criminality of child sex trafficking. This survey is focused on trafficking, and should not be conflated with other issues.

- VIII. Demand Reduction, A. Training, Question 1 focuses on training law enforcement, prosecutors, and judges. The correct legal terminology must be used to ensure that the training is accurate. FNUSA recommends revising the question to, “Integrate information on the range of activities that are comprised by the crime of trafficking, and the importance of holding all who commit a trafficking crime accountable into all mandated training, especially training for law enforcement, prosecutors, and judges.” Tiers would similarly be revised to documenting the percentage of training that “includes complete information on trafficking activities.”
- VIII. Demand Reduction, A. Training, Question 2 focuses on public awareness and prevention efforts. Again, the correct legal terminology must be used to ensure that the training is accurate. FNUSA recommends revising the question to, “Integrate information on the range of activities that are comprised by the crime of trafficking into public awareness and prevention efforts.” Tiers would similarly be revised to documenting the percentage of efforts that “include complete information on trafficking activities.”
- VIII. Demand Reduction, B. Policies and Procedures, Question 3 requires policies “that support and prioritize reducing demand over arresting potential victims of sex trafficking, and support the use of demand reduction enforcement and prosecution to facilitate the identification and prosecution of buyers, traffickers, and exploiters, identify and locate potential victims, and promote community safety. Again, the correct legal terminology must be used to ensure that the training is accurate. FNUSA recommends revising the question to, “Integrate information on the range of activities that are comprised by the crime of trafficking into public awareness and prevention efforts.” Tiers would similarly be revised to documenting the percentage of efforts that “include complete information on trafficking activities.” This conflates a series of issues and sets up false choices and dichotomies in inaccurate and ineffective ways. FNUSA recommends removing irrelevant terminology and focusing, instead, on effective and necessary changes. FNUSA recommends revising the question to, “Establish policies within law enforcement agencies that eliminate the practice of arresting potential victims of sex trafficking, and instead redirect law enforcement resources to arresting sex traffickers to facilitate the prosecution of traffickers, identification and protection of victims, and promote community safety.” Tier descriptions can remain as they are.
- VIII. Demand Reduction, B. Policies and Procedures, Question 4 requires changes in prosecution priorities. Again, the correct legal terminology must be used to ensure that the correct outcome is prioritized, the prosecution of traffickers and the protection of victims. FNUSA recommends revising the question to, “Establish policies within prosecutor’s offices that prioritize the prosecution of

traffickers and end the practice of prosecuting victims of trafficking for crimes incident to the trafficking victimization.” Tier descriptions can remain as they are.

- VIII. Demand Reduction, C. Implementation, Question 5 requires changes in law enforcement priorities. Again, the correct legal terminology must be used to ensure that the correct outcome is prioritized, the arrest of traffickers and the protection of victims. FNUSA recommends revising the question to, “Engage in law enforcement efforts that target traffickers who have committed trafficking crimes against real humans, and do not result in the arrest of victims of trafficking for crimes incident to the trafficking victimization.” Tiers would similarly be revised to documenting the percentage of law enforcement agencies that have “conducted in enforcement activities that identified both traffickers and their victims, in which victims were not arrested or charged’.
- IX. Prevention, A. Training, Question 4 again includes the confusing and offensive term, “demand for children and youth.” That phrase must be removed.
- X. Legislation and Regulation, Question 2 again includes the confusing and offensive framing of “demand.” Again, the correct legal terminology must be used, especially in legislation, to ensure that the correct outcome is prioritized, the arrest of traffickers and the protection of victims. FNUSA recommends revising the question to, “Address human trafficking of children and youth by ensuring comprehensive legislation, including the following legislative actions: Ensure that purchasing sex with a minor is a felony. Ensure that state trafficking statutes include the labor trafficking of minors. Establish an affirmative defense for trafficking victims in all criminal cases. Ensure comprehensive criminal record relief for trafficking victims that includes all acts related to the trafficking victimization.” Tier I should require the enactment of at least two of the above legislative activities.

4. Remove Restrictive Reliance on Child Welfare Systems

While the child welfare system is a key system in responding to the needs of child and youth trafficking survivors, it is not always the best system. Some child welfare systems are better positioned than others. Some children and youth are fleeing the child welfare system and requiring that they remain trapped in this system increases their chance of revictimization as they continue to flee the system. Children and youth should be allowed to choose from many systems which are all prepared to support them, including schools, runaway and homeless youth programs, community centers, and the child welfare system.

Specifically:

- III. Child Welfare, B. Policies and Procedures, Question 5 and X. Legislation and Regulation, Question 5 require that states “designate the child welfare system as the state system responsible for identifying, assessing, and providing services to known or suspected victims of sex trafficking.” This expansion of the child welfare system, to require engagement with children and youth who have not experienced abuse or neglect from their caregivers, is highly problematic. Families and youth who need additional support and services may be dissuaded from seeking help for fear that their

children will be removed from their homes. States should, instead, be encouraged to develop innovative ways to provide services and support through the systems that are most effective for their communities.

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

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is written in a cursive style with a long, sweeping tail.

Jean Bruggeman
Executive Director
Freedom Network USA