

## NAPBS Position: "Ban the Box"

The National Association of Professional Background Screeners (NAPBS) believes steps must be taken to help re-integrate people who have a criminal history back into society and we support the intent of "Ban the Box" legislation. In 2015, the White House echoed this sentiment with the "Fair Chance Pledge." We remain concerned that the current framework of fragmented and varying legislation at the state and local levels is not ideal. And we are also concerned about recent studies that initially find greater racial discrimination in hiring after "Ban the Box" legislation; this problem needs more study.

### State and local ordinances that go beyond federal requirements lead to a fragmented patchwork of regulations that present hurdles for employers.

- In their narrowest form, "Ban the Box" provisions regulate the timing of the criminal history question by prohibiting the inquiry on an initial employment application or delaying the employer's ability to ask the question until after an interview or conditional offer. In their broadest forms, these bills ban or delay not only the criminal history question, but also impose numerous recordkeeping requirements which overlap and conflict with requirements of the Fair Credit Reporting Act, and in some cases effectively make ex-offenders a protected class.
- When state or local ordinances extend beyond federal requirements, it allows applicants to be treated differently based on the jurisdiction they are in. There are numerous instances where a single employer operating at a national level is required to present applicants for the same position with different forms, timeframes, and processes.
- Fragmented and varying legislation presents a host of compliance challenges for employers that hire in multiple jurisdictions.

### We do not believe that an employer should be required to provide a conditional offer of employment before they may inquire about the applicant's criminal history

- Such a requirement will force employers to conduct background checks on applicants one-by-one (after each conditional offer is made), rather than permitting the employer to conduct checks on multiple qualified applicants at the same time, and then selecting the best applicant for the job. This delays getting applicants to work and slows down the entire hiring process, thus harming the very job-seekers it is intended to help.
- Applicants who receive a conditional offer may defer accepting other positions for which they have applied, only to find out that the conditional offer has been rescinded after the background check (in accordance with the Fair Credit Reporting Act's adverse action procedures). This effectively places at risk the alternative job offers that applicants with criminal history might otherwise accept. And it would also have the unintended effect of delaying the process for everyone else going through the hiring process.
- Permitting employers to conduct background checks earlier in the employment process (namely after the initial employment application) would be consistent with the spirit of "Ban the Box" while not creating unnecessary delays in the hiring process.

### Any "Ban the Box" proposals should take into account the unintended disparate impacts on communities of ethnic diversity

- After the "Ban the Box" regulations in New York and New Jersey took effect, a study by Princeton and University of Michigan economists indicated "employers became much less likely to call back any apparently black applicant." ("Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment")
- A University of Virginia and University of Oregon joint study found that in areas where "Ban the Box" has been put into place, "the probability of employment for young black men without a college degree went down by 3.4 percentage points; for young Hispanic men without a college degree, it dropped by 2.3 percentage points." (UVA Today, 8/5/2016)
- "Ban the Box" is relatively new and these studies are recent so many of the impacts are yet to be understood. Further study in the field is warranted before drawing firm conclusions. But they should warn policymakers to proceed cautiously. As policymakers consider "Ban the Box" regulations, we believe they should look to identify solutions that promote employment of reformed citizens while not incurring a disparate impact on communities of ethnic diversity.