

## Immigration Alert: New Stimulus Legislation Limits H-1Bs for Employers Receiving TARP Funds

2/23/2009

On Tuesday, February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act of 2009 into law. Commonly referred to as the "Stimulus Bill" or "ARRA," this new law has a significant immigration provision. Banks and companies that have received or will receive funds under the previously passed Emergency Economic Stabilization Act of 2008 ("TARP funding") or Section 13 of the Federal Reserve Act (authorizing the Federal Reserve's "Discount Window" for short-term, secured loans to financial institutions and other companies) will not be able to hire an H-1B nonimmigrant unless the employer complies with the stricter H-1B dependent requirements. These require the employer to attest that it has recruited for the position in good faith, but found no U.S. workers equally or better qualified than the H-1B worker and that the hiring of the H-1B employee will not displace U.S. workers currently in the employer's workforce. Normally, these strict provisions are only required of employers that are "H-1B dependent" because their percentage of H-1B workers surpasses a certain level based on the size of the total workforce. Very few employers meet this H-1B dependent standard. This new provision forces recipients of TARP or certain Federal Reserve loan funding into this dependent category for two years from the date of enactment to February 16, 2011.

While normally the H-1B dependent rule exempts dependent employers from these additional attestations if the H-1B worker will be paid more than \$60,000 per year or possesses a Master's degree or higher, *this exception does not* apply to these federal funds recipients. This means that any employer receiving these special funds must comply with the additional recruitment and attestation requirements until February 16, 2011, even if the H-1B worker has a master's degree or will be paid more than \$60,000 per year.

Recipients of funding under the TARP program are disclosed publicly by the U.S. Treasury and the Treasury Department posts weekly reports regarding funding recipients on the Emergency Economic Stabilization Act page of its Web site. Recipients of funding through the Federal Reserve's Discount Window program are not disclosed to the public.

The Stimulus Bill imposes the above-referenced restrictions in connection with the "hire" of a covered employer; therefore it would appear that these additional requirements would not apply to the filing of H-1B extensions for existing employees. However, neither U.S. Citizenship and Immigration Services nor the Department of Labor have yet issued implementation guidance or regulations, so it remains to be seen whether the government will take the view that H-1B extensions should be subject to the same requirements. If a covered employer seeks to file an H-1B petition for a new hire who already is in H-1B status with another employer, this will very likely be considered a "hire" that would be covered by this provision.

We will continue to update you regarding the immigration restrictions in the Stimulus Bill as additional information becomes available.

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