

The Impact of TARP Funding on H-1B Employers

March 16, 2009

On February 17, 2009, Congress passed the American Recovery and Reinvestment Act of 2009 (ARRA). Designed to provide funding to financial companies to stimulate economic recovery, this law contains significant provisions that are likely to affect H-1B employers who are recipients of funds authorized by the act.

Section 1611 of the ARRA was included as part of the law to limit banks, financial institutions and other recipients of funds authorized under the act from sponsoring H-1B workers, unless:

- The employer attests that it will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant worker;
- The employer will not place any H-1B nonimmigrant with any other employer or at another employer's worksite unless the employer first makes a bona fide inquiry as to whether the second employer has displaced or intends to displace a similarly employed U.S. worker within the period 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant worker; and
- Prior to the H-1B filing, the employer took good-faith steps to meet industry-wide standards to recruit U.S. workers for the job for which the H-1B worker is sought, offering compensation at least as great as required to be offered to the H-1B worker, and that the employer has offered the job to any U.S. worker who has applied and is equally or better qualified than the H-1B worker.

Affected employers include any company that receives funding from title I of the Emergency Economic Stabilization Act of 2008, also known as the "TARP Bill," or receives funding under section 13 of the Federal Reserve Act. At present, the U.S. Department of Treasury's website includes a list of those institutions that have received funding under the TARP Bill; however, cohesive information regarding which institutions have received section 13 funding is less clear. It is important to note that while banks and financial institutions are the primary recipients of funding, other companies may qualify and may have received funds.

The act covers all H-1B workers hired by an employer between February 17, 2009, and February 16, 2011. Companies that may have received funding under either the TARP Bill or section 13, and are contemplating hiring H-1B workers, may want to seek immigration counsel to determine what steps they should take to address this issue.

For Further Information

If you have any questions regarding this Alert or would like more information, please contact any [member](#) of the [Employment & Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.