



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

DRAFT / ATTORNEY WORK PRODUCT / PRIVILEGED & CONFIDENTIAL / PRE-DECISIONAL & DELIBERATIVE

TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April 5, 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

(b)(5)

A large rectangular area of the document is redacted with a solid pink color. The redaction is outlined in yellow. The text "(b)(5)" is written in the top-left corner of this area.

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

(b)(5)



(b)(5)



(b)(5)



(b)(5)



(b)(5)



(b)(5)



## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 6:50 PM  
**To:** Leheny, Emma; Darcus, Joanna  
**Subject:** RE: Klain follow-up  
**Attachments:** Debt Cancellation Memo (2021.04.05 600 pm).docx

Hi Emma – I'm attaching an updated draft, reflecting your edits and edits from Brian. This continues to be marked as "draft" and with other headings for purposes of circulating to Sheila et al. tonight.

---

**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 1:43 AM  
**To:** Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Klain follow-up

Hi Emma,

I'm attaching an updated debt cancellation memo Joanna and I prepared that takes the HEROES Act analysis from our original memo and updates it based on consultations with OLC/WHCO and further research. If helpful to discuss, it looks like we're all free at 3:00 pm and 4:30 pm. As we discussed, we should give Brian the opportunity to review, and one comment bubble asks him to weigh in based on his institutional knowledge.

Greg

---

**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Sent:** Friday, April 2, 2021 2:04 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Klain follow-up

Sounds good. Would the two of you like to work out steps to completion? If can review it and the three of us meet by Monday morning, I think we will be on target.

I'll call Jen as Sheila requested, but let her know we are working up a new version.

---

**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Friday, April 2, 2021 1:56 PM  
**To:** Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Klain follow-up

That might be best – we could describe it as the original memo as updated to reflect further research and consultations with WHCO/OLC. (b)(5)

(b)(5)

---

**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Sent:** Friday, April 2, 2021 1:51 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** Re: Klain follow-up



I wonder if only circulating a new version may meet needs. And providing it to Jen, but saying she can move or hold it.

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---

**From:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>

**Sent:** Friday, April 2, 2021 1:47:21 PM

**To:** Leheny, Emma <[Emma.Leheny@ed.gov](mailto:Emma.Leheny@ed.gov)>; Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>

**Subject:** RE: Klain follow-up

(Narrowing chain to OGC.)

(b)(5)



Note that the letter Ben just sent from Sen. Warren includes this question: "Secretary DeVos requested a legal opinion on the Secretary's statutory authority to cancel, compromise, discharge, or forgive broad categories of student loans, which has since been removed from ED's website. Has ED prepared a new legal opinion or review? If so, please provide this opinion or review. If not, do you plan to prepare a new opinion?"

---

**From:** Leheny, Emma <[Emma.Leheny@ed.gov](mailto:Emma.Leheny@ed.gov)>

**Sent:** Friday, April 2, 2021 12:36 PM

**To:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>; Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>

**Cc:** Miller, Benjamin <[Benjamin.Miller@ed.gov](mailto:Benjamin.Miller@ed.gov)>; Morgan, Julie <[Julie.Morgan@ed.gov](mailto:Julie.Morgan@ed.gov)>

**Subject:** Klain follow-up

At our noon daily, Sheila gave us some direction on how to respond to the Klain comments on ED's debt cancellation work. Julie and Ben were present and can correct/comment on my summary:

(b)(5)



(b)(5)

I called Jen S. at WHCO last night and

(b)(5)

(b)(5)

Thanks.

Emma

## Schmidt, Gregory

---

**From:** Leheny, Emma  
**Sent:** Monday, April 5, 2021 6:54 PM  
**To:** Schmidt, Gregory; Darcus, Joanna  
**Subject:** RE: Klain follow-up

Great. Thank you both. I really felt this version was excellent. And more useful for current purposes than our original draft. I'm waiting to hear from Jen Sokoler whether (b)(5) Sheila is expecting it.

---

**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Monday, April 5, 2021 6:50 PM  
**To:** Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
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**Subject:** RE: Klain follow-up

(Narrowing chain to OGC.)

If we're recirculating the original memo Monday, we'll have to think about (b)(5)

(b)(5)

Note that the letter Ben just sent from Sen. Warren includes this question: "Secretary DeVos requested a legal opinion on the Secretary's statutory authority to cancel, compromise, discharge, or forgive broad categories of student loans, which has since been removed from ED's website. Has ED prepared a new legal opinion or review? If so, please provide this opinion or review. If not, do you plan to prepare a new opinion?"

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**Cc:** Miller, Benjamin <[Benjamin.Miller@ed.gov](mailto:Benjamin.Miller@ed.gov)>; Morgan, Julie <[Julie.Morgan@ed.gov](mailto:Julie.Morgan@ed.gov)>  
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I called Jen S. at WHCO last night and (b)(5)

(b)(5)

Thanks.  
Emma



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TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April 8, 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

(b)(5)

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[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

(b)(5)



(b)(5)





(b)(5)



(b)(5)



(b)(5)



## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Thursday, April 8, 2021 3:33 PM  
**To:** Leheny, Emma  
**Subject:** FW: Rubinstein debt cancellation memo question  
**Attachments:** Memo, EL to MC re Debt Cancellation (2021.04.08).pdf

Phil confirms that he was not consulted on the Rubinstein memo. I (b)(5)

(b)(5)

I've also deleted "draft" from the headers (but otherwise left the headers), updated the date to today, and made a few light proofing/stylistic edits.

---

**From:** Schmidt, Gregory  
**Sent:** Thursday, April 8, 2021 2:41 PM  
**To:** Rosenfelt, Phil <Phil.Rosenfelt@ed.gov>  
**Subject:** RE: Rubinstein debt cancellation memo question

Got it – thank you. I cannot imagine how anybody could do these jobs without checking with you on just about everything, so I hope we're striking the right medium!

Thanks,  
Greg

---

**From:** Rosenfelt, Phil <Phil.Rosenfelt@ed.gov>  
**Sent:** Thursday, April 8, 2021 2:38 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Rubinstein debt cancellation memo question

Greg: Good afternoon. I really appreciate you checking with me. I was definitely not consulted on the memorandum. Please let me know if you have any questions. Thanks for asking.

Phil

---

**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Thursday, April 8, 2021 2:08 PM  
**To:** Rosenfelt, Phil <Phil.Rosenfelt@ed.gov>  
**Subject:** Rubinstein debt cancellation memo question

Hi Phil,

One question regarding the Jan. 12, 2021 Rubinstein memorandum on debt cancellation (attached)—we understand from Brian that he and DPE staff were not consulted on that memo, but Emma and I just realized that we weren't sure whether we'd checked with you on whether you were consulted at all on it. (We're just trying to confirm whether it would be true to say (b)(5)

Thank you,

Greg



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TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April 8, 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation Under  
the Higher Education Relief Opportunities for Students Act of 2003

(b)(5)

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

(b)(5)

(b)(5)



(b)(5)



(b)(5)

(b)(5)



## Schmidt, Gregory

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**From:** Schmidt, Gregory  
**Sent:** Thursday, April 8, 2021 4:09 PM  
**To:** Leheny, Emma  
**Subject:** RE: Rubinstein debt cancellation memo question  
**Attachments:** Memo, EL to MC re Debt Cancellation (2021.04.08).pdf

All makes sense – revised attached.

---

**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Sent:** Thursday, April 8, 2021 4:03 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Rubinstein debt cancellation memo question

Looks good. (b)(5)

(b)(5)

Lastly, and this is a very minor point, we spell out the number “fifty” in footnote 2, but use a numeral for the number “5.” In my experience, the reverse would be true. But if that is a stylistic choice you’ve made, we can leave it.

Could you make these tweaks and send it back to me once more? Is this copy in PDF, I wasn't able to make them myself.

Thanks so much.  
Emma

---

**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Thursday, April 8, 2021 3:33 PM  
**To:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Subject:** FW: Rubinstein debt cancellation memo question

Phil confirms that he was not consulted on the Rubinstein memo. (b)(5)

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Greg

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**Sent:** Thursday, April 8, 2021 2:38 PM  
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Thank you,  
Greg

## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Thursday, April 1, 2021 4:01 PM  
**To:** Darcus, Joanna; Leheny, Emma  
**Subject:** RE: [Press Inquiry] FW: Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

This report indicates that the President made the ask before the Secretary was confirmed – it says the request was to prepare a memo “once he got on the job.” (b)(5)

(b)(5)

Could you loop Emma and me into the chain?

---

**From:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Sent:** Thursday, April 1, 2021 3:19 PM  
**To:** Leheny, Emma <Emma.Leheny@ed.gov>; Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** [Press Inquiry] FW: Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

Hi Emma and Greg,

I'm sorry I missed the chance to catch up with you all about this news item earlier. I'm sending along a specific press inquiry (at the bottom of the thread) and a request for direction (highlighted in green) about what to say to the press. WH Comms did not coordinate with Kelly or with Rachel Thomas about Klain's interview in advance, but (b)(5)

(b)(5) I'm sure our input on the response and the coordination will be welcome.

Thanks,

Joanna

---

**From:** Leon, Kelly S. <Kelly.S.Leon@ed.gov>  
**Sent:** Thursday, April 1, 2021 2:15 PM  
**To:** Miller, Benjamin <Benjamin.Miller@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>  
**Cc:** Bradshaw, Jim <Jim.Bradshaw@ed.gov>; Harmoush, Vanessa <Vanessa.Harmoush@ed.gov>  
**Subject:** Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

Greetings Again,

All the higher ed things this week.

So Ron Klain talked to *Politico/CNN* about student loan debt this morning.

(b)(5)

Andrew K. at *Bloomberg Gov* is specifically interested in whether the Department is now preparing a new/separate memo for the President and if so who is leading this work.

(b)(5)

Thanks for your guidance,  
Kelly

<https://www.politico.com/newsletters/playbook-pm/2021/04/01/top-takeaways-from-our-ron-klain-interview-492326>

— **KLAIN MADE NEWS ON STUDENT DEBT:** [Progressives](#) like Rep. **PRAMILA JAYAPAL** (D-Wash.) have been pushing President **JOE BIDEN** to use what they argue is his executive power to cancel \$50,000 in student debt. Klain said the president (b)(5)

(b)(5)

**From:** Kreighbaum, Andrew <[akreighbaum@bloombergindustry.com](mailto:akreighbaum@bloombergindustry.com)>  
**Sent:** Thursday, April 1, 2021 12:09 PM  
**To:** Leon, Kelly S. <[Kelly.S.Leon@ed.gov](mailto:Kelly.S.Leon@ed.gov)>  
**Cc:** Harmoush, Vanessa <[Vanessa.Harmoush@ed.gov](mailto:Vanessa.Harmoush@ed.gov)>; Press <[Press@ed.gov](mailto:Press@ed.gov)>  
**Subject:** Ed Department review of authority on student debt cancellation

Hey Kelly,

Hope you're having a good week. I'm writing because Ron Klain told CNN this morning that the White House has asked Secretary Cardona for a review of authority to cancel student debt via executive action.

<https://twitter.com/lbarronlopez/status/1377643128279158786>

Can you comment on who will lead that review and when the Ed Department expects to complete it? Also, how will this review align with the work DOJ is already doing to study this issue?

Thanks!

.....

**Andrew Kreighbaum**

Reporter

Bloomberg Government

Cell: (214) 673-3424





## Schmidt, Gregory

---

**From:** Leon, Kelly S.  
**Sent:** Thursday, April 1, 2021 10:07 PM  
**To:** Leheny, Emma; Darcus, Joanna; Miller, Benjamin; Morgan, Julie  
**Cc:** Bradshaw, Jim; Harmoush, Vanessa; Schmidt, Gregory  
**Subject:** RE: Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

Thanks, Emma, Joanna and All. I am sincerely grateful for your guidance here. After my outreach to the WH Comms office, a few colleagues who work with the COS were looped in. (b)(5)

(b)(5) If anything more is shared with me, I will relay to all of you. -kelly

---

**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
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**To:** Leon, Kelly S. <Kelly.S.Leon@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>  
**Cc:** Bradshaw, Jim <Jim.Bradshaw@ed.gov>; Harmoush, Vanessa <Vanessa.Harmoush@ed.gov>; Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

Kelly,

(b)(5)

I confess I have not heard back from Julie, but otherwise I think we are all set.

Emma

---

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**Sent:** Thursday, April 1, 2021 4:38 PM  
**To:** Darcus, Joanna <Joanna.Darcus@ed.gov>; Miller, Benjamin <Benjamin.Miller@ed.gov>; Morgan, Julie <Julie.Morgan@ed.gov>  
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**Subject:** RE: Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

Thanks, Joanna.

Andrew is aiming to publish by COB (~6:30P). He wants to put something in tomorrow morning's newsletter.

Fox News also reached out with the same question this afternoon at about 3:30. No clear deadline was provided but we are checking.

(b)(5)

Thanks to all,  
-kelly

---

**From:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>

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**To:** Leon, Kelly S. <[Kelly.S.Leon@ed.gov](mailto:Kelly.S.Leon@ed.gov)>; Miller, Benjamin <[Benjamin.Miller@ed.gov](mailto:Benjamin.Miller@ed.gov)>; Morgan, Julie <[Julie.Morgan@ed.gov](mailto:Julie.Morgan@ed.gov)>

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**Subject:** RE: Ron Klain's comments to Politico / CNN about Ed Department review of authority on student debt cancellation

Hi all,

I'm adding Emma and Greg to this thread so we can benefit from their direct input, too. We look forward to following up with you, though we are all in a key meeting until 5pm.

Kelly, do you have Andrew's deadline?

Thanks,

Joanna

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||

TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Principal Deputy General Counsel & Acting General Counsel

DATE: April [redacted], 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

**Introduction**

[redacted]

[redacted]

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

(b)(5)



(b)(5)



(b)(5)

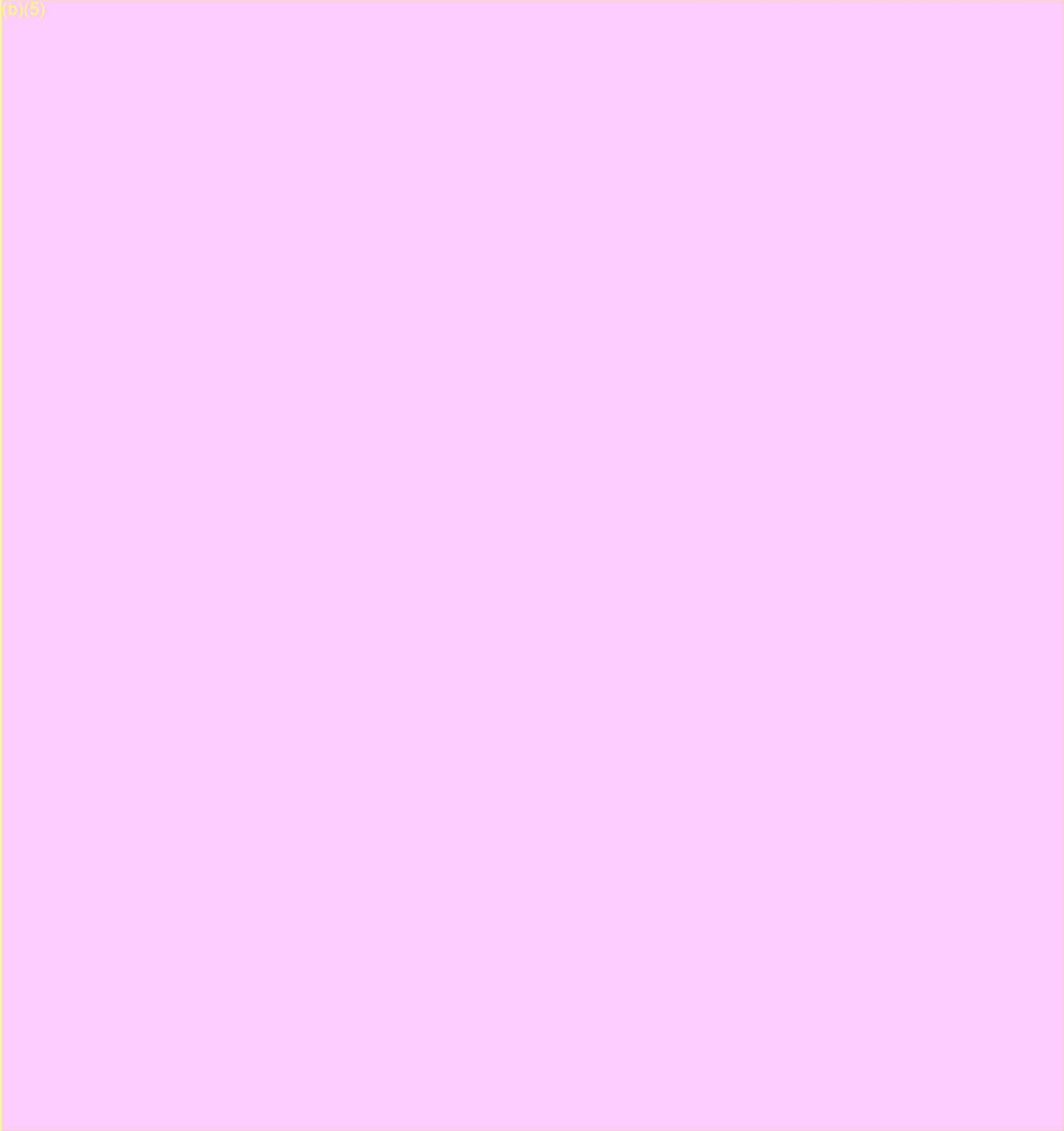


(b)(5)





(b)(5)



## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Saturday, April 3, 2021 2:15 PM  
**To:** Darcus, Joanna  
**Subject:** RE: Klain follow-up  
**Attachments:** Debt Cancellation Memo (2021.04.03 2 pm).docx

Attached and over to you! I've tried to move the ball down the field as much as possible given my unavailability the first half of the day tomorrow, but will be on email further today and the back half of tomorrow.

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**From:** Schmidt, Gregory  
**Sent:** Saturday, April 3, 2021 11:31 AM  
**To:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Klain follow-up

Got it – I'm waiting on Emma to turn around edits on the Marten QFRs right now, so I may take an initial pass through and turn to you by 2 pm (or let you know by 2 pm that I haven't yet).

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**From:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Sent:** Friday, April 2, 2021 7:24 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Klain follow-up

Hi Greg,

I'm glad you'll be able to spend time with your parents on Sunday. Tomorrow morning, (b)(5) so later in the day would work better for me. I'll try to gather my thoughts as early as possible so I can be efficient in the afternoon/evening.

(b)(5)

Sounds great re: Brian.

Thanks!

Joanna

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**From:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>

**Sent:** Friday, April 2, 2021 6:04 PM

**To:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>

**Subject:** RE: Klain follow-up

Sorry for late follow-up on this! That sounds good. I'm aiming to work tomorrow but to protect Sunday to see my parents as best I can, so if you think you're likely to turn to it in the second half of tomorrow I can also start in early in the day tomorrow.

A few thoughts:

- Two competing thoughts on litigation risk analysis:

(b)(5)

- If this is intended to be public-facing, we may want to more directly engage with the Rubinstein memo (b)(5)

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Our

Rubinstein countering in the original was i (b)(5)

- I've been toying with idea of (b)(5)

(b)(5)

- Per Emma, I'll flag for Brian that we're still sorting through how to respond to Klain's statement, but that we're working on a revised draft of the memo and may share it for his review Monday.

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**From:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>

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**To:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>

**Subject:** RE: Klain follow-up

Hi Greg,

Just wanted to confer about the updates to the memo. Shall we propose a time by which we can get the draft to Emma for review? I haven't been able to turn to the memo yet today, but I anticipate that I should be able to share a draft with the updates I'm thinking about for the HEROES Act section by sometime tomorrow evening.

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I'll call Jen as Sheila requested, but let her know we are working up a new version.

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That might be best – we could describe it as the original memo as updated to reflect further research and consultations with WHCO/OLC. (b)(5)

(b)(5)

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**From:** Leheny, Emma <[Emma.Leheny@ed.gov](mailto:Emma.Leheny@ed.gov)>  
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**To:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>; Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
**Subject:** Re: Klain follow-up

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**Subject:** RE: Klain follow-up

(Narrowing chain to OGC.)

(b)(5)

Note that the letter Ben just sent from Sen. Warren includes this question: “Secretary DeVos requested a legal opinion on the Secretary’s statutory authority to cancel, compromise, discharge, or forgive broad categories of student loans, which has since been removed from ED’s website. Has ED prepared a new legal opinion or review? If so, please provide this opinion or review. If not, do you plan to prepare a new opinion?”

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**Cc:** Miller, Benjamin <[Benjamin.Miller@ed.gov](mailto:Benjamin.Miller@ed.gov)>; Morgan, Julie <[Julie.Morgan@ed.gov](mailto:Julie.Morgan@ed.gov)>  
**Subject:** Klain follow-up

At our noon daily, Sheila gave us some direction on how to respond to the Klain comments on ED's debt cancellation work. Julie and Ben were present and can correct/comment on my summary:

(b)(5)



Thanks.  
Emma



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

DRAFT / ATTORNEY WORK PRODUCT / PRIVILEGED & CONFIDENTIAL / PRE-DECISIONAL & DELIBERATIVE

||

(b)(5)

TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Principal Deputy General Counsel & Acting General Counsel

DATE: April [redacted], 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

(b)(5)

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www.ed.gov

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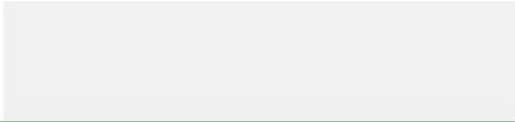
which the benefits provided to borrowers with Department-held loans under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. 116-136, are effective.

The use of the HEROES Act to effectuate these waivers and modifications in 2020 is consistent with the Department’s past practice. The HEROES Act was enacted by Congress in 2003, and the Department issued its first Notice of waivers and modifications pursuant to the HEROES Act that same year. 68 Fed. Reg. 69,312 (Dec. 12, 2003). In the more than 17 intervening years, the Department has continued to use this authority without legal challenge.

**Commented [J4]:** Do we want to qualify this in any way?  
Known legal challenge? Record of legal challenge?

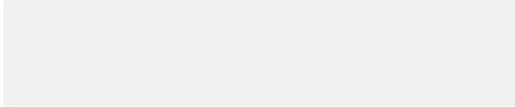
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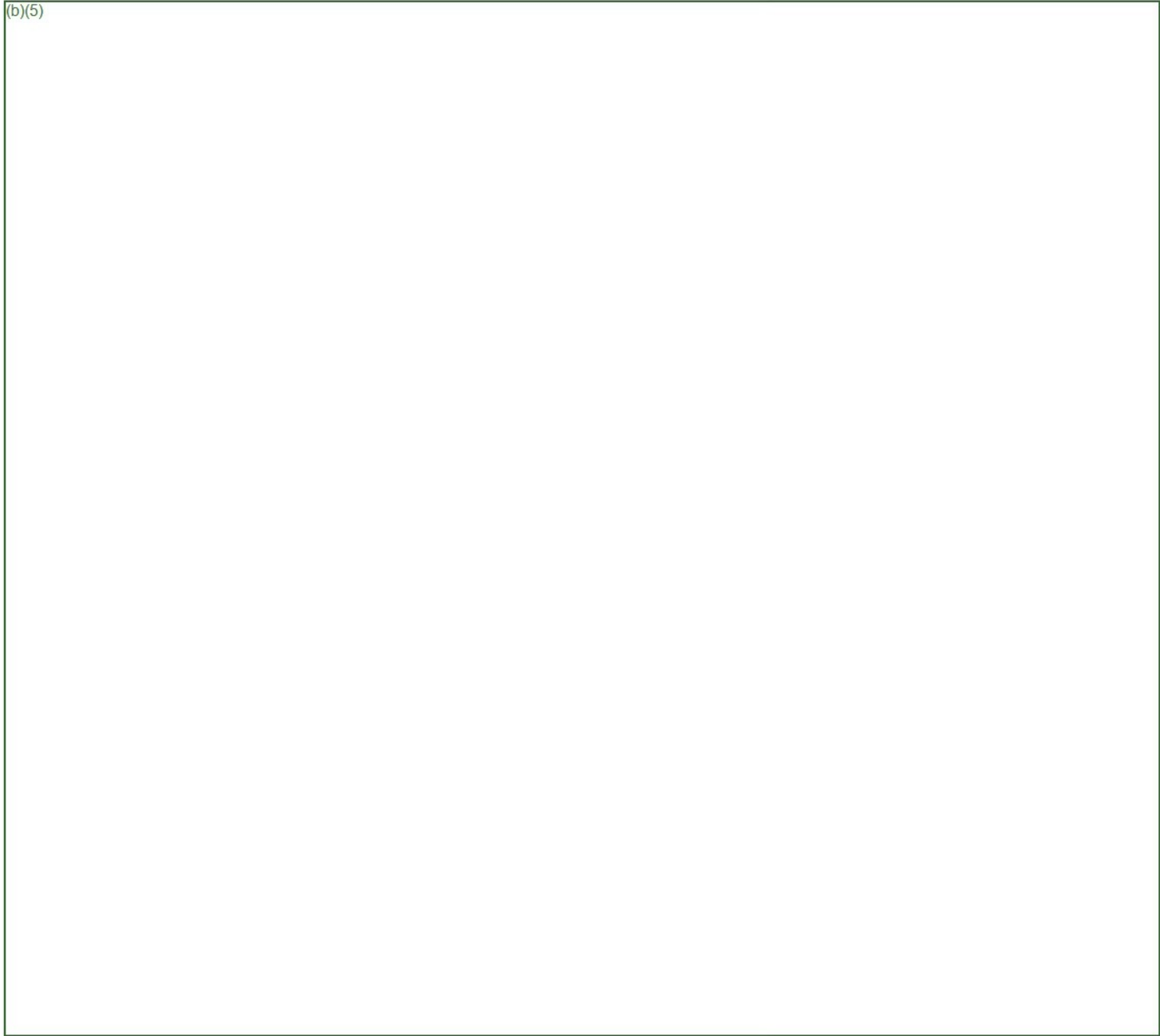


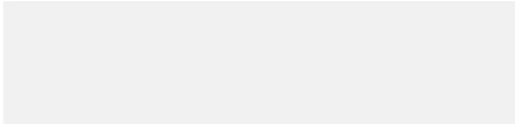
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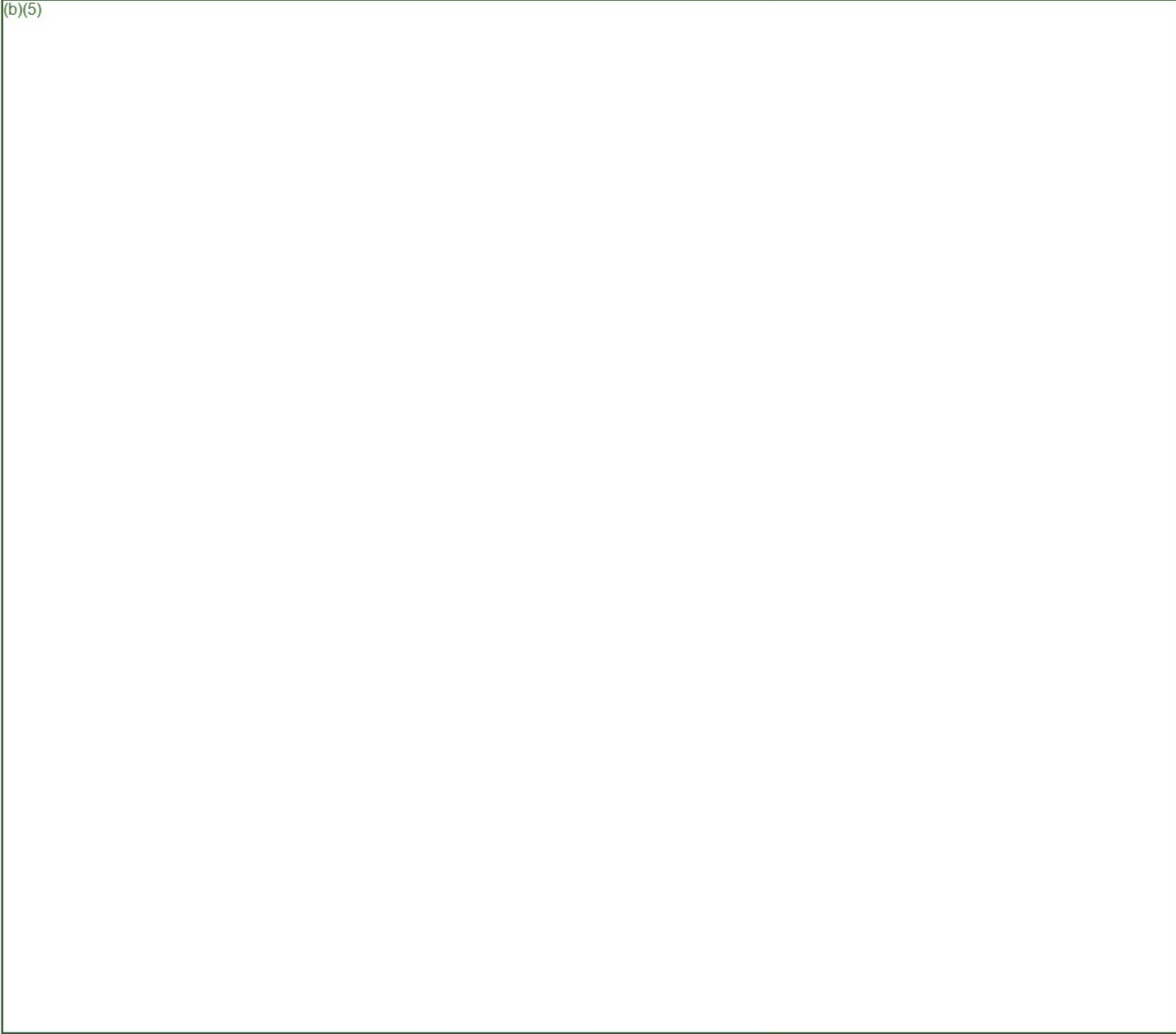


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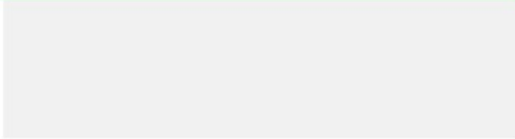




(b)(5)



|



(b)(5)



## Schmidt, Gregory

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**To:** Darcus, Joanna  
**Subject:** RE: Klain follow-up  
**Attachments:** Debt Cancellation Memo (2021.04.04 900 pm).docx

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**Cc:** Miller, Benjamin <[Benjamin.Miller@ed.gov](mailto:Benjamin.Miller@ed.gov)>; Morgan, Julie <[Julie.Morgan@ed.gov](mailto:Julie.Morgan@ed.gov)>  
**Subject:** Klain follow-up



At our noon daily, Sheila gave us some direction on how to respond to the Klain comments on ED's debt cancellation work. Julie and Ben were present and can correct/comment on my summary:

(b)(5)



Thanks.  
Emma

## Schmidt, Gregory

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**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 12:59 AM  
**To:** Darcus, Joanna  
**Subject:** RE: Klain follow-up

Got it – will update. Aiming to circulate a clean later tonight/early tomorrow.

---

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**Sent:** Monday, April 5, 2021 12:47 AM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
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Hi Greg,

Just wanted to note that (b)(5) If you're still finalizing the document for Emma's review, I wanted to share that small edit.

Thanks,

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**Sent:** Monday, April 5, 2021 12:31 AM  
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**Subject:** RE: Klain follow-up

Hi Greg,

Sure—I prefer option 2. Happy to compromise on that for now and will be happy to discuss this and any other aspects of the memo as we keep moving forward on this—just can't let ED be perceived as the hold up!

Thanks,

Joanna

---

**From:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>  
**Sent:** Monday, April 5, 2021 12:20 AM  
**To:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
**Subject:** RE: Klain follow-up

Great – worth talking further on substantive/strategic considerations around (b)(5) but looks like the only open question as to what the text of the memo says is (b)(5)

(b)(5)

---

**From:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
**Sent:** Sunday, April 4, 2021 11:28 PM  
**To:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>  
**Subject:** RE: Klain follow-up

Hi Greg,

Here's the draft back. I wrote a pretty long response to your comment about (b)(5) Thanks for flagging that in your email. I'll be happy to talk through any or all of that and, in the meantime, I still see mostly agreement in the text and I think the edits you suggested on that point/issue work well.

I resolved comments for which my response amounted to "I agree"—save those that require further follow up (like a flag for Brian). I left just 2-3 new tracked changes, too.

Happy to resume work on this in the morning, as helpful.

Thanks,

Joanna

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**From:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
**Sent:** Sunday, April 4, 2021 9:48 PM  
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Hi Greg,

Okay—I will hop back in now!

Joanna

Joanna Darcus

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**Sent:** Sunday, April 4, 2021 9:38:58 PM  
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Hi Greg,

Just wanted to confer about the updates to the memo. Shall we propose a time by which we can get the draft to Emma for review? I haven't been able to turn to the memo yet today, but I anticipate that I should be able to share a draft with the updates I'm thinking about for the HEROES Act section by sometime tomorrow evening.

Joanna

---

**From:** Leheny, Emma <[Emma.Leheny@ed.gov](mailto:Emma.Leheny@ed.gov)>  
**Sent:** Friday, April 2, 2021 2:04 PM  
**To:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>; Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
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(b)(5)

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(Narrowing chain to OGC.)

(b)(5)

Note that the letter Ben just sent from Sen. Warren includes this question: “Secretary DeVos requested a legal opinion on the Secretary’s statutory authority to cancel, compromise, discharge, or forgive broad categories of student loans, which has since been removed from ED’s website. Has ED prepared a new legal opinion or review? If so, please provide this opinion or review. If not, do you plan to prepare a new opinion?”

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(b)(5)

Thanks.  
Emma



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

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||

TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April [redacted], 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

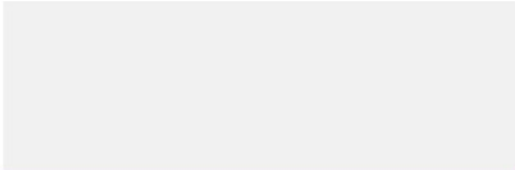
(b)(5)

(b)(5)

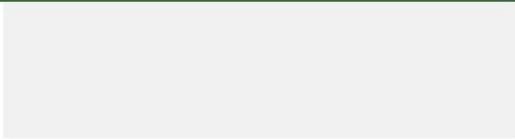
400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
www.ed.gov

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*



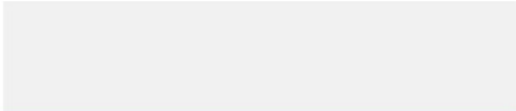


(b)(5)

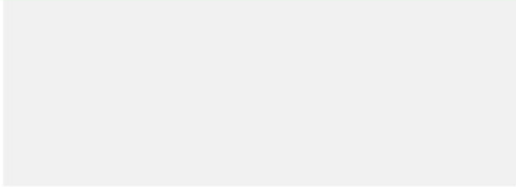


(b)(5)

(b)(5)



(b)(5)



(b)(5)

(b)(5)

## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 1:43 AM  
**To:** Leheny, Emma; Darcus, Joanna  
**Subject:** RE: Klain follow-up  
**Attachments:** Debt Cancellation Memo (2021.04.05 100 am).docx

Hi Emma,

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Greg

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**Subject:** RE: Klain follow-up

(Narrowing chain to OGC.)

If we're recirculating the original memo Monday, we'll have to think about (b)(5)

(b)(5)

Note that the letter Ben just sent from Sen. Warren includes this question: "Secretary DeVos requested a legal opinion on the Secretary's statutory authority to cancel, compromise, discharge, or forgive broad categories of student loans, which has since been removed from ED's website. Has ED prepared a new legal opinion or review? If so, please provide this opinion or review. If not, do you plan to prepare a new opinion?"

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(b)(5)

Thanks.



Emma

## Schmidt, Gregory

---

**From:** Leheny, Emma  
**Sent:** Monday, April 5, 2021 11:01 AM  
**To:** Schmidt, Gregory; Darcus, Joanna  
**Subject:** RE: Klain follow-up

Thank you both. Will review this afternoon.

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Thanks for enduring this food salad.

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Greg

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(b)(5)

(b) (5)

Thanks.  
Emma

## Schmidt, Gregory

---

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**Sent:** Monday, April 5, 2021 12:53 PM  
**To:** Leheny, Emma; Darcus, Joanna  
**Subject:** RE: Klain follow-up

Should we share this with Brian now so we can give him more time to send comments in advance of circulating later today, or do you want to review first?

---

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(Narrowing chain to OGC.)

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OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

DRAFT / ATTORNEY WORK PRODUCT / PRIVILEGED & CONFIDENTIAL / PRE-DECISIONAL & DELIBERATIVE

TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April 1, 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

(b)(5)

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
www.ed.gov

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*



(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)



## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 4:45 PM  
**To:** Siegel, Brian  
**Cc:** Darcus, Joanna  
**Subject:** RE: Debt cancellation memo  
**Attachments:** Debt Cancellation Memo (2021.04.05 100 am).docx

Hi Brian,

I'm attaching the updated draft of the memo, which Emma will be sending to Sheila and others later tonight. We'd be grateful for any comments you have, and in particular have flagged a question on page 3 regarding (b)(5)

(b)(5)

Thank you,  
Greg

---

**From:** Schmidt, Gregory  
**Sent:** Saturday, April 3, 2021 9:01 AM  
**To:** Siegel, Brian <Brian.Siegel@ed.gov>  
**Cc:** Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** Debt cancellation memo

Hi Brian,

Just an FYI for Monday – in connection with Ron Klain's statement Thursday about the President having asked the Secretary for a memo on debt cancellation legal authority, we'll likely be preparing an updated version of the memo prepared in February, focused on HEROES Act authority. We'd be grateful for your review of it sometime likely on Monday, and will be in touch as we have a better sense of timing.

Thanks, and have a good weekend,  
Greg

## Schmidt, Gregory

---

**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 4:50 PM  
**To:** Leheny, Emma  
**Subject:** RE: Klain follow-up

We don't yet have comments from Brian (the delay is on my end, as I initially missed your 1 pm email approving sending it to him—apologies), but I've flagged the question for him in the cover email and I'm hoping we'll hear from him on that if not other points in the next couple hours.

That seems like the right group. Could consider including Phil as well, although we haven't sent it to him yet (he did review the original memo) and might be odd for him to receive it on the same chain as Sheila.

---

**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Sent:** Monday, April 5, 2021 4:39 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Klain follow-up

I have read half of it and it looks great. Have you heard from Brian? I'm inclined to deputize you as my approver. I had some line edits, but they are far short of necessary. I did tell Sheila today and she is expecting it. I can send this evening if best for me to review in entirety.

Tell me if you agree re. recipients: Email from me to Sheila with you, Joanna, Brian, Ben M., and Julie M. as cc line.

---

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Emma

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**To:** Siegel, Brian  
**Cc:** Darcus, Joanna  
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Thank you very much, Brian, and apologies for the short turnaround window!

Greg

---

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**Subject:** RE: Debt cancellation memo  
**Importance:** High

Greg – My markup showing some suggestions and technical corrections is attached. I have responded to your question on page 3.

I hope this is helpful. Let me know if you have any questions.

Brian

---

**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Monday, April 5, 2021 4:45 PM  
**To:** Siegel, Brian <Brian.Siegel@ed.gov>  
**Cc:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Debt cancellation memo

Hi Brian,

I'm attaching the updated draft of the memo, which Emma will be sending to Sheila and others later tonight. We'd be grateful for any comments you have, and in particular have flagged a question on page 3 regarding (b)(5)

Thank you,  
Greg

---

**From:** Schmidt, Gregory  
**Sent:** Saturday, April 3, 2021 9:01 AM  
**To:** Siegel, Brian <Brian.Siegel@ed.gov>  
**Cc:** Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** Debt cancellation memo

Hi Brian,

Just an FYI for Monday – in connection with Ron Klain’s statement Thursday about the President having asked the Secretary for a memo on debt cancellation legal authority, we’ll likely be preparing an updated version of the memo prepared in February, focused on HEROES Act authority. We’d be grateful for your review of it sometime likely on Monday, and will be in touch as we have a better sense of timing.

Thanks, and have a good weekend,  
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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

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TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April [redacted], 2021

SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

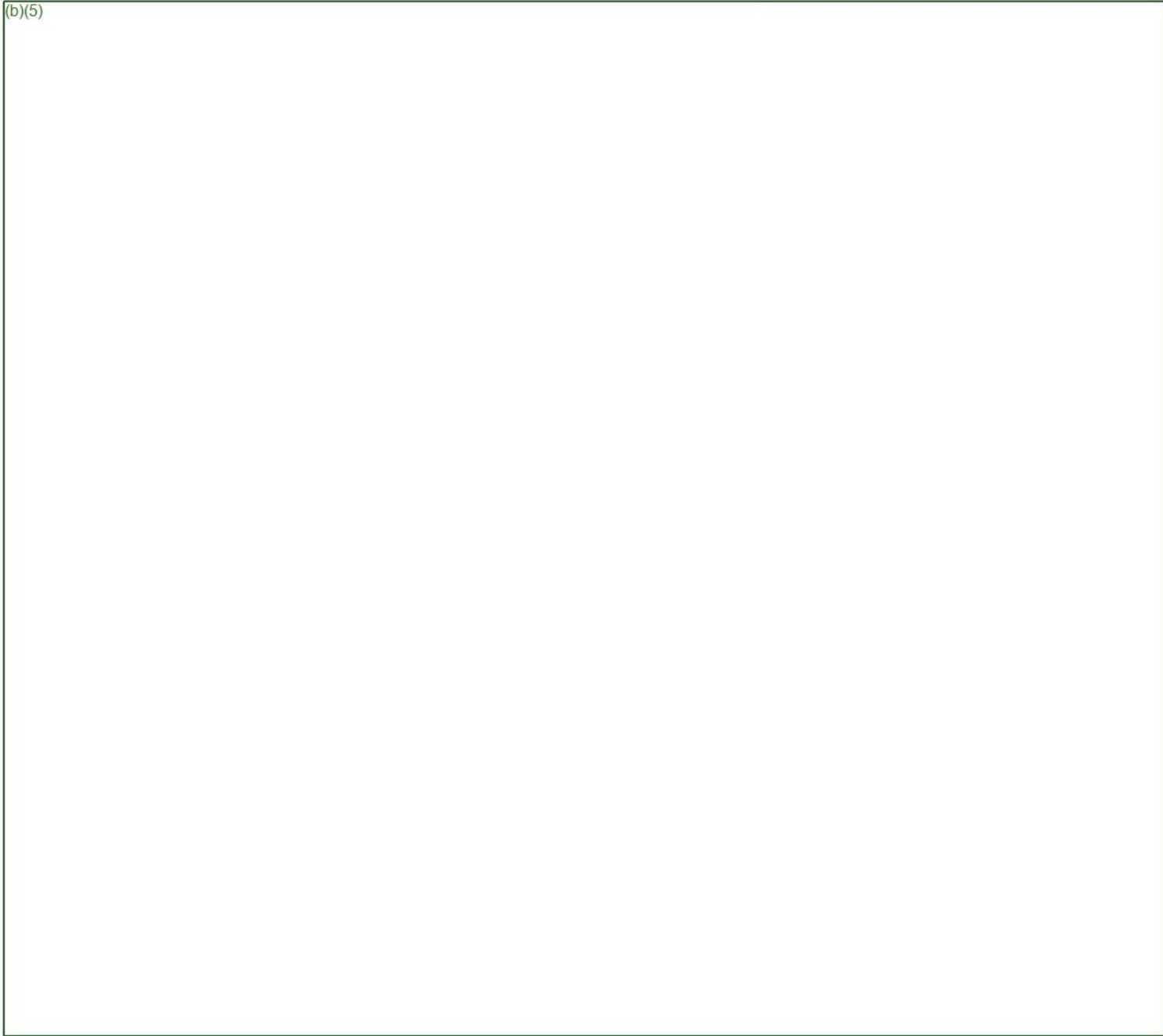
(b)(5)

[www.ed.gov](http://www.ed.gov)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

(b)(5)

(b)(5)



(b)(5)



(b)(5)

(b)(5)

(b)(5)



## Schmidt, Gregory

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**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 5:55 PM  
**To:** Darcus, Joanna  
**Subject:** FW: Debt cancellation memo  
**Attachments:** Debt Cancellation Memo (2021.04.05 100 am).docx

**Importance:** High

I'll merge these with some edits Emma just sent me. Could you weigh in on the comment on page 5?

---

**From:** Siegel, Brian <Brian.Siegel@ed.gov>  
**Sent:** Monday, April 5, 2021 5:52 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Cc:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Debt cancellation memo  
**Importance:** High

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**Cc:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Debt cancellation memo

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**Sent:** Saturday, April 3, 2021 9:01 AM  
**To:** Siegel, Brian <Brian.Siegel@ed.gov>  
**Cc:** Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** Debt cancellation memo

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||

TO: Miguel A. Cardona  
Secretary of Education

FROM: Emma Leheny  
Acting General Counsel

DATE: April [redacted], 2021

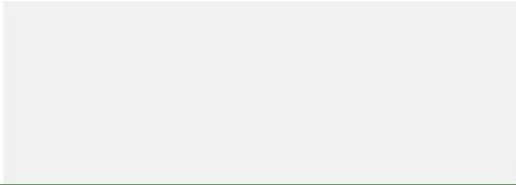
SUBJECT: The Secretary's Legal Authority for Broad-Based Debt Cancellation

(b)(5)

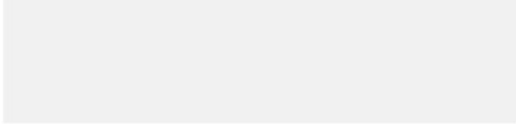
(b)(5)

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
www.ed.gov

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(b)(5)

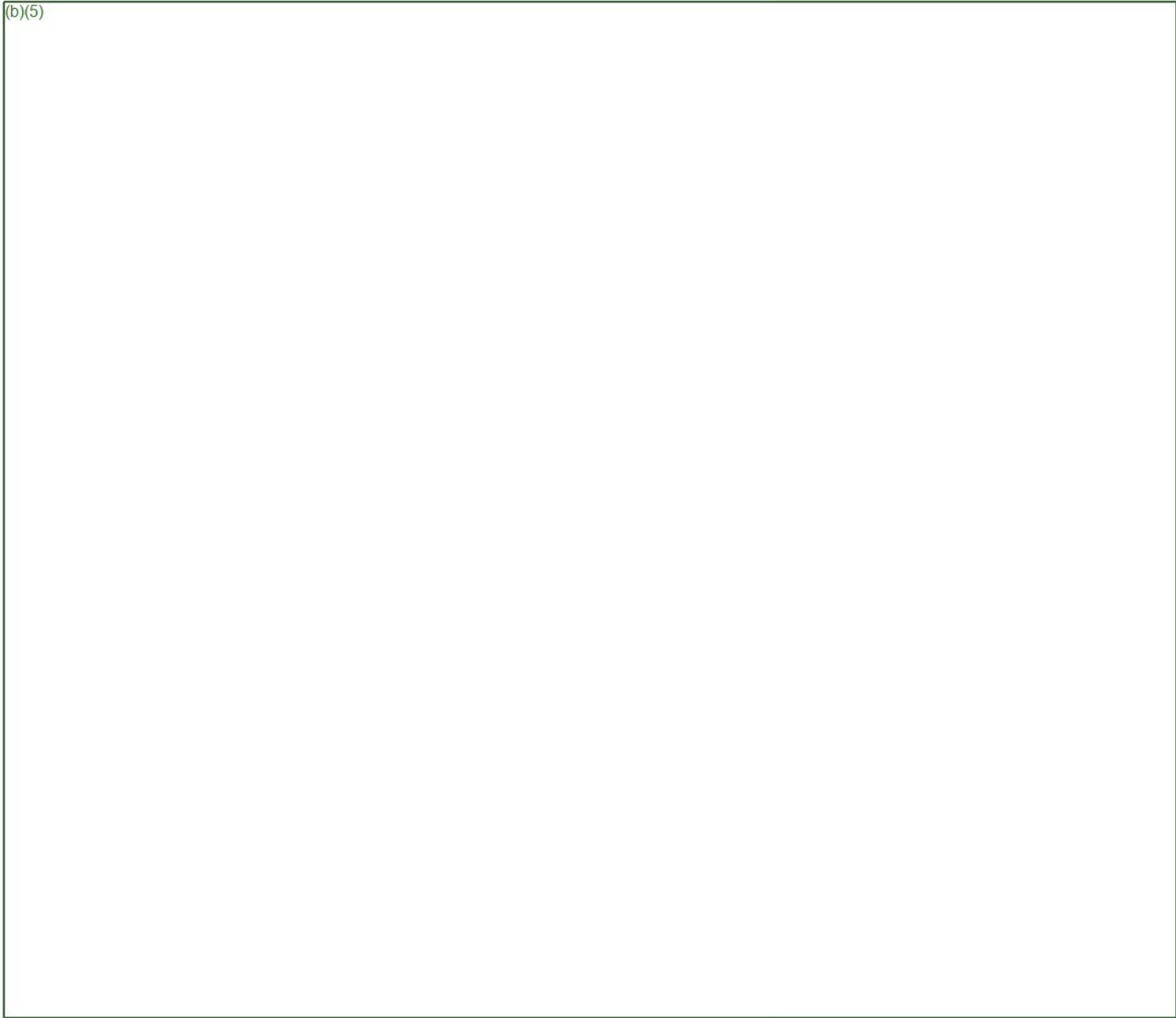


(b)(5)



(b)(5)

(b)(5)



(b)(5)

(b)(5)



## Schmidt, Gregory

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**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 6:30 PM  
**To:** Darcus, Joanna  
**Subject:** RE: Debt cancellation memo  
**Attachments:** Debt Cancellation Memo (2021.04.05 EL).docx

Thanks! Attaching Emma's edits, FYI (b)(5)

---

**From:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Sent:** Monday, April 5, 2021 6:18 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Debt cancellation memo

Here's updated pg. 5 language:

(b)(5)

Three notes:

- (1) I've cited to the first page of each of the regs. (b)(5)
- (2) Note that I made a couple of other tweaks to the sentence for consistency with other places in the text (b)(5) (b)(5) or clarity (b)(5)
- (3) We could end the sentence after (b)(5) if a shorter sentence is desired.

Joanna

---

**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Monday, April 5, 2021 6:02 PM  
**To:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Subject:** RE: Debt cancellation memo

Great – could you send that page paragraph 5 as it should read revised?

---

**From:** Darcus, Joanna <Joanna.Darcus@ed.gov>  
**Sent:** Monday, April 5, 2021 6:00 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Debt cancellation memo

I like all of Brian's comments. As to page 5, I think that's a good flag: (b)(5)

(b)(5)

Joanna

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**From:** Schmidt, Gregory <[Gregory.Schmidt@ed.gov](mailto:Gregory.Schmidt@ed.gov)>  
**Sent:** Monday, April 5, 2021 5:55 PM  
**To:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
**Subject:** FW: Debt cancellation memo  
**Importance:** High

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**Sent:** Monday, April 5, 2021 5:52 PM  
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**Cc:** Darcus, Joanna <[Joanna.Darcus@ed.gov](mailto:Joanna.Darcus@ed.gov)>  
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**Subject:** RE: Debt cancellation memo

Hi Brian,

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(b)(5) [REDACTED]

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Greg

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Greg

## Schmidt, Gregory

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**From:** Schmidt, Gregory  
**Sent:** Monday, April 5, 2021 6:47 PM  
**To:** Leheny, Emma  
**Subject:** RE: Optional line edits

I'd propose (b)(5)

(b)(5) I'll send the revised clean draft, reflecting edits per you and Brian, to the chain with you and Joanna momentarily.

---

**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Sent:** Monday, April 5, 2021 6:01 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** RE: Optional line edits

Excellent – thanks. (b)(5)

(b)(5)

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**From:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Sent:** Monday, April 5, 2021 5:59 PM  
**To:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Subject:** RE: Optional line edits

Executing these now – only comment is that (b)(5)

(b)(5)

Brian has just sent some helpful but non-major comments, which I'm implementing as well.

(b)(5)

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**From:** Leheny, Emma <Emma.Leheny@ed.gov>  
**Sent:** Monday, April 5, 2021 5:33 PM  
**To:** Schmidt, Gregory <Gregory.Schmidt@ed.gov>  
**Subject:** Optional line edits

Greg,

None of my line edits are necessary. Their inclusion are subject to your discretion. Go ahead and finalize once you hear from Brian (unless he raises issues we should discuss). I am working this evening and able to transmit it. Although it is in a holding pattern, I do think we should include today's date and save as a PDF, to mark where we were when we provided it to the Secretary (b)(5)

(b)(5)



Emma