



## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

[Docket ID FSA-2021-0005]

### Notice of Funds Availability; American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA)

**AGENCY:** Farm Service Agency, Department of Agriculture (USDA).

**ACTION:** Notification of funding availability.

**SUMMARY:** The Farm Service Agency (FSA) is issuing this first notice announcing the availability of funds for eligible borrowers with direct loans under the Farm Loan Programs (FLP) and Farm Storage Facility Loan Program (FSFL) as authorized by section 1005 of the American Rescue Plan Act of 2021 (ARPA). A subsequent notice addressing guaranteed loans and remaining loan balances eligible under section 1005 will be published within 120 days of publication of this NOFA. FSA will pay 120 percent of direct loan balances outstanding as of January 1, 2021, for socially disadvantaged farmers and ranchers as that term is defined by section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990.

**DATES:** *Funding availability:* Implementation will begin [Insert date of publication in the **FEDERAL REGISTER**].

*Comment Date:* We will consider comments on the Paperwork Reduction Act that we receive by: [Insert date 60 days after date of publication in the **FEDERAL REGISTER**].

**ADDRESSES:** We invite you to submit comments on the information collection request. You may submit comments by any of the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FSA-2021-0005. Follow the online instructions for submitting comments.
- Mail: Bruce Mair, Direct Loan Servicing Branch Chief, Farm Loan Programs, Farm Service Agency, USDA, 1400 Independence Ave SW, Stop 0523, Washington, DC 20250. In your comment, specify the docket ID FSA-2021-0005.

All comments received, including those received by mail, will be posted without change and publicly available on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bruce Mair; telephone: (202) 720-1645; or by email: [bruce.mair@usda.gov](mailto:bruce.mair@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 1005 of the American Rescue Plan Act of 2021 (ARPA) provides funding and authorization for FSA to pay up to 120 percent of direct and guaranteed loan outstanding balances as of January 1, 2021, for certain loans of socially disadvantaged farmers and ranchers as that term is defined in section 2501(a) of the Food, Agriculture Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)). See ARPA section 1005(b)(3). Section 2501(a) defines a socially disadvantaged farmer or rancher as someone who is a member of a socially disadvantaged group, which is further defined as a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. See 7 U.S.C. 2279(a)(5)-(6). Through this notice, FSA is announcing the immediate implementation of section 1005 of ARPA for eligible direct loan FLP and FSFL borrowers who are socially disadvantaged farmers or ranchers, as defined by section 2501(a).

A separate NOFA will be issued specifying the timeframes and requirements for guaranteed loans and direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset. All eligible direct loan borrowers are included in this initial announcement except those who no longer have collateral or an active farming operation. These borrowers often have more complicated cases and may not have the same opportunities to invest in their farming operation to manage tax liabilities. FSA expects these cases to account for approximately 5 percent of eligible direct loan borrowers. Procedures for payments to these borrowers will be addressed in a subsequent NOFA, which will also include eligible guaranteed loan borrowers. For eligible direct loan borrowers who also have guaranteed loans, their guaranteed loans will be handled through the subsequent NOFA.

### **Definitions**

The following definitions apply to this Notice:

*Adjustment* is a form of debt settlement that reduces the financial obligation to FSA, conditioned upon the completion of payment of a specified amount at a future time. An adjustment is not a final settlement until all payments have been made under the agreement.

*Bankruptcy estate* is a legal entity created upon the filing of any case under Title 11 of the United States Code, 11 U.S.C. 101 -1532, consisting of the legal and equitable interests in property of a debtor.

*CONACT* means the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 - 2009cc-18).

*Cooperative* means an entity that has farming as its purpose, whose members have agreed to share the profits of the farming enterprise and is recognized as a farm cooperative by the laws of the state in which the entity will operate a farm.

*Corporation* means a private domestic corporation created and organized under the laws of the state in which it will operate a farm.

*Direct Loan* means a loan funded and serviced by FSA as the lender.

*Eligible direct loan* means a debt that had an outstanding balance on January 1, 2021, and is any of the following:

- FLP direct loan issued under subtitles A, B, or C of the CONACT, including Conservation loans, Emergency loans, Farm Ownership loans (including Down Payment loans), Grazing loans, Irrigation and Drainage loans, Operating loans (including Youth loans and Microloans), and Soil and Water loans;
- FLP direct non-program loan and Softwood Timber Loans where the original loan was issued under the CONACT; or
- FSFL loan.

*Eligible recipient* means an individual or entity that is:

- A borrower or co-borrower on FSA eligible direct loans on January 1, 2021; all eligible direct loan borrowers are included in this initial announcement except those who no longer have collateral or an active farming operation and whose loan has been previously referred to the Department of Treasury for debt collection for offset; and
- A member of a socially disadvantaged group as reflected on FSA records at the time a payment is made. For entities and married couples, at least one individual personally liable as a borrower or co-borrower for the debt must be a member of a socially disadvantaged group; or
- An estate of a deceased eligible recipient.

*Entity* means a corporation, partnership, joint operation, cooperative, limited liability company, or trust.

*Estate* is a legal entity created as a result of a person's death and consists of the property of the deceased. The estate pays any debts owed by the deceased and distributes the balance of the estate's assets to the beneficiaries of the estate.

*FLP* means Farm Loan Programs, the FSA programs to make, guarantee, and service loans to family farmers authorized under the CONACT and implemented through the FSA regulations in 7 CFR parts 700-774.

*FSFL* means Farm Storage Facility Loans, the FSA program to make and service loans for farm storage facilities authorized by the CCC Charter Act (15 U.S.C. 714 - 714p) and the Food, Conservation and Energy Act of 2008 (7 U.S.C. 7971 and 8789) and implemented through the FSA regulations in 7 CFR part 1436.

*Guaranteed loan* means a loan made pursuant to subtitles A, B, or C of the CONACT and serviced by a lender for which FSA has entered into a Lender's Agreement and for which FSA has issued a loan guarantee. This term also includes guaranteed lines of credit.

*Joint operation* means an operation run by individuals who have agreed to operate a farm or farms together as an entity, sharing equally or unequally land, labor, equipment, expenses, or income, or some combination of these items. The real and personal property is owned separately or jointly by the individuals.

*Limited Liability Company* means a business structure combining the pass-through taxation of a partnership or sole proprietorship with the limited liability of a corporation organized pursuant to the laws of the state in which it will operate a farm.

*Offer notice* means the letter sent to eligible borrowers that will notify them of the payment amount, obtain direct deposit payment information and verifying eligible and ineligible loans.

*Partnership* means an entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a

partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

*Primary borrower* means the borrower who was designated as the operator of the farm or ranch when the loan was closed. For formal entities, the primary borrower is the entity while members are co-borrowers. For informal joint operations, at the time of application the applicants designate the individual identified as the primary borrower.

*Recapture* is the amount that FSA or lenders are entitled to recover from a direct or guaranteed loan borrower in consideration for FSA or the lender writing down a portion of their direct or guaranteed loan debt when the loan was secured by real estate and the real estate increased in value. Recapture also includes the act of collecting shared appreciation.

*Socially Disadvantaged Farmer or Rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities, as defined by section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)). Members of socially disadvantaged groups include, but are not limited to:

- American Indians or Alaskan Natives;
- Asians;
- Blacks or African Americans;
- Native Hawaiians or other Pacific Islanders; and
- Hispanics or Latinos.

The Secretary of Agriculture will determine on a case-by-case basis whether additional groups qualify under this definition in response to a written request with supporting explanation.

*Sole Proprietor* means a business owned and operated by an individual with no legal distinction between the owner and the business.

*Trust* means an entity that under applicable state law meets the criteria of being a trust of any kind but does not meet the criteria of being a farm cooperative, private domestic corporation, partnership, or joint operation.

### **Determining Amount of Payments**

ARPA section 1005 permits the Secretary of Agriculture to provide payments to a lender directly to pay off an eligible loan, to an eligible recipient, or a combination of both. Payments for eligible direct loans will be equal to 120 percent of the outstanding indebtedness owed on eligible direct loans as of January 1, 2021. Undisbursed balances of eligible direct loans will not count toward the outstanding indebtedness owing as of January 1, 2021.

In order to determine the amount of the payment, FSA will make adjustments for eligible recipients with the following types of cases:

- Where FSA has entered into an adjustment agreement with the borrower, the adjustment agreement will be reversed and the payment to the eligible borrower will be calculated on the full debt as of January 1, 2021, rather than on the lesser amount owing on the adjustment agreement.
- Shared Appreciation Agreement: the recapture amount will be waived.

### **Initial Notification Process**

Eligible recipients do not need to take any action until receipt of a payment offer from FSA. However, eligible recipients may, if necessary, update their demographic information in FSA records by contacting their Local FSA Service Center. Within 45 days of the publication of this NOFA, FSA anticipates sending an offer notice to eligible recipients with eligible direct loans. The offer notice will explain:

- Eligibility based on the current information on record;

- FSA’s calculation of payments, including proposed distribution of payments;
- Remaining balances on loans that are not included as eligible direct loans (if any) (for example, Economic Emergency loans or loans disbursed after January 1, 2021);
- Any eligible loans that will be addressed through a subsequent NOFA (that is, guaranteed FLP loans and direct loans that no longer have collateral and have been previously referred to the Department of Treasury for debt collection for offset); and
- That borrowers should be aware of potential implications of receipt of direct payments during bankruptcy.

The offer notice will be sent to the primary borrower and eligible recipient(s) and will provide three options:

- (1) Accept the offer and conditions;
- (2) Schedule a meeting to discuss with FSA before making a decision (for example to discuss the loan calculation, if an error is identified); or
- (3) Decline the offer.

Only the eligible recipient(s) must sign the document either accepting or declining to initiate the payments.

The eligible recipient(s) must certify the information in the offer notice.

Acceptance of the offer indicates concurrence with the payment calculations and the indicated distribution of funds, and verification as eligible recipient(s).

If an offer has not been formally accepted or declined after 30 days, FSA will send a reminder letter and make a phone call or send an email if that contact information is on file. If a response to accept or decline an offer is not received after 60 days from the date of the initial offer, FSA will provide a second reminder notification to those



borrowers that a payment will not be processed unless contacted by the eligible recipient. Should FSA establish a final deadline, it will be publicly announced and a final notification will be provided to borrowers at least 30 days in advance of the deadline.

### **Distributing Payments**

FSA will distribute payments as follows:

- (1) The amount to pay off the eligible direct loan(s) will be directly applied to such loans by FSA; and
- (2) The additional 20 percent will be paid in accordance with the offer notice.

Any payment will be issued electronically as stated in the offer notice. FSA will credit payments as of January 1, 2021, and ensure payments made on accounts after January 1, 2021, are reversed and refunded to customers that have accepted the payment. Refunds will occur at the time the direct loan payoff is being completed. If the loan was paid in full after January 1, 2021, the ARPA payment will be calculated based on the balance outstanding as of January 1, 2021.

Both the payment to FSA to payoff outstanding loans and the additional 20 percent to the borrower will be reported to the Internal Revenue Service (IRS) as income using form IRS-1099 G, in accordance with applicable requirements. Borrowers should consult with a tax professional to discuss any tax implications. ARPA is subject to appeal rights pursuant to 7 CFR parts 11 and 780.

USDA will work with non-governmental organizations (NGO) funded through FSA Cooperative Agreements to provide technical assistance. Technical assistance by USDA and its cooperators will be provided to borrowers free of charge. Borrowers are not required or expected to pay any fees to access these ARPA benefits.

The USDA makes no representation whether any payment directly to a borrower in a pending bankruptcy case constitutes property of the bankruptcy estate. Borrowers

should consult bankruptcy professionals or counsel to discuss the impact of bankruptcy on any payments received under ARPA.

### **Paperwork Reduction Act Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), FSA is requesting comments from interested individuals and organizations on the information collection request associated with ARPA. After the 60-day period ends, the information collection request will be submitted to the Office of Management and Budget (OMB) for a 3-year approval to cover ARPA information collection.

To start the ARPA information collection approval, prior to publishing this document, FSA received emergency approval from OMB for 6 months. The emergency approval covers ARPA information collection activities.

*Title:* American Rescue Plan Act of 2021 Section 1005 Loan Payment (ARPA),

*OMB Control Number:* 0560-New.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support all ARPA information collection requests to provide payments to the eligible borrowers under section 1005 of ARPA. FSA will provide the loan information, the calculation of payments, and other required information to the borrower to review and to sign the offer to indicate acceptance or rejection of the offer.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

*Type of Respondents:* FLP direct and FSFL borrowers

*Estimated Annual Number or Respondents: 24,000.*

*Estimated Number of Responses per Respondent: 1*

*Estimated Total Annual Responses: 24,000.*

*Estimated Average Time Per Response: 15 minutes*

*Estimated Total Annual Burden on Respondents: 6,000 hours.*

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this document, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

### **Environmental Review**

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

As previously stated, ARPA includes provisions for paying up to 120 percent of direct and guaranteed loan balances as of January 1, 2021, for FSA borrowers who belong to socially disadvantaged groups as defined in section 2501(a) of the Food, Agriculture Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)). The limited discretionary aspects of ARPA do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the FSA Categorical Exclusions specified in 7 CFR 799.31(b)(1)(xiii) (partial or complete release of loan collateral) and 799.31(b)(1)(xvii) (restructuring of loans and writing down of debt).

No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of ARPA and the participation in ARPA do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

### **Federal Assistance Programs**

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this document applies is 10.136.

### **USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity

conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

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Zach Ducheneaux,  
Administrator,  
Farm Service Agency.

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