



## Stimulus Law Restricts New H-1Bs for Funding Recipients

February 23, 2009

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act ("the Act"), a massive bill that allocates \$789.5 billion in federal funds and tax cuts for a variety of initiatives in an effort to stimulate the economy. The new legislation will severely restrict the ability of recipients of the Troubled Assets Relief Program ("TARP") funds or federal funds under Section 13 of the Federal Reserve Act to hire new H-1B temporary workers.

The Act requires that any recipient of such funds must be considered an "H-1B Dependent Employer" regardless of whether or not they meet the traditional H-1B Dependent Employer qualifications.

Under the H-1B dependent regulations, an employer is prohibited from "displacing" a U.S. worker during the 90-day period before and after the filing of an H-1B petition ("direct displacement"), and from placing an H-1B worker with another employer that had displaced U.S. workers within a 90-day period before and after the placement ("secondary displacement").

Further, the H-1B dependent employer is required to take "good faith steps" to recruit U.S. workers for the job to be filled by the H-1B candidate, and must offer the job to any U.S. worker who applies and is at least equally qualified for the job.

Considering the numerical limit on new H-1B petitions and the expectation that, like last year, all available new H-1B visa numbers will be accounted for on or about April 1, 2009, complying with the H-1B dependent regulations before the April 1, 2009 H-1B filing start date presents a significant challenge this year for those employers who have received TARP or Section 13 funds. As a result of this new requirement, TARP/Section 13 fund recipients will not likely have an opportunity to successfully petition on behalf of new H-1B employees on April 1, 2009, to consequently employ new H-1B workers during fiscal year 2010, which starts on October 1, 2009.

The Act does not apply to extensions of H-1B status for H-1B employees currently employed by the employer, or to temporary nonimmigrant workers in other visa classifications, (e.g., L-1, TN, E-1/E-2, etc.). Nor does the Act prohibit, restrict or otherwise adversely affect an H-1B employer's ability to sponsor a current H-1B or other eligible foreign national worker for U.S. Lawful Permanent Resident ("green card") status.

Dykema's attorneys are closely tracking the legislation as it relates to new developments in immigration law and are available to answer questions and provide additional information. For additional information, please contact: Derek Meier at (313) 568-6590 and [dmeier@dykema.com](mailto:dmeier@dykema.com) or Sonya Olds Som at (312) 627-2113 and [ssom@dykema.com](mailto:ssom@dykema.com).