

For: State and County Offices

Section 1005 of the American Rescue Plan Act of 2021 (ARPA) for FSFL's

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

On March 11, 2021, President Joseph R. Biden signed into law the American Rescue Plan Act (ARPA) of 2021. Section 1005 of ARPA provides financial assistance to FSFL borrowers who are racial or ethnic minorities. Section 1005 of ARPA provides payments to eligible borrowers up to 120 percent of the outstanding loan balance as of January 1, 2021.

Payments are intended to pay-off the eligible borrower's outstanding FSFL as of January 1, 2021, with the remaining funds being used to offset tax liabilities incurred by the payment.

ARPA payments are one-time payments, and the entire 120 percent will be reported as taxable income.

B Purpose

This notice provides general information to State and County Offices on implementation plans for Section 1005 of ARPA.

Note: Payments to FLP borrowers will be processed according to separate guidance provided by DAFLP.

C Contact

If there are questions about this notice:

- County Offices will contact the State Office
- State Offices will contact both of the following:
 - Toni Williams by email to toni.williams@usda.gov
 - Laura Schlote by email to laura.schlote@usda.gov.

Disposal Date	Distribution
May 1, 2022	State Offices; State Offices relay to County Offices

2 Section 1005 of ARPA

A Socially Disadvantaged (SDA) Definition

An SDA 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 includes one or more of the following:

- Black (African American)
- American Indian/Alaska Native,
- Hispanic or Latino
- Asian, and
- Hawaiian/Pacific Islander.

Note: Section 2501 does not include gender.

B Eligible ARPA FSFL Borrowers

FSFL borrowers that are SDA eligible and had an outstanding FSFL as of January 1, 2021, are eligible for an APRA payment.

At least 1 borrower or co-borrower who signed the CCC-186, FSFL Promissory Note and Security Agreement must meet the SDA criteria according to section 2501.

If one member of an entity is SDA declared, regardless of the share percentage, the entire FSFL is eligible for the full ARPA payment.

The CCC-186 may be used to verify FSFL borrowers or co-borrowers.

Note: If for any reason all entity members were not required to sign the CCC-186 at loan closing, contact the National Office for additional guidance.

Important: Co-signors are not the same as co-borrowers and are **not** eligible for ARPA.

If the eligible FSFL is currently paid in full, the borrower is still eligible for ARPA based on the balance owed as of January 1, 2021.

Notice FSFL-178

2 Section 1005 of ARPA (Continued)

C Race and Ethnicity Designation

If an FSFL borrower is uncertain of his/her demographic designation on file at the County Office, the borrower may contact the County Office to verify their classification on record.

If an update or correction is needed, the borrower may either complete AD-2047, Customer Data Worksheet, AD-2106, or contact the County Office to update their record, including race and ethnicity.

County Offices must accept the completed AD-2047 or AD-2106 and properly record the new or updated information in CRM Business Partner (BP) promptly. Borrowers are **not** required to answer any qualifying questions to verify their race and ethnicity status.

If a co-borrower was not loaded in the Direct Loan System (DLS) as a related entity before the FSFL was closed on or before January 1, 2021, and a manual CCC-186 is in the FSFL producer's file folder, contact the National Office for assistance.

Once the FSFL borrower's SDA information is updated in BP and meets the SDA definition according to subparagraph 2 A, the FSFL is eligible for ARPA.

D ARPA Rulemaking

A Notice of Funds Availability (NOFA) was published in the Federal Register on May 26, 2021, announcing ARPA program requirements.

E Program Funding

The ARPA statute provides funding as needed for Section 1005 ARPA payments.

Notice FSFL-178

2 Section 1005 of ARPA (Continued)

F Program Timeline

There is no specific application or signup period for ARPA. However, actions are being taken to start communicating with known SDA FSFL borrowers and provide an ARPA offer letter.

If a timeframe or deadline is determined to be necessary, the information will be announced publicly in the Federal Register.

3 ARPA Program Administration

A FSFL National Team

Notice FSFL-177, issued on May 25, 2021, requested names of State Office point of contacts (POC's) and assistant POC's from all States that have known SDA FSFL borrowers.

The FSFL National Team will serve the role of verifying all payment calculations and providing assistance to designated POC's and assistant POC's for processing and certifying payments in OLP and NPS. After National Office approval, FSFL loan payments will be entered in DLS by the designated POC or assistant POC, and as necessary County Office assistance may be required.

For internal control purposes, the FSFL National Team will confirm all eligible ARPA FSFL payments were made properly in DLS and report findings to the FSA Administrator, DAFP, DAFLP, DAFO and respective SED's.

B Notification to Borrower and Agreement

During the last week of April 2021, two notification letters were mailed by the National Office to:

- primary borrowers where the race or ethnicity is unknown in FSA records making them aware of their unknown status and how to designate their SDA status if they are eligible, and
- primary borrowers where FSA records already indicate eligibility based on race or ethnicity of the producer.

FSA-2601, Notification of FSA's Decision – American Rescue Plan Act of 2021 (ARPA) will serve as the **offer letter** and be used to notify known SDA FSFL borrowers of the ARPA offer amount. The SDA FSFL Borrowers Report is maintained at the National Office and will continuously be monitored and updated using information stored in BP.

Notice FSFL-178

3 ARPA Program Administration (Continued)

B Notification to Borrower and Agreement (Continued)

Eligible borrowers will use FSA-2601 to do one of the following:

- accept the offer and conditions
- schedule a meeting to discuss with FSA before making a decision
- decline the offer.

The FSA-2601 which includes the payment calculation methodology will be mailed and emailed (if requested by the borrower) to eligible known SDA FSFL borrowers and serve as written notification of an offer for an ARPA payment.

Eligible borrowers who prefer to receive ARPA related correspondence and an offer letter by email should contact the County Office directly and ensure the email address on file is correct or recorded in the system. The County Office will coordinate with the State POC and/or assistant POC to ensure correspondence is emailed, in addition to being sent by regular mail.

The FSFL National Team will generate FSA-2601 and provide to State POC's and assistant POC's for verification and distribution.

See **Exhibit 1** for an example of FSA-2601 (offer letter).

The offer letter includes an ARPA Payment Distribution Chart with important factors outlining who will receive, sign, and acknowledge acceptance of the ARPA offer and certify to several basic conditions and eligibility criteria.

For ARPA participation, the signor must agree to an assignment of payment to CCC. Once the signed accepted offer is received, the assignment will be established to ensure the amount necessary to pay off the eligible FSFL is remitted directly CCC.

After an ARPA accepted offer is received, the POC and/or assistant POC will work directly with the FSFL National Team for additional guidance.

State and County Offices are **not** authorized to create or modify the offer letter which includes the payment calculation worksheet.

3 ARPA Program Administration (Continued)

B Notification to Borrower and Agreement (Continued)

All eligible ARPA FSFL borrowers should review their FSFL documents and payment history, and then compare their records to those that will be described in the offer letter.

If the offer letter is incorrect, the borrower may contact the County Office as described in the offer letter to request a meeting with an FSA employee to discuss the payment calculations or other factors prior to acceptance of the offer. If corrections are needed, a new offer letter will be provided by the National Office only. If disagreement still remains, the FSFL borrower will be provided with appeal options.

If the offer letter is destroyed or lost, the FSFL borrower may contact the County Office to obtain a new copy of the offer letter.

Eligibility for future FSFL's will **not** be affected by receipt of an ARPA payment. However, the statutory and regulatory factors for FSFL loan making will still apply, such as borrower eligibility, loan repayment feasibility, and loan security, if applicable.

For all cases involving deceased producers, the National Office must be contacted for guidance.

C No Response Received from Eligible ARPA FSFL Borrowers

If the County Office does not receive a response from the known SDA borrower and/or co-borrowers within 30 calendar days, a reminder letter (FSA-2603) will be sent to the borrower stating they have an additional 30 calendar days to respond to the ARPA offer.

FSA will send a reminder letter and make a telephone call or send an email if the contact information is on file.

If a response to accept or decline an offer is not received after 60 calendar days from the date of the initial offer, State and/or County Office will provide a second reminder notification (FSA-2604) to those borrowers that a payment will not be processed unless the office is contacted by the eligible recipient.

FSA 2603 and FSA-2604 are available on the FSA intranet forms site.

Currently, there is no final deadline to accept the ARPA offer. However, if a final deadline is established, the information will be publicly announced, and a final notification will be provided to eligible known SDA borrowers at least 30 calendar days in advance of the deadline.

3 ARPA Program Administration (Continued)

D ARPA FSFL Repayment

For all eligible ARPA loan payments, January 1, 2021, will be used as the date of repayment, all outstanding principal and interest (P&I) will be paid in full and there will be no outstanding amount due from the borrower for the FSFL.

Example: James Carter (Caucasian-primary) and Maria Carter (Hispanic-co-borrower) are considered an informal entity and a married couple. The Carters have an outstanding FSFL balance in the amount of \$126,330.00 (including P&I), as of January 1, 2021. Both borrowers have equal shares in the FSFL. FSFL No. 2019/00002 was disbursed on April 27, 2019. The entire FSFL is eligible for ARPA because Maria is Hispanic and the entire outstanding FSFL debt will be paid in full using the repayment date of January 1, 2021, in DLS.

If FSFL payments were received after January 1, 2021, and applied in DLS, the payments will be reversed either by the FSFL National Team and/or POC, assistant POC, and as necessary, County Office staff, and refunded to the FSFL borrowers.

E Direct Payment to Distribution to Eligible ARPA FSFL Borrowers

As part of the written notification of an offer for a payment, the payment calculation worksheet will include a separate payment for a direct payment of 20 percent to the eligible FSFL borrowers.

The direct ARPA payment to eligible borrowers will not exceed 20 percent of the total FSFL pay off amount as of January 1, 2021.

Example: As provided in subparagraph 3 D, Joseph and Maria Carter's FSFL No. 2019/00002 will be paid in full in the amount of \$126,330.00. They are also eligible to receive a 20 percent ARPA payment in the amount of \$25,266.00. Exhibit 1 must be followed to determine who will sign the offer letter and receive the full payment.

The intent of the 20 percent direct payment is to assist FSFL borrowers with costs incurred due to the loan pay off, such as lien releases and tax liabilities.

F ARPA Fees

There are **no** associated fees to participate or receive an ARPA payment. County Office employees must assist borrowers with ARPA questions free of charge and will help borrowers complete any required documents. State Office POC's and/or assistant POC's must be notified that assistance has been requested.

Participants will **not** need a third party to access this assistance.

Notice FSFL-178

3 ARPA Program Administration (Continued)

G FSFL Security Releases

After the ARPA payment has been processed and the FSFL is paid in full and there is real estate or other security instruments pledged as security for the FSFL, the County Office will remind borrowers of their responsibility to file and/or record the lien release with the applicable office or entity in the county/State where the security is located.

H Tax Form IRS-1099 G

All ARPA payments will be reported to IRS as income using IRS-1099 G, in accordance with applicable requirements. It is recommended, eligible borrowers should consult with a tax professional to discuss any tax implications.

Note: IRS-1098 will be sent to the primary borrower only and borrowers may seek tax advice on how best to file.

I ARPA Additional Resources

The ARPA NOFA may be accessed at <https://public-inspection.federalregister.gov/2021-11155.pdf>.

ARPA Frequently Asked Questions may be accessed at <https://www.farmers.gov/americanrescueplan>.

The American Rescue Plan Fact Sheet may be accessed at <https://www.usda.gov/media/press-releases/2021/03/10/fact-sheet-united-states-department-agriculture-provisions-hr-1319>

Example of FSA-2601

This form is available electronically.

OMB Control Number: 0560-0300
OMB Expiration Date: 11/30/2021

FSA-2601 (05-24-2021)	U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	Position 2
AMERICAN RESCUE PLAN ACT OF 2021 (ARPA) SECTION 1005 LOAN PAYMENT		

DATE

BORROWER NAME
ADDRESS 1
ADDRESS 2
CITY, STATE ZIP

Dear Borrower,

FSA records show that you had a direct loan(s) on January 1, 2021, and that you are eligible for payment under the American Rescue Plan Act of 2021 (ARPA) Loan Payment program. All of your eligible direct loan debt will be paid in full. Eligible direct loan debt includes Farm Storage Facility Loans (FSFL), as well as most Farm Loan Program (FLP) direct loans. Eligible FLP loan types include Conservation, Emergency, Farm Ownership (including Down Payment), Grazing, Irrigation and Drainage, Operating (including Youth and Microloans), and Soil & Water. The ARPA Calculation Worksheet, beginning on page 4 of this notification, provides detailed calculations for your eligible direct loan debt, including any debt that was paid in full after January 1, 2021. Notification regarding any guaranteed loans that you may have will be sent at a later date.

After your ARPA-eligible direct loans are paid in full as provided below, you will still be indebted to FSA for any loan funds advanced after January 1, 2021.

If you are in bankruptcy or have been discharged of the debt, this informational notice is not an attempt to collect or recover the discharged debt as your personal liability.

You may select one of the following three options. Once you make your selection, the completed form may be returned to your local FSA office or to the following:

RETURN ADDRESS
RETURN FAX
RETURN E-MAIL

OPTION 1. I accept the ARPA payment as calculated by FSA for my eligible direct loan debt or, in the case of an Estate or deceased person, for the debt owed by the Estate or deceased person I represent. Please apply the payment to my FSA eligible direct loan debt or, in the case of an Estate or deceased person, to the eligible direct loan debt owed by the Estate or deceased person I represent, and pay the 20 percent portion to assist with tax liability using the bank account(s) information I provided below.

I certify under penalty of perjury punishable as a federal crime pursuant to 18 U.S.C. § 1001 that, to the best of my knowledge, I am, or at least one borrower who signed the promissory note(s) or assumption agreement(s) establishing the receipt of direct loan assistance from FSA is, a member of an eligible socially disadvantaged group as defined by section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990. A socially disadvantaged group includes borrowers who are: American Indian, Alaskan Native, Asian, Black, African American, Native Hawaiian, Pacific Islander, or Hispanic or Latino.

I understand and acknowledge:

- FSA payments, including the ARPA payment, are subject to public disclosure. Consequently, after any payment is made according to ARPA and applicable regulations or Notifications of Funding Availability, my name (or in the case of an Estate or deceased person, the name of the Estate or deceased person) will be released in public documents or records and/or listed on a USDA and/or FSA webpage as having received an ARPA payment.
- FSA will not provide my reported race and ethnicity next to my name (or in the case of an Estate or deceased person, will not provide their race and ethnicity next to their name) in public documents or records or on the USDA and/or FSA webpage when it lists my name (or in the case of an Estate or deceased person, their name) as having received an ARPA payment, unless a determination is made that race and ethnicity is not considered PII, or unless USDA/FSA is directed to list the information pursuant to a court order or law or regulation.

Example of FSA-2601 (Continued)

FSA-2601 (05-24-2021)

Page 2 of 5

- FSA will continue to provide any and all information in its loan files, including for the purposes of cooperating with a Federal audit (such as may be conducted by the Government Accounting Office); cooperating with a law enforcement agency; reporting fraud, waste and abuse to the Office of the Inspector General (OIG); when cooperating with an OIG investigation; or for other audit, law enforcement or investigative purposes, including any investigation into allegations that I misrepresented/misrepresented my race and/or ethnicity (or in the case of an Estate or deceased person, their race and/or ethnicity) to FSA for the purposes of receiving an ARPA payment.
- Receiving an ARPA payment may have income tax consequences for me, my farm operation, or the Estate of the deceased person I am representing. It is my responsibility to consult with a tax professional if I have any questions. It is also my responsibility to pay any and all taxes that may be owed as a result of receiving an ARPA payment.
- Additional assistance for borrowers through community-based organizations and other service providers will be made available in a future letter to borrowers and announced on farmers.gov/americanrescueplan, via GovDelivery, and a press release.
- Receiving an ARPA payment may have bankruptcy implications if I, my farm operation, or the Estate of the deceased person I am representing is currently under bankruptcy court protection. The USDA makes no representation whether any payment directly to a borrower in a pending bankruptcy case constitutes property of the bankruptcy estate. It is my responsibility to consult bankruptcy professionals or counsel to discuss the impact of bankruptcy on any payments received under ARPA.
- I hereby assign the ARPA payment to FSA for the amount of eligible direct loan debt as shown in the Amount Paid to FSA column on the ARPA Calculation Worksheet.
- If my loan payments are currently being made via Pre-Authorized Debt (PAD) or a dairy, poultry or other form of assignment, my PAD or assignment will be cancelled.
- The ARPA payment shown in the Total Amount Paid to Borrower(s) column on the ARPA Calculation Worksheet will be made electronically using the banking information I provide.
- If my loan installment is coming due, I may still receive an automated payment reminder letter. I understand that I can disregard the reminder letter for any loans that are listed on the ARPA Calculation Worksheet.
- Any payments applied to loans listed on the ARPA Calculation Worksheet after January 1, 2021, will be refunded to the primary borrower.
- Due to the number of ARPA payments that must be processed, it may take several weeks or more for FSA to process the payment. After the payment has been processed, if there was property that was pledged as security for the FSA debt, FSA will mail me the documents needed to release the FSA lien. Unless otherwise required by State law, it is my responsibility to file/record the lien release with the applicable office or entity in the County/State where the property is located.
- The chart below explains how my payment will be distributed and who is required to sign this form. It is my/our responsibility to obtain all required signatures in order for a payment to be issued:

ARPA PAYMENT DISTRIBUTION SCENARIOS					
BORROWER TYPE	DISTRIBUTION OF FUNDS TO PAY OFF LOAN (will be reported as income on IRS Form 1099-G)	DISTRIBUTION OF ADDITIONAL 20% PAYMENT (will be reported as income on IRS Form 1099-G)	FSA-2601 SIGNATURE REQUIREMENTS	REQUIRED FINANCIAL INSTITUTION INFORMATION	COMMENTS
SDA Individual	All attributable to SDA Individual	All to SDA Individual	SDA Individual	Account Supplied by SDA Individual	The amount of interest paid will always be reported on IRS Form 1098 to the primary borrower. Borrowers may seek professional advice on how best to report to the IRS.
Formal Entity, At Least One SDA Borrower	All attributable to Entity	All to Entity	All SDA Borrowers	Account Supplied by Entity	A formal entity has a unique tax ID, while an informal entity uses the SSN of one of the borrowers.
Informal Entity/Married Couple, At Least One SDA Borrower	Attributed equally among all Borrowers	Attributed equally among all Borrowers	All Borrowers	Accounts Supplied by all Borrowers	All SDA borrowers are required to sign to ensure their understanding and agreement to the program benefit they are entitled to

Example of FSA-2601 (Continued)

FSA-2601 (05-24-2021)

Page 3 of 5

- If at least one, but not all, required signatures are received within 60 days of the date of this notification, the borrowers who have not signed will be notified of their appeal rights. If an appeal is not requested within 30 days, FSA will process the payment as described in this notice
- In order for USDA to proceed, this form must be signed and dated by all socially disadvantaged borrowers and all borrowers who will be included in the payment distribution must provide the required Financial Institution Information.

OPTION 2. Before I make a decision, I want to schedule a meeting with the local FSA office to discuss this notice (for example, if I disagree with the calculation, if an error is identified, or if I disagree with the payment distribution) or provide updated information that may affect the payment distribution.

My meeting preference is:

- telephone meeting on my phone number _____
 in person at the FSA office. However, I understand and acknowledge that scheduling an in-person meeting may not be possible due to local, State or Federal restrictions due to COVID-19.
- FSA will contact you within seven (7) days of receiving your request for a meeting.

OPTION 3. I do not want to receive the ARPA payment. I understand and acknowledge that my decision to not accept the ARPA payment is final and I understand and acknowledge that FSA will continue to service the debt according to FSA regulations and the Debt Collection Improvement Act of 1996 (DCIA) requirements.

Sincerely,

NAME
TITLE

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is the American Rescue Plan Act of 2021 (ARPA), the Computer Security Act of 1987 (Pub. L. 100-235), OMB Circular A-123, Federal Managers' Financial Integrity Act of 1982, and Privacy Act of 1974 (5 USC 552a - as amended). The information will be used to verify (or update, if needed) a customer's demographic information in USDA and FSA records in order to process the customer's request for payment according to ARPA and applicable regulations. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notices, USDA/FSA-2, Farm Records File (Automated), and USDA/FSA-14, Applicant/Borrower. Providing the requested information is voluntary. However, failure to furnish the requested information may result in a determination that FSA cannot process the customer's request for payment.

The provisions of criminal and civil fraud, privacy and other statutes may be applicable to the information provided.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the 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/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 (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's 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 http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of 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: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410, (2) fax: (202) 690-7442, or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

Example of FSA-2601 (Continued)

FSA-2601 (05-24-2021)

Page 4 of 5

American Rescue Plan Act of 2021 (ARPA) Section 1005 Loan Payment
Calculation Worksheet
Direct Farm Loans

Primary Borrower Name:

Case Number:

Direct Loans							Payment Distribution	
Loan Number	Date of Loan	Unpaid Principal as of 1/1/2021	Unpaid Interest as of 1/1/2021	Protective Advances after 1/1/2021	Total Payoff	Calculated ARPA Payment	Total Amount Paid to FSA	Total Amount Paid to Borrower(s)
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Example of FSA-2601 (Continued)

FSA-2601 (05-24-2021)

Page 5 of 5

ARPA Payment Distribution to BORROWER NAME , Primary Borrower			
	Amount Paid to FSA		Amount Paid to Borrower
Total Amount :	\$	Total Amount :	\$
Amount Attributed to BORROWER NAME :	\$	Amount Paid to BORROWER NAME :	\$

Financial Institution Information - Must Also Attach a Copy of a Voided Check	
Bank Name _____	
Nine-Digit Routing Number _____	Account Number _____
Account Holder's Name _____	[] Checking [] Savings
	Type of Account _____

Signature	
<p>This form must be signed and dated by all socially disadvantaged borrowers who signed the promissory note(s) or assumption agreement(s) and have not previously been released of liability for the debt. In the case of an Estate, the deceased person must have been liable for the debt as of 1/1/2021, and this form must be signed by the person authorized to act on behalf of the Estate. By signing below, you are certifying that you have reviewed this notice (FSA-2601) and the ARPA Section 1005 Loan Payment Calculation Worksheet and agree that all loans eligible for ARPA payments have been included and the calculations are correct.</p>	
Borrower Name _____	Ethnicity _____ Race _____
Signature _____	Date _____