

Fact Sheet #62Z: What impact does the Employ American Workers Act (EAWA) have on H-1B employers?

This fact sheet provides general information concerning the effects of Employ American Workers Act (EAWA) on the H-1B visa program and H-1B employers.

On Feb. 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (“stimulus bill”), Public Law 111-5. The stimulus bill contained the Employ American Workers Act (EAWA) which applies certain requirements to H-1B employers who are receiving funding under the Troubled Asset Relief Program (TARP) or section 13 of the Federal Reserve Act.

- **What does EAWA do?**

EAWA places mandatory recruitment and non-displacement requirements on any company that seeks to hire H-1B specialty occupation workers if the company received funds through the Troubled Asset Relief Program (TARP), Pub. L. 110-343, Div. A, Title I, or under section 13 of the Federal Reserve Act (collectively referred to in this document as “covered funding”).

Under EAWA, any company that has received covered funding and seeks to hire H-1B workers is considered to be an “H-1B dependent employer” and must adhere to the additional dependent employer attestations (*See* [WH Fact Sheet #62C](#)).

- **Who is considered a recipient of covered funding under EAWA?**

A covered funding recipient under section 13 of the Federal Reserve Act is the entity or person that enters into the borrowing arrangement with a Federal Reserve Bank. In situations where the relationship involves a tri-party agreement, the recipient is the entity or person that received the funds and against whom the Federal Reserve Bank has recourse. If the recipient is a Special Purpose Vehicle (SPV), the EAWA applies to the SPV and to any entity that owns or controls 25% or more of the total equity of the SPV (see <http://www.federalreserve.gov/monetarypolicy/files/eawafaq.pdf>).

A list of covered funding recipients under TARP can be found at the following website: <http://www.treasury.gov/initiatives/financial-stability/briefing-room/reports/Pages/Home.aspx>.

- **To which H-1B hires does EAWA apply?**

- EAWA applies to any H-1B “hire” taking place on or after Feb. 17, 2009, and before Feb. 17, 2011 regardless of the date the underlying petition was approved. EAWA defines “hire” as an employer’s permitting a new H-1B employee to begin a period of employment.

- EAWA does not apply to a petition to extend the H-1B status of a current employee with the same employer or to a petition seeking to change the status of a current U.S. work-authorized employee to H-1B status with the same employer.
- **Is a company covered by the H-1B dependent requirements after it repays the section 13 and TARP funding it received?**

A company that has repaid its obligation under section 13 or TARP funding is no longer subject to the H-1B dependent requirements for new H-1B hires after repayment of that funding. However, if an H-1B employer hired a new H-1B employee while receiving covered funding the H-1B dependent requirements remain in effect until the expiration of the LCA for that new hire. Note that H-1B employers determined to be dependent regardless of section 13 or TARP funding must adhere to all additional attestation requirements. (See [WH Fact Sheet #62](#) and [WH Fact Sheet #62C](#).)

- **For additional information regarding funding under section 13 of the Federal Reserve Act and those entities subject to the EAWA visit:**
<http://www.federalreserve.gov/monetarypolicy/files/eawafaq.pdf>

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For additional information, visit our Wage-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).

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