

# The Federal Update for July 1, 2022

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Re: Federal Update

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## Legislation and Guidance

### Senate Republicans Introduce Legislation to Block Loan Forgiveness

As the Biden administration continues to weigh its options for delivering loan forgiveness for a wider range of borrowers than the more targeted forgiveness already implemented, Senate Republicans have introduced legislation to require approval from Congress for such loan relief.

Many Democrats have been pushing the administration to unveil a plan for widespread loan forgiveness, but the White House is weighing exactly how it plans to move forward, which may include imposing income maximums for borrowers to be eligible for the loan relief. Congressional Republicans have generally been opposed to any widespread loan forgiveness, as well as further extensions of the COVID-19 pause on payments and interest accrual. The legislation this week, introduced by Senator Mitt Romney (R-UT) and joined by others, is the latest signal from Republicans of their opposition to widespread relief. The legislation would require approval from the House and Senate for loan forgiveness. Senator Romney also introduced legislation this spring that would completely prohibit the President’s ability to implement loan relief, except for targeted programs like the Public Service Loan Forgiveness program, and Representative Ashley Hinson (R-IA) offered a similar amendment to the fiscal year 2023 education funding bill marked up Thursday by the House Committee on Appropriations that was not adopted.

While these bills will not pass muster in the House or Senate due to the Democratic majority, they serve as a message for Republican constituents and voters generally as the midterm elections approach. As for the administration’s plan, no clear timeline for its release has been set. According to the most recent reports, the administration is strongly considering cancelling $10,000 per borrower, with certain income limitations placed on the forgiveness. It is likely the plan will be released in the coming months ahead of the midterm elections. Meanwhile, it remains unclear whether the administration will extend the student loan payment and interest pause past the current August 31st expiration, but Secretary of Education Miguel Cardona has indicated that the administration is considering it.

Resources:

Michael Stratford, “Top Senate GOP leaders unveil bill to block Biden’s loan forgiveness,” *Politico Morning Education*, June 29, 2022.

Author: KSC

## News

### Supreme Court Says Public Prayer Allowed at Schools

In a precedent-setting case decided earlier this week, the U.S. Supreme Court said that a State’s interest in avoiding the appearance that it endorsed a specific religious exercise is outweighed by the right of a football coach to engage in religious exercise and free speech. In the case of *Kennedy v. Bremerton Community School District*, the coach engaged in repeated prayer with players, both in the locker room during halftime and on the 50-yard line at the end of games. After some complaints, Kennedy stopped his halftime prayer but he persisted in offering a prayer after the game at the 50-yard line despite district objections. Parents also complained that students felt compelled to join in the prayer in order to gain playing time.

The Court sided with Kennedy 6-3, suggesting that he was offering a “brief, private” prayer during a time in his workday when he was not otherwise engaged and when other staff were free to check their phones, make calls, socialize with game attendees, and participate in “all manner of private speech.” It rejected concerns about coercion, saying that “learning how to tolerate speech or prayer of all kinds is ‘part of learning how to live in a pluralistic society,’ a trait of character essential to ‘a tolerant citizenry.’”

In this ruling, the Court also struck down previous precedent set by a 1971 ruling, *Lemon v. Kurtzman*, which allows a practice to advance if it does not cause “excessive entanglement with religion.” The new rule set out by the Court is to determine whether a law or practice violates the establishment clause by looking at the historical practices and understanding that would have been familiar to the drafters of the Constitution.

The dissenting justices disputed not only the legal reasoning—and the propriety of overturning the *Lemon* test—but also the assertion that the prayer was a “quiet” and “private” exercise, taking the unprecedented step of including a photo in the dissent that showed Kennedy in a school jersey surrounded by dozens of players and holding up a school-branded football helmet. It suggested that the decision “elevates one individual’s interest in personal religious exercise over society’s interest in protecting the separation between church and [S]tate, eroding the protections for religious liberty for all.”

States and school districts are already grappling with what this decision means for the free speech rights of teachers and staff, as well as existing limitations on religious practices or groups on school grounds.

Author: JCM

### In EPA Decision, Court Challenges Administrative Power

On Thursday, the Supreme Court issued a decision which calls into question the ability of federal agencies to regulate in certain contexts. In *West Virginia v. Environmental Protection Agency* (EPA), the Court was asked to consider the EPA’s authority to require States to curb greenhouse gas emissions under the Clean Air Act.  Plaintiffs argued that EPA only had the authority to regulate within the confines of the statutory provisions.  The Court agreed, saying that under the “major questions doctrine” created by courts, Congress should make “major policy decisions” itself, and that administrative agencies do not have such broad authority.  Under a 2001 decision, this principle of statutory interpretation says that courts, agencies, and others should assume Congress “does not alter the fundamental details of a regulatory scheme in vague terms” or “hide elephants in mouse holes.”

In saying that it is Congress—not federal agencies—who should authorize broad regulatory systems, the Court calls into question the scope of agency discretion to interpret statutes outside the strict confines of a few paragraphs of text.  This assertion could be used to challenge forthcoming controversial regulations, such as the draft rule for Title IX of the Education Amendments of 1972 unveiled last week or the new rule on “gainful employment” expected next year.

Author: JCM

## Reports

### BIE Making Some Progress, GAO Says

According to a report released this week by the Government Accountability Office (GAO), the Bureau of Indian Education (BIE) continues to face management and operational challenges despite making some progress.

GAO includes BIE on a high-risk list which identifies government operations with vulnerabilities to fraud, waste, abuse, and mismanagement. Struggles within BIE date back to February 2017 when GAO named BIE’s administration of schools for American Indian students as part of the high-risk area, “Improving Federal Management of Programs that Serve Tribes and their Members,” identified in GAO’s biennial update that year.

The recent report identifies five criteria that BIE must meet to be removed from high-risk status. Currently, BIE has fully met two of the criteria: those for “leadership commitment” and creating an action plan. However, it has only partially met the criteria for capacity, monitoring, and demonstrated progress. Notably, GAO has made 32 recommendations to BIE related to their high-risk status of school administration in various reports dating back to 2013. To date, 10 of those recommendations remain open. The topics identified in the recommendations range from management issues and fiscal oversight to school construction and safety, as well as the provision of special education services.

GAO determined that BIE leadership is committed to improving based on the Bureau’s implementation of past GAO recommendations and its creation of a leadership position dedicated to seeing that GAO’s recommendations are met. Among the issues related to the criteria from the recent report that BIE must address are staffing issues that hinder progress on meeting the capacity criteria and BIE’s failure to implement a high-risk monitoring program for schools’ use of federal education funds.

BIE serves around 46,000 American Indian students at 183 elementary and secondary schools located on reservations in 23 States. BIE grant funds help administer approximately two-thirds of those schools, while BIE itself operates the remaining third.

[A copy of the report can be found here.](https://www.gao.gov/assets/gao-22-106104.pdf)

Resources:

Naaz Modan, “GAO: BIE schools continue to be at ‘high risk,’” *K-12 Dive*, June 29, 2022.

Author: ASB

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