



# CIVIL RIGHTS FORUM

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## A nation of immigrants moves to address the language needs of individuals with limited English proficiency



*Deputy Attorney General Eric Holder opened an Interagency Working Group meeting of the White House Initiative on Asian Americans and Pacific Islanders hosted by the Department of Justice on October 18, 2000, which addressed LEP issues. In the immediate background, White House representative Irene Bueno, Assistant Attorney General for Civil Rights Bill Lann Lee, and Community Relations Service Director Rose Ochi look on. (DOJ photo)*

While only recently the subject of front-page news, the Title VI roots of the obligation to address the needs of persons with limited English proficiency reach back more than twenty-five years to *Lau v. Nichols*, 414 U.S. 563 (1974). In the waning days of the first summer of the century, President Clinton took steps to draw attention to, and build upon, this page from civil rights history.

On August 11, 2000, the President issued Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." At the same time, the Department of Justice (DOJ) issued a Policy Guidance Document, "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency" (LEP Guidance). The purpose of the

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## Addressing the language needs of LEP individuals

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Executive Order and the LEP Guidance is to eliminate to the maximum extent possible limited English proficiency as an artificial barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities. Prior to the President's action, LEP obligations under Title VI were limited to recipients of Federal financial assistance.

In issuing the Executive Order, the President observed that:

[f]ailure to systematically confront language barriers can lead to unequal access to federal benefits based on national origin and can harm the mission of federal agencies. Breaking down these barriers will allow individuals with limited English proficiency to more fully participate in American society . . . [A]gencies and recipients must take reasonable steps to provide meaningful access to their programs and activities . . .

Executive Order 13166 requires each federal agency to address the needs of LEP persons, both in their own federally conducted programs and activities, and in those of their federally assisted recipients, through the development of two documents. The first, an internal implementation plan, is designed to ensure meaningful access to each agency's own federally conducted programs and activities. The second, agency-specific external LEP guidance for recipients, is designed to guide



*COR attorney Christine Stoneman leads a discussion with federal agency representatives on how they can implement Executive Order 13166. (DOJ photo)*

federally assisted programs and activities.

The Executive Order also directs agencies to develop both documents after appropriate consultations with recipient and beneficiary stakeholders. The documents must be consistent with the LEP Guidance and must be completed by December 11, 2000. Agency implementation plans will be filed with the Department of Justice as the federal repository, and LEP guidance documents for recipients will be submitted to the Department of Justice for review and approval. The Civil Rights Division's Coordination and Review Section (COR) has been assigned responsibility for all Department of Justice functions under the Executive Order.

"While the time frame for implementation is short, the great needs of LEP individuals warrant it," emphasized Merrily Friedlander, COR Section Chief. She continued: "As the President has directed, our goal is to turn the promise of *Lau v. Nichols* into a reality whenever and wherever LEP individuals seek services from the federal government or from recipients of federal financial assistance."

The LEP Guidance, which is referenced in Executive Order 13166, provides a framework for agencies to evaluate their own federally conducted programs and activities, and to develop agency-specific guidance for their recipients on how to address the needs of LEP persons.

The LEP Guidance rejects a "bright line" test for coverage or the imposition of universal mitigation measures. Instead, it provides a four-factor analysis as the starting point in identifying whether a federally conducted or federally assisted program or activity must take affirmative steps to overcome language barriers. The factors to be considered are: (1) the number or proportion of LEP individuals served by the program; (2) the frequency of contact by LEP individuals with the program; (3) the nature and importance of the program to the quality of beneficiaries' lives or livelihood; and (4) the resources available to meet the needs of LEP individuals.

The LEP Guidance also advances a vital/non-vital information test for determining whether oral or written services or information provided by or about a program or activity must be available in languages other than English. Where understanding information is vital to accessing or benefitting from a program or activity, written translation or oral interpretation likely is required under the LEP Guidance. Where the information is merely helpful or secondary to the accomplishment of the core purpose of the program or activity, rather than vital, translation or interpretation is more than likely not required.

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At a meeting of federal funding agencies hosted by DOJ, HHS Attorney Wendy Pailen describes OCR's LEP policy, as White House representative Michelle Aronowitz (l.) and OCR Deputy Director Kathryn Ellis (r.) look on. (DOJ photo)

### Addressing the language needs of LEP individuals

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“The guiding principle of the LEP Guidance is reasonableness,” explained Ms. Friedlander. Therefore, she clarified: “Agencies and recipients must take steps to identify and implement reasonable measures to mitigate limited English proficiency as an artificial barrier to full and meaningful participation.”

In furtherance of its coordination efforts under Executive Order 13166, COR has initiated an aggressive program of intra- and inter-agency consultations. COR is actively soliciting comments and suggestions from representatives of recipients and LEP individuals about how to identify and address the needs of LEP individuals.

In addition, COR is working actively with other federal agencies, assisting them as they develop their plans for federally conducted programs and their agency-specific guidance. On September 25, 2000, COR hosted a meeting of all funding agencies, with White House staff

present, at which time the principles of the LEP Guidance were discussed and specific agency questions were answered. On November 14, 2000, COR hosted an LEP stakeholders meeting at which ten organizations representing LEP populations met with representatives of approximately 60 federal agencies to discuss how best to address the needs of LEP individuals.

Questions, comments, and requests should be directed to attorneys Christine Stoneman at (202) 616-6744 (e-mail: christine.stoneman@usdoj.gov) or Sebastian Aloat at (202) 305-9349 (e-mail: sebastian.aloot@usdoj.gov).

The Executive Order and the related DOJ LEP Guidance were published in the *Federal Register* on August 16, 2000. These two documents may be viewed and downloaded in English, Spanish, and Chinese on the COR website LEP page at [www.usdoj.gov/crt/cor/13166.htm](http://www.usdoj.gov/crt/cor/13166.htm). That site also includes the President's Statement on the Executive Order and a Questions and Answers Document, which contains responses to commonly-asked questions about the Executive Order. ♦

## Twenty-one federal agencies publish final Title IX common rule



Federal Register

Wednesday,  
August 30, 2000

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**Part III**

**Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Final Common Rule**

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Nuclear Regulatory Commission  
Small Business Administration  
National Aeronautics and Space Administration  
Department of Commerce  
Tennessee Valley Authority  
Department of State  
Agency for International Development  
Department of Housing and Urban Development  
Department of Justice  
Department of the Treasury  
Department of Defense  
National Archives and Records Administration  
Department of Veterans Affairs  
Environmental Protection Agency  
General Services Administration  
Department of the Interior  
Federal Emergency Management Agency  
National Science Foundation  
Corporation for National and Community Service  
Department of Transportation

*Twenty-one agencies (including the Department of Labor, not shown on this cover page) joined in the final Title IX common rule.*

After months of coordinated effort, the final common rule implementing Title IX of the Education Amendments of 1972, as amended, was published in the *Federal Register* on August 30, 2000. The final common rule is designed to provide an effective enforcement mechanism for the 21 participating agencies (including the Department of Justice) that lacked their own Title IX regulations.

Enacted in 1972, Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. Although passage of this landmark statute occurred over 25 years ago,

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## Final Title IX common rule published

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only four federal agencies previously had adopted implementing regulations: the Department of Education, the Department of Health and Human Services, the Department of Agriculture, and the Department of Energy.

Although most of the nation's educational institutions receive funding from the Department of Education and already are covered by the Department of Education's Title IX regulations, many other federal agencies also fund educational programs or activities. For example, the Federal Emergency Management Agency might fund state and local courses on planning how to deal with disasters; the Department of Transportation might fund state-sponsored courses dealing with traffic safety; and the Department of the Interior might fund forestry workshops run by state parks agencies. While Title IX always has applied to such programs, even though they may have been carried out in meeting halls or other nontraditional education program arenas rather than at formal educational institutions, the lack of implementing regulations has made it very difficult for funding agencies to enforce the statute. These new regulations thus will facilitate the effective enforcement of the nondiscrimination mandates of Title IX.

The common rule, which is based upon the Department of Education's Title IX regulations, was originally

published as a Notice of Proposed Rulemaking on October 29, 1999. During the 60-day notice and comment period, which ended on December 28, 1999, the Department of Justice received 22 comments regarding the proposed rule. The majority of these comments expressed strong support for the proposed regulations and urged prompt and final adoption of the common rule. After carefully reviewing and analyzing these comments, the Department of Justice circulated a draft final common rule for approval by all of the participating agencies.

The final common rule will provide guidance to recipients of federal financial assistance that administer educational programs or activities, and will promote continuity in the enforcement of Title IX by government agencies. The regulations cover nondiscrimination on the basis of sex in a wide array of areas, including admission and recruiting practices, housing, financial and employment assistance, health insurance benefits and services, athletics, marital and parental status, and employment. In addition, the regulations address implementation and enforcement procedures.

Publication of the final common rule represents a major step toward furthering the effective enforcement of Title IX. The final common rule, which became effective on September 30, 2000, will help significantly to eradicate sex-based discrimination in education programs or activities operated by recipients of federal financial assistance outside the traditional education arena. ♦

## President Clinton issues Executive Order prohibiting discrimination in federally conducted education and training programs

On June 23, 2000, President Clinton issued Executive Order 13160, which is designed to prohibit a broad range of discriminatory conduct in federally conducted education and training programs. Specifically, Executive Order 13160 states that no individual shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in a federally conducted education or training program or activity on the basis of that individual's race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent.

The purpose of Executive Order 13160 is to ensure that the federal government holds itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of recipients of federal financial assistance. The Executive Order applies to the federally conducted education programs of almost 100 federal agencies. It extends the prohibitions against discrimination on the basis of race, sex, color, national origin, disability, and age that currently apply to the education and training programs of recipients of federal financial

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## Bill Lann Lee sworn in as Assistant Attorney General for Civil Rights



Attorney General Janet Reno swears in Bill Lann Lee as Assistant Attorney General for Civil Rights as his family and Chief of Staff Bill Yeomans look on. (DOJ photo)

With his wife, Carolyn Yee, and the youngest two of his three children by his side, Bill Lann Lee was sworn in by Attorney General Janet Reno as Assistant Attorney General for Civil Rights on September 14, 2000. He had been serving as Acting Assistant Attorney General since December 15, 1997, following his nomination by President Clinton in July of that year to head the Civil Rights Division.

As previously reported in the *Civil Rights Forum*, Bill Lee, the first Asian-American to head the federal government's premier civil rights post, was born in New York City, and grew up in Manhattan, where his parents owned a small laundry. He attended the prestigious Bronx High School of Science and won a scholarship to Yale, where he graduated *magna cum laude*. A winner of the First Year Moot Court Brief Prize, and a Third Year Stone Scholar, he graduated from Columbia University Law School in 1974.

Bill Lee joined the NAACP Legal Defense and Educational Fund, holding

additional positions as an adjunct professor at Fordham University and as counsel to the Asian American Legal Defense and Education Fund. In 1983, he moved to California to assume the position of Supervising Attorney for Civil Rights Litigation at the Center for Law in the Public Interest in Los Angeles. He returned to the NAACP Legal Defense and Education Fund in 1988, where he served as head of the office from 1990 until he joined the Civil Rights Division.

Throughout his career, Bill Lann Lee has worked to ensure equal opportunity for victims of discrimination in employment, housing, voting, transportation, and education. His many achievements during his tenure at the Civil Rights Division include expanded prosecutions of hate crimes and modern-day slavery, strengthened enforcement of the Americans with Disabilities Act and fair housing and lending laws, and the development of a wide range of strategies for addressing police misconduct. ♦

## Environmental Protection Agency completes public comment process on draft Title VI guidance documents

The Environmental Protection Agency (EPA) has completed a vigorous public comment process on two related draft Title VI guidance documents. The "Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs" (Draft Recipient Guidance), written at the request of states, offers suggestions to EPA's recipients of federal financial assistance to help them address potential Title VI concerns relating to the adverse environmental and health impacts of their granting of permits. The "Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits" (Draft Revised Investigation Guidance) explains how EPA will investigate complaints alleging that the adverse environmental and health impacts of a state or local government environmental agency's permitting decisions constitute discrimination on the basis of race, color, or national origin, in violation of Title VI. Both draft documents are found on EPA's website at <http://www.epa.gov/civilrights/polguid.htm>.

In its publication of the draft documents for public comment, EPA summarized the guidance as "striking a fair and reasonable balance between EPA's strong commitment to civil rights enforcement and the practical aspects of operating permitting programs." 65 Fed. Reg. 39650 (June 27, 2000).

## EPA completes public comment process on draft Title VI guidance documents

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This effort is not EPA's first exploration of this important area of civil rights enforcement. In February 1998, EPA issued its "Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits" (Interim Guidance). The Interim Guidance provided an initial framework for EPA to process complaints filed under Title VI that allege discriminatory environmental and health effects from environmental permits issued by EPA financial assistance recipients. That effort drew a large number of comments by stakeholders and others seeking more detail and clarity about different aspects of the Title VI investigation process.

Over the past two years, EPA has engaged in an extensive consultation process with representatives of state and local government, communities, environmental justice organizations, and industry, as it developed the draft guidance documents. Once the Draft Revised Investigation Guidance is finalized, it will replace the Interim Guidance.

During the public comment period, EPA hosted seven public listening sessions in Washington DC; Dallas; Chicago; New York; Los Angeles; Oakland; and Philadelphia. Transcripts of those listening sessions will be considered during the revision of the draft guidance documents. EPA currently is reviewing the comments and hopes to issue the final guidance documents early next year. ♦

## Participants give high marks to Civil Rights Division's Title VI training course

The more than 500 people who have attended the intensive two-day Title VI training program offered by the Civil Rights Division's Coordination and Review Section (COR) have responded positively to it, with more than 90% of respondents characterizing it as outstanding or excellent.

COR currently conducts one intensive two-day training course per month. COR already has presented this course to staff from over 50 federal and state agencies, including the Departments of Transportation, Housing and Urban Development, Agriculture, and the Wisconsin Department of Health and Family Services, among others.

COR also presents shorter courses, which focus on a Title VI overview, Title VI investigation procedures, and illustrative vignettes. These half-day to full-day courses have been attended by staff from over 40 federal and state agencies, and have received similar positive responses.

Now that an additional 21 federal agencies have published final regulations to implement Title IX of the Education Amendments of 1972, COR is developing a *Title IX Legal Manual* and an accompanying training module that will address the application of Title IX to federally

assisted education and training programs in settings other than educational institutions. COR's goal is to offer this Title IX training module sometime in 2001.

The Title VI training course agenda and related materials are found on COR's website at <http://www.usdoj.gov/crt/cor/coord/train.htm>. The two manuals upon which the course is based also can be viewed: the *Title VI Legal Manual* at <http://www.usdoj.gov/crt/cor/coord/vimannual.htm>; and the *Investigation Procedures Manual* at <http://www.usdoj.gov/crt/cor/coord/invmanual.htm>. Federal, state, or local government agencies interested in scheduling Title VI training should write to Andy Strojny, Deputy Section Chief, Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C. 20035-6560; or e-mail him at: [cor.crt@usdoj.gov](mailto:cor.crt@usdoj.gov). ♦

**Something to share? The *Forum* is looking for agency "happenings" and news of interest to other agencies and the civil rights community. Contact us at: (202) 307-2222 (voice); (202) 307-2678 (TDD), or write to:**

***Civil Rights Forum*  
Coordination and Review  
Section Civil Rights Division  
Department of Justice  
P.O. Box 66560  
Washington, D.C. 20035-6560**

## Helen Norton appointed Civil Rights Division's newest Deputy Assistant Attorney General

Helen Norton was appointed as a Deputy Assistant Attorney General in the Civil Rights Division on October 10, 2000, having served in an acting capacity in that position since August 28, 2000. Prior to joining the Department of Justice in 1998 as Counsel to the Assistant Attorney General for Civil Rights, Ms. Norton was Director of Legal and Public Policy at the National Partnership for Women and Families (formerly known as the Women's Legal Defense Fund).



*Helen Norton has been named as Deputy Assistant Attorney General in the Civil Rights Division (DOJ photo)*

Ms. Norton currently is co-chair of the American Bar Association's Equal Employment Opportunity Committee and an adjunct associate professor at American University's Washington College of Law. She is a graduate of Boalt Hall School of Law at the University of California at Berkeley and of Stanford University.

As a Deputy Assistant Attorney General, Ms. Norton supervises the Civil Rights Division's Coordination and Review, Educational Opportunities, and Employment Litigation Sections. She also is involved in developing litigation strategy and policy positions on civil rights issues; representing the Civil Rights

Division to Congress, the public, and other federal enforcement agencies; and coordinating civil rights policy within the Department of Justice and the Administration. ◆

## Nondiscrimination in federally conducted education and training programs

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assistance, and provides new protections against discrimination on the basis of sexual orientation and status as a parent.

In accordance with the Executive Order, the Coordination and Review Section of the Civil Rights Division is drafting a Guidance Document for publication in the *Federal Register*. The Guidance Document is designed to facilitate implementation of the Executive Order and will address a number of issues including the scope of covered programs and activities, examples of discriminatory conduct, applicable legal principles, enforcement procedures, remedies, and agency reporting requirements. In addition, within 90 days of publication of this Guidance Document, each executive department and agency must establish a procedure for receiving and addressing complaints.

The issuance of Executive Order 13160, together with the publication of the Title IX common rule (see the accompanying article in this issue) mark the completion of two major objectives established by President Clinton in June 1997. In a memorandum issued on the 25th anniversary of Title IX, the President announced his intention to reinvigorate the enforcement of Title IX and to apply the standards of Title IX (which covers education and training programs that receive federal financial assistance) to education and training programs conducted by the federal government itself. ◆



The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Attorney General

*Janet Reno*  
Attorney General

*Eric H. Holder, Jr.*  
Deputy Attorney General

*Daniel Marcus*  
Acting Associate Attorney General

*Bill Lann Lee*  
Assistant Attorney General

*William Yeomans*  
Chief of Staff

*Stuart J. Ishimaru*  
*Loretta King*  
*Helen Norton*  
Deputy Assistant Attorneys General

*Merrily A. Friedlander*  
Section Chief

*Theodore R. Nickens*  
Deputy Section Chief (Program)

*Andrew M. Strojny*  
Deputy Section Chief (Legal)

*Allen Payne*  
Editor

*Contributing to this issue:*

Contributing to this issue: Sebastian Aloit, Jody Feder, Selin Cherian-Rivers, Mona Diaz, Allen Payne, Beth Pincus, Christine Stoneman, Nathan Stump, Andrew Strojny, Bill Worthen, Yasmin Yorker (EPA)

*Secretarial support:* Rita Craig

This newsletter can be viewed on the Coordination and Review Section's website at [www.usdoj.gov/crt/cor](http://www.usdoj.gov/crt/cor). It also is available in alternate formats. Contact the Coordination and Review Section at (202) 307-2222 (voice) or (202) 307-2678 (TDD).

Toll-free Title VI Information Line:  
1-888-TITLE06