



The recently passed American Recovery and Reinvestment Act of 2009 (the Stimulus Act) places limitations on recipients of certain kinds of assistance from hiring new H-1B aliens. Under the terms of the Stimulus Act, any recipient of funding under title I of the Emergency Economic Stabilization Act of 2008, i.e. TARP funds, or that receives funding under Section 13 of the Federal Reserve Act authorizing the Federal Reserve's "Discount Window" for short-term, secured loans are prohibited from hiring H-1B aliens for new employment unless they meet certain conditions. The covered entities must attest that:

1. Before filing the H-1B petition, they made a good faith effort to recruit U.S. workers for the positions in question and offered U.S. workers a wage at least as high as required to be offered to the H-1B worker;
2. In connection with the recruitment effort for U.S. workers, the employer offered the job to any U.S. worker who applied and was equally or better qualified for the position; and
3. The employer has not laid off, and will not lay off, any U.S. worker in a job that is essentially equivalent to the H-1B position in the area of intended employment of the H-1B worker within the period 90 days before the filing of the H-1B petition and 90 days after the filing.

Covered entities should maintain documentation supporting their attestations for the entire period of the H-1B employee's employment in H status. Documentation may include copies of newspaper advertisements, on line job postings, resumes of all people responding to the recruitment, brief explanations why a rejected candidate was not equally or better qualified than the H-1B alien, and records reflecting layoffs, if any, during the applicable period of time.

The restrictions should not apply to the extension of an H-1B worker already employed by the covered entity. The Stimulus Act applies only to newly hired H-1B employees. It is not clear whether the restrictions apply to a foreign worker already employed with the covered entity but working in another nonimmigrant status, such as F, TN or L status, and who is changing to H-1B status.

The employers impacted by these new restrictions should be limited. The impact should be felt primarily by banks, brokerage firms, and other financial institutions. Only entities receiving TARP funds or the Federal Reserve's "Discount Window" for short-term, secured loans are affected. The Department of Treasury's website maintains a list of entities that have received funds under the TARP program. The Federal Reserve does not disclose entities receiving assistance through the "Discount Window" program.

The restrictions took effect on February 17, and will expire on February 16, 2011.

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