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
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 <Emmaleheny@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 <Emmaleheny@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.

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Sent: Friday, April 2, 2021 1:56 PM
To: Leheny, Emma <Emmaleheny@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. (Conf)

From: Leheny, Emma <Emmaleheny@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

1
I wonder if only circulating a new version may meet needs. And providing it to Jen, but saying she can move or hold it.

Get Outlook for iOS

From: Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Sent: Friday, April 2, 2021 1:47:21 PM
To: Leheny, Emma <Emma.Leheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>
Subject: RE: Klain follow-up

(Narrowing chain to OGC.)

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>
Sent: Friday, April 2, 2021 12:36 PM
To: Darcus, Joanna <Joanna.Darcus@ed.gov>; Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Cc: Miller, Benjamin <Benjamin.Miller@ed.gov>; Morgan, Julie <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:
I called Jen S. at WHCO last night and

Thanks.
Emma
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 [INSERT] Sheila is expecting it.

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.

Hi Emma,

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If we’re recirculating the original memo Monday, we’ll have to think about...

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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Thanks.
Emma
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
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'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 [redacted]).

Thank you,
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
Schmidt, Gregory

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 <Emmaleheny@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. 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 is in PDF, I wasn't able to make them myself.

Thanks so much.
Emma

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Thank you,
Greg
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.”

Could you loop Emma and me into the chain?

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 I’m sure our input on the response and the coordination will be welcome.

Thanks,

Joanna

Greetings Again,
All the higher ed things this week.
So Ron Klain talked to Politico/CNN about student loan debt this morning.
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.

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

From: Kreighbaum, Andrew <akreighbaum@bloombergindustry.com>
Sent: Thursday, April 1, 2021 12:09 PM
To: Leon, Kelly S. <Kelly.S.Leon@ed.gov>
Cc: Harmoush, Vanessa <Vanessa.Harmoush@ed.gov>; Press <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/Ibarronlopez/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
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. If anything more is shared with me, I will relay to all of you. -kelly

From: Leheny, Emma <Emmaleheny@ed.gov>
Sent: Thursday, April 1, 2021 6:31 PM
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,

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>
Cc: Bradshaw, Jim <Jim.Bradshaw@ed.gov>; Harmoush, Vanessa <Vanessa.Harmoush@ed.gov>; Leheny, Emma <Emmaleheny@ed.gov>; Schmidt, Gregory <Gregory.Schmidt@ed.gov>
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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.
Thanks to all,
-kelly

From: Darcus, Joanna <Joanna.Darcus@ed.gov>
Sent: Thursday, April 1, 2021 4:16 PM
To: Leon, Kelly S. <Kelly.S.Leon@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>; Leheny, Emma <Emma.Leheny@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

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

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>
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Thanks!

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**Andrew Kreighbaum**

Reporter

Bloomberg Government

Cell: (214) 673-3424

akreighbaum@bloombergindustry.com
TO: Miguel A. Cardona  
Secretary of Education  

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

DATE: April 2021  

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

Introduction
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.

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).

Hi Greg,

I’m glad you’ll be able to spend time with your parents on Sunday. Tomorrow morning, 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.

Sounds great re: Brian.

Thanks!

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A few thoughts:

- Two competing thoughts on litigation risk analysis:
  - If this is intended to be public-facing, we may want to more directly engage with the Rubinstein memo.
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- I’ve been toying with idea of

- 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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Secretary of Education

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

DATE: April 2021

SUBJECT: The Secretary’s Legal Authority for Broad-Based Debt Cancellation
which the benefits provided to borrowers with Department-held loans under the Coronavirus

The use of the HEROES Act to effectuate those 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? Knowledge about challenge? Record of legal challenge?
I’m attaching a draft with some responsive comments and further edits on the intro and parts I and III, and adding comments/proposed edits on part II. The main thing I think you’ll want to weigh in on are the comments/edits about

Got it – taking a look through now.

Hi Greg,

Hope your day is going well, and that you continue to enjoy time with your family. I’m attaching the draft with my tracked changes and comments. (I inadvertently deleted one of your comments about the factual basis requirement, but since these are static drafts, I know we haven’t lost it!) I’m going for a run now, but will be in range and happy to collaborate, as helpful, to get this to Emma for review.

Thanks,

Joanna

Hi Greg,

Thanks for giving us such a head start on the updates. I’m just writing with a quick status update. Because I got a slow start and will need to keep working on the factual basis section tomorrow. (I’ve made most of my suggestions for the rest of the document already.) I understand that you will be offline for much of the day tomorrow, so you’ll see the version with my notes in your inbox by the time you are back in range.

Thanks,
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Thanks.

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

Hi Greg,

Just wanted to note that if you’re still finalizing the document for Emma’s review, I wanted to share that small edit.

Thanks,

Joanna

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

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

---
Hi Greg,

Here’s the draft back. I wrote a pretty long response to your comment about 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

Hi Greg,

Okay—I will hop back in now!

Joanna

Joanna Darcus

I’m attaching a draft with some responsive comments and further edits on the intro and parts I and III, and adding comments/proposed edits on part II. The main thing I think you’ll want to weigh in on are the comments-edits about

Got it – taking a look through now.
Hi Greg,

Hope your day is going well, and that you continue to enjoy time with your family. I’m attaching the draft with my tracked changes and comments. (I inadvertently deleted one of your comments about the factual basis requirement, but since these are static drafts, I know we haven’t lost it!) I’m going for a run now, but will be in range and happy to collaborate, as helpful, to get this to Emma for review.

Thanks,

Joanna

Hi Greg,

Thanks for giving us such a head start on the updates. I’m just writing with a quick status update. Because I got a slow start and will need to keep working on the factual basis section tomorrow. (I’ve made most of my suggestions for the rest of the document already.) I understand that you will be offline for much of the day tomorrow, so you’ll see the version with my notes in your inbox by the time you are back in range.

Thanks,

Joanna

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.

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).
Hi Greg,

I’m glad you’ll be able to spend time with your parents on Sunday. Tomorrow morning, 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.

Sounds great re: Brian.

Thanks!

Joanna

From: Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Sent: Friday, April 2, 2021 6:04 PM
To: Darcus, Joanna <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:
  - If this is intended to be public-facing, we may want to more directly engage with the Rubinstein memo Rubinstein countering in the original was
  - I’ve been toying with idea of us


• 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.

From: Darcus, Joanna <Joanna.Darcus@ed.gov>
Sent: Friday, April 2, 2021 4:43 PM
To: Schmidt, Gregory <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.

Joanna

From: Leheny, Emma <Emmaleheny@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 <Emmaleheny@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.

From: Leheny, Emma <Emmaleheny@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>
Sent: Friday, April 2, 2021 1:47:21 PM
To: Leheny, Emma <Emmaleheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>
Subject: RE: Klain follow-up
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.Lehey@ed.gov>
Sent: Friday, April 2, 2021 12:36 PM
To: Darcus, Joanna <Joanna.Darcus@ed.gov>; Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Cc: Miller, Benjamin <Benjamin.Miller@ed.gov>; Morgan, Julie <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:

Thanks.
Emma
TO: Miguel A. Cardona
   Secretary of Education

FROM: Emma Leheny
      Acting General Counsel

DATE: April 2021

SUBJECT: The Secretary’s Legal Authority for Broad-Based Debt Cancellation
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 <Emmaleheny@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.

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To: Leheny, Emma <Emmaleheny@ed.gov>; Darcus, Joanna <Joanna.Darcus@ed.gov>
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From: Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Sent: Friday, April 2, 2021 1:47:21 PM
(Narrowing chain to OGC.)

If we’re recirculating the original memo Monday, we’ll have to think about...

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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To: Darcus, Joanna <Joanna.Darcus@ed.gov>; Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Cc: Miller, Benjamin <Benjamin.Miller@ed.gov>; Morgan, Julie <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:

Thanks.
Emma
Thank you both. Will review this afternoon.

Per Sheila’s request, I spoke to WHCO about this today. Jen S. understands that we will be circulating a revised memo internally within leadership today. I asked Ben M. to give a read-out on his 10:45 with the Secretary on debt cancellation. I don’t know whether Jen S. did ask Ben M. to prepare the Secretary for any questions on this as he re-starts public-facing meetings tomorrow. Jen S. will check with Stuart/Dana about this. They understand where we are coming from on this.

Thanks for enduring this food salad.

From: Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Sent: Monday, April 5, 2021 1:43 AM
To: Leheny, Emma <Emmaleheny@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 <Emmaleheny@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.

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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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(Narrowing chain to OGC.)

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?”

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:
Thanks.
Emma
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?

---

From: Schmidt, Gregory
Sent: Monday, April 5, 2021 1:43 AM
To: Leheny, Emma; Darcus, Joanna
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
That might be best – we could describe it as the original memo as updated to reflect further research and consultations with WHCO/OLC.

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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?”
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:

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

Thank you,
Greg

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
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.

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.

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

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.
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?”
At our noon daily, Sheila gave us some direction on how to respond to the Klain comments on ED’s debt cancellation.

Thanks.

Emma
Schmidt, Gregory

From: Schmidt, Gregory
Sent: Monday, April 5, 2021 5:54 PM
To: Siegel, Brian
Cc: Darcus, Joanna
Subject: RE: Debt cancellation memo

Thank you very much, Brian, and apologies for the short turnaround window!

Greg

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

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 [REDACTED].

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
The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.
I’ll merge these with some edits Emma just sent me. Could you weigh in on the comment on page 5?

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

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

Thank you,
Greg
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
TO: Miguel A. Cardona  
Secretary of Education  

FROM: Emma Leheny  
Acting General Counsel  

DATE: April 2, 2021  

SUBJECT: The Secretary’s Legal Authority for Broad-Based Debt Cancellation
Thanks! Attaching Emma’s edits, FYI.

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:

Three notes:

1. I've cited to the first page of each of the regs.
2. Note that I made a couple other tweaks to the sentence for consistency with other places in the text or clarity.
3. We could end the sentence after 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.
Joanna

From: Schmidt, Gregory <Gregory.Schmidt@ed.gov>
Sent: Monday, April 5, 2021 5:55 PM
To: Darcus, Joanna <Joanna.Darcus@ed.gov>
Subject: FW: Debt cancellation memo
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

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

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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 [redacted].

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
I’d propose I’ll send the revised clean draft, reflecting edits per you and Brian, to the chain with you and Joanna momentarily.

Excellent — thanks.

Executing these now – only comment is that Brian has just sent some helpful but non-major comments, which I’m implementing as well.

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.
Emma