

Immigration Compliance Alert

New Hiring Restrictions for TARP Employers

On February 17, 2009, President Obama signed into law The American Recovery and Reinvestment Act of 2009 (commonly known as the “Stimulus Bill”), which imposes restrictions on employers who are Troubled Asset Relief Program (“TARP”) recipients or recipients of certain Federal Reserve loans. The new provision, called the “Employ American Workers Act,” restricts TARP recipients and recipients of Federal Reserve loans offered pursuant to Section 13 of the Federal Reserve Act from hiring foreign nationals in H-1B (Specialty Occupation) visa status for a two-year period, unless the employer makes certain attestations regarding displacement and recruitment of U.S. workers.

The H-1B visa category allows an employer to hire foreign nationals with graduate or undergraduate university degrees for professional positions, provided that the employer adheres to certain conditions regarding wages and benefits offered to the employees. The majority of foreign nationals who graduate from U.S. colleges and universities are employed in the U.S. in H-1B status. Many TARP recipients regularly employ H-1B employees, and so may need to take additional steps if they plan to hire June graduates.

The new bill deems all TARP and certain Federal Reserve loan recipients to be “H-1B dependent employers.” As H-1B dependent employers, these employers will have to provide certain attestations to the U.S. Department of Labor that no U.S. workers have been displaced, and actively recruit U.S. citizens or permanent residents before being permitted to hire foreign national employees in H-1B status. The new law will impact employees hired after February 17, 2009, but will not affect current H-1B employees.

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The Vedder Price Business Immigration Group

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