



April 23, 2019

The Honorable R. Alexander Acosta
Secretary of Labor
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Response of The National Association of Professional Background Screeners

Dear Secretary Acosta:

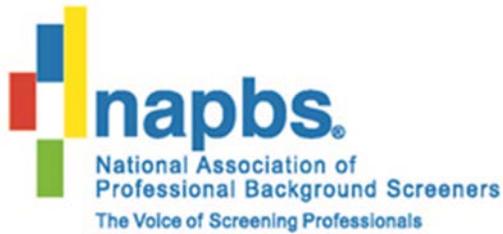
The National Association of Professional Background Screeners (“NAPBS”) is the trusted global authority for the screening profession. In pursuit of their mission to advance excellence in the screening profession, NAPBS promotes and advocates for ethical business practices and fosters awareness of privacy rights and consumer protection issues. NAPBS is an international trade association of over 900 member companies. Its members provide employment and tenant background screening and related services to virtually every industry around the globe. The reports prepared by NAPBS’s background screening members are used by employers and property managers every day to ensure that workplaces and residential communities are safe for all who work, reside or visit there.

NAPBS members range from large background screening companies to individually-owned businesses, each of which must comply with applicable law, including when they obtain, handle, or use public record and private data. NAPBS members also include suppliers of background screening information such as court-record retrieval services and companies that provide access to public record data to background screeners.

As the Department of Labor (“the Department”) considers updating and clarifying its interpretation of joint employer status under the Fair Labor Standards Act, NAPBS welcomes the opportunity to comment. Our comment concerns the following provision of the proposed rule, found in § 791.2 (d)(3):

“The potential joint employer’s contractual agreements with the employer requiring the employer to, for example, set a wage floor, institute sexual harassment policies, establish workplace safety practices, require morality clauses, adopt similar generalized business practices, or otherwise comply with the law, do not make joint employer status more or less likely under the Act.”

NAPBS respectfully submits the following requests for clarification pertaining to the particular clause, “similar generalized business practices.”



Employers seeking background screening services from NAPBS members need to make two important decisions. Initially, employers must decide what background check is appropriate for their given needs. After receiving the selected background check, employers must make additional decisions regarding how to evaluate the information uncovered by the background check. These two decisions raise related, yet distinct, questions regarding the Department's proposed rule. As such, NAPBS requests clarification on the following two points:

- **First, that the initial decision regarding what background check to procure belongs on the list of “similar generalized business practices” delineated by the proposed rule.**
- **Second, that the later decision regarding how to assess the background check received belongs on the list of “similar generalized business practices” delineated by the proposed rule.**

In summary, NAPBS respectfully requests confirmation that neither the procurement of a background check, nor the separate later assessment of a background check, make joint employer status more or less likely under the Department's clarified and updated interpretation of the Fair Labor Standards Act.

NAPBS hopes that the Department can clarify these two points in the text of the rule, in an explanation of the rule, or in a response to this comment. NAPBS thanks the Department for the opportunity to share its comment regarding revisions to the Fair Labor Standards Act and sincerely hopes its comment and requests for clarification can be addressed during the Department's review process. NAPBS and its members are available and prepared to discuss any questions regarding our industry or the aforementioned concerns. Thank you for accepting our comment and we look forward to working with you further.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Sorenson", is positioned below the word "Sincerely,".

Melissa Sorenson, Esq.
Executive Director