



Rural Development

May 12, 2021

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TO: State Directors
Rural Development

Rural Housing Service
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ATTN: Program Directors
Single Family Housing

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FROM: Chad Parker /s/ *Jamal Habibi*
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SUBJECT: Temporary Authorization Single Family
Housing Direct Programs

PURPOSE:

This memorandum provides temporary authorization to accept applications from existing Section 502 and Section 504 direct loan borrowers, to refinance outstanding loans which are, or have been, in an approved COVID-19 moratorium. This temporary authorization is needed in response to the American Rescue Plan (ARP) Act of 2021 to ensure mortgage payments are more affordable post-moratorium.

This temporary authorization is effective as of the date of this memorandum.

BACKGROUND:

The American Rescue Plan (ARP) Act of 2021 ([H.R. 1319](#), Section 3207) appropriated an additional \$39 million of Budget Authority (BA) for section 502 and 504 direct loans, to remain available until September 30, 2023. The BA equates to approximately \$656.6 million of 502 direct and \$18.3 million 504 loan additional ARP program funding available in fiscal year (FY)21. Program funding is expected to increase significantly in FY 22 due to an expected change in the subsidy rate. The Agency's initial focus will be to refinance existing Section 502 and Section 504 borrowers who have received a payment moratorium related to COVID-19.

EXPIRATION DATE:
May 31, 2022

FILING INSTRUCTIONS:
Housing Programs

IMPLEMENTATION RESPONSIBILITIES:

Unless the guidance in this memo is supplemented or revoked, the Agency will temporarily accept applications from existing Section 502 and Section 504 direct loan borrowers, to refinance outstanding loans, which have been in an approved COVID-19 moratorium, as follows.

- A. To be eligible for refinance under this temporary authority, borrowers must be (or have been) on a COVID-19 moratorium (CUST/USER in LoanServ Field 56 will reflect: “C”); and, the Agency must determine that there is a net tangible benefit (NTB) to the borrower as the result of the refinance. A NTB includes, but is not limited to, a reduced note rate or a change in term that results in a financial benefit to the borrower (e.g. lower monthly principal and interest payment). This must be documented in the ARP Worksheet. Any borrower meeting these criteria may apply at any time.

However, in an effort to reach borrowers who may have the most immediate need for assistance and to provide them every opportunity for success post-moratorium, the Agency will have tiered outreach under which borrowers will be sent a letter from the Servicing and Asset Management Office (Servicing Office) about the availability of this option and how to apply. The Tiers are as follows:

- Tier I – borrowers who are no longer under a COVID-19 moratorium and are at risk of foreclosure (i.e. delinquent status).
 - As required by the provisions of 31 U.S.C. 3720B, a person may not obtain any Federal financial assistance in the form of a loan if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency, which is in a delinquent status. 31 C.F.R. 285, §285.13 (d) defines *Delinquent status*, in part, as “...a debt is in “delinquent status” for purposes of this section if the debt has not been paid within 90 days of the payment due date.” Therefore, if the borrower is unable to bring their account current, the Servicing Office must first reamortize the loan to resolve the delinquent status before the loan can be refinanced. The reamortization process will take approximately 30 days. Following the reamortization, borrowers should continue to make at least one regular payment each month while the application for refinance is being processed, so that the loan does not return to a delinquent status.
- Tier II – borrowers who are no longer under COVID-19 moratorium, and less than 90 days delinquent.
- Tier III - borrowers whose COVID-19 moratorium is scheduled to expire in the near future.
- Tier IV – to be determined by a future memorandum on this topic.

A copy of the letter will be placed in the borrower’s existing case record in Electronic Customer File (ECF) under the Forbearance (Special Assistance) classification > ARP Notifications document type.

- B. ARP application package. Impacted borrowers must use the “ARP Checklist of Items to Accompany the Uniform Residential Loan Application” when submitting a complete application, instead of HB-1-3550, Attachment 3-J or 12-E. A standardized, ARP specific application packet, which includes the ARP Checklist of Items, is available to borrowers at <https://pubmai.sc.egov.usda.gov/>, and is also posted in the Direct SharePoint > General Info > [American Rescue Plan](#) folder, and on the [Direct Loan Application Packagers](#) page. Loan

application packagers must use the “Phase I Application Submittal Cover Letter for ARP” and the “Packaging Required Disclosure Letter for ARP” on the [Direct Loan Application Packagers](#) page, in lieu of the Phase 1 and required disclosure letter in HB-1-3550, Attachment 3-A.

- C. ARP application review. The Agency will process applications in accordance with 7 CFR 3550 and HB-1-3550, **except for the following:**

Application Processing Stage:

- Staff must use the “ARP Application Processing Checklist” in lieu of HB-1-3550, Attachment 3-G or 12-C. A fillable version is available in the Direct SharePoint > General Info > [American Rescue Plan](#) folder.
 - 502 only - staff and loan application packagers must use the ARP Worksheet in lieu of Attachment 4-A, Worksheet for Computing Income. The ARP Worksheet includes a section for the Loan Narrative. This is posted in the Direct SharePoint > General Info > [American Rescue Plan](#) folder, and on the [Direct Loan Application Packagers](#) page.
- Processing priority (HB-1-3550, 3.13 B.) – ARP refinance applications will receive third priority for processing (due to hardship). Within this category, Tier I borrowers will receive initial priority.
- All application material must be stored in ECF as soon as the new account number is available; ECF must be utilized as the official case record beginning with application receipt.
- Eligible use of funds. The loan may exceed the market value of the property and/or the area loan limit only as necessary to cover the following:
 - Refinance of borrower’s outstanding Agency direct loan indebtedness.
 - 502 only - subsidy recapture may be included in the amount to be refinanced if requested by the borrower, but should be considered carefully. The analysis must include what the borrower’s total outlay will be on the recapture amount being refinanced (by amortizing the amount as applicable), and comparing to the potential discount the borrower may be eligible for by refinancing the recapture amount (see HB-2-3550, Par. 2.25). The ARP Worksheet includes additional information to assist with this analysis. For example, if a borrower owes \$20,000 in recapture, they may receive a 25% discount for paying that off by borrowing new loan funds as part of the refinance; in which case they would need to borrow \$15,000 to pay off the discounted recapture amount. Because the \$15,000 then becomes principal which will be amortized under the new loan, it must be determined whether the amount of interest paid is likely to exceed the amount the borrower saved through the discount. The analysis should be documented carefully in the ARP Worksheet and discussed with the borrower, who will decide if they want to include the recapture in the refinance.
 - Closing costs associated with the new loan, and allowable excess costs over the market value and area loan limit (including the tax service fee and initial deposit to fund the escrow account).
 - Permissible packaging fees:
 - 502 - not to exceed \$500 for certified packaging bodies with an intermediary (split per agreement with intermediary), \$400 for certified packaging body without an intermediary (packaged by an intermediary, opt-out, or when a

state isn't served by an intermediary), or \$200 for an approved non-certified packager.

- 504 - \$200 for eligible 504 loan packaging types.
- 502 only - outstanding debt to prior lien holders (as identified on Form RD 1927-8, Agreement with Prior Lienholder), if rates and/or terms are less favorable than the Agency's new loan. However, even if the Agency offers a more favorable rate or term, lower payment, etc., the borrower may still choose to continue with the loan to the prior lienholder if they determine it is in their best interest to do so (e.g. – if the Agency rate is lower, but borrower only has a few years remaining on the term, they may prefer to continue as-is to pay off the debt in fewer years.)
- In limited circumstances, amounts needed to correct major deficiencies, such as structural or issues impacting the health and safety of the occupants or members of the community.

Other eligible use of funds, if there is adequate security value, is:

- 502 only - junior liens for secondary financing (e.g. down payment assistance loans, home equity loans, etc.) may be included in the Agency refinance if there is adequate security value, and rates and/or terms are less favorable than the Agency's new loan (i.e. there is a NTB to the borrower such as lower total payment when refinanced). If there isn't adequate security value, the junior lien must be subordinated to the new loan. If security value is not adequate to include the amount(s) in the refinance, or a subordination cannot be obtained, the loan cannot be closed.
 - Involuntary liens (e.g. child support liens, judgment liens from unsecured creditors, etc.) are not eligible for Agency refinance.
- Program Type Codes:
 - 502 loans - use Program Type Code 1079
 - 504 loans - use Program Type Code 2079
- TRID: The Loan Estimate (LE) and Closing Disclosure (CD) 'Non-Purchase' forms will be used for all refinanced loans secured by a deed of trust or mortgage. An unsecured (Note only) loan will utilize the Truth in Lending Statement. The Loan Estimate must be issued within 3 business days of receiving the refinance application package; when issuing the LE, staff must use the "Tailored ARP Cover Letter to TRID" posted in the Direct SharePoint > General Info > [American Rescue Plan](#) folder.
 - The 'Payoff Quote' screen in LoanServ will be utilized to obtain the estimated maximum payoff (excluding subsidy recapture). Direction for obtaining a payoff quote can be found in Chapter 14 of the Direct Loan Origination System (DL0S) manual. The loan amount reflected on the initial LE should include the principal, interest, fees, etc. (excluding subsidy), closing costs, and any other eligible use of funds known at the time of application. *Note regarding subsidy recapture:* an appraisal will be required to calculate the recapture amount owed and will be ordered by the Servicing Office once the applicant is determined eligible. The Loan Originator must send the revised Loan Estimate including the recapture amount within 3 business days of receiving the recapture calculation (final payoff) from Servicing Office, but no later than 7 business days prior to loan consummation. The applicant must be given an opportunity to review the recapture amount and determine if they will include the amount in the refinance, or defer repayment of the subsidy recapture.

- Terms:
 - 502 – LEs for loans less than \$24,000 with a remaining term of less than ten years, will be issued using a new ten-year term; however, if a longer term is necessary to demonstrate a NTB, or if the applicant prefers, a 25-year or 33-year term may be used. If the estimated loan amount is over \$24,000, the LE will be issued using a 33-year term (30-year for manufactured homes); however, if the applicant prefers a shorter term (and a NTB is still demonstrated) they may select a 25-year term. The applicant must indicate their preference on the ‘Tailored ARP Cover Letter to TRID’ attached to this UL.
 - 504 – 20 years.
 - The credit report and whole house inspection should not be included in the LE; however, a new tax service fee to reestablish the escrow will be required. Additional guidance on appraisal fees, if applicable, will be provided separately from this UL.
 - States should modify Attachment 3-I, ‘List of Settlement Service Providers and Mortgage Loan Application Related Disclosures’ to remove any information or service providers that are not necessary for an ARP refinance (i.e. inspectors).
 - Once the details of the refinance transaction are approved, field staff will complete the Closing Disclosure at least 3 business days prior to consummation however, there is a 7-business day waiting period before closing can occur if the CD was not provided in person (i.e. mailbox rule).
- Income:
 - Adjusted household income must be calculated to determine if the applicant is income-eligible to receive a new program loan. Evaluation of borrower repayment income is not required.
 - 502 - The adjusted income must not exceed the applicable moderate-income limit at the time of loan approval and closing. As a reminder, the ARP Worksheet must be used in lieu of Attachment 4-A, Worksheet for Computing Income.
 - 504 – The adjusted income must not exceed the very low-income limit at the time of loan approval and closing. If the household exceeds the very low-income limit, 502 loan funds may be used to refinance the 504 debt.
- Assets:
 - The borrower and/or net family assets will not be evaluated for down payment requirements or repayment income calculations, as applicable. However, net family assets must still be evaluated for annual and adjusted income calculations.
- Credit:
 - The borrower’s credit history will not be evaluated using a tri-merge credit report (TMCR) or infile; therefore, no credit report fee is to be collected and these reports must not be ordered. Attachment 3-H is not required.
 - Nontraditional/alternative credit sources are not required.
 - The Agency must check the Department of Treasury’s Do Not Pay (DNP) portal. NOTE: All Agency accounts in moratorium are reported to the Credit Alert System which is checked through the DNP portal, regardless of the reason the moratorium was granted. Therefore, it is important that Field Staff clearly document that the DNP hit is related to an approved COVID-19 moratorium. All other DNP hits are subject to the guidance in HB-1-3550, Chapter 4.

- Bankruptcy – if a borrower is in Chapter 7 or 13 bankruptcy at the time of application to refinance, the borrower’s attorney must be notified of the proposed terms of the refinance. The Agency must receive written concurrence from the attorney or court (e.g. order granting the motion) before approving the loan.
- Adding/Removing Borrowers:
 - Adding borrowers – it is acceptable to add a new borrower; provided the household continues to meet applicable income limit (502 - moderate; 504 - very low). The added borrower’s credit history will not be evaluated, except for DNP check as noted above. Systematic Alien Verification for Entitlements (SAVE) must be checked for new borrowers. Homeownership Education and Form 3550-23, Applicant Orientation Guide will not be required from new borrowers.
 - All borrowers on the existing RHS debt must remain on the refinance (except for deceased individuals). If a borrower wishes to be released from liability on the existing loan (and not be a party to the refinance loan) they must apply to the Servicing Office for a release of liability from the existing loan.
- Applicants who exceed the applicable income limit, or are determined ineligible for other reasons (e.g. there is no net tangible benefit to the proposed transaction, or an applicant is not eligible due to an outstanding judgment obtained by the United States in a Federal court, other than the United States Tax Court. This requirement is statutory and cannot be waived), must be sent the ARP specific Standardized Adverse Decision Letter posted in the Direct SharePoint > General Info > [American Rescue Plan](#) folder, in lieu of HB Letter 15. In addition, the letter should include HB-1-3550 Attachment 1-B or 1-C, as appropriate.

Other (502) eligibility processing items:

- Social Security Number CROSS REFERENCE check is not required.
- SAVE check is not required (except for new borrowers being added).
- Form RD 3550-23, Applicant Orientation Guide is not required.
- The Eligibility Summary from UniFi is required to document the Annual and Adjusted Income only; these figures should match those in the ARP Worksheet. The Eligibility Summary must be signed by the Loan Originator with a note on Page 2 to see ARP Worksheet for correct refinanced loan amount.
- Notify the borrower of eligibility using the “ARP Eligibility Letter” posted in the Direct SharePoint > General Info > [American Rescue Plan](#) folder, instead of Form 1944-59, Certificate of Eligibility.

Property Eligibility Stage:

- Whole house inspections are not required.
- An appraisal will be obtained by the Servicing Office in order to calculate recapture on the outstanding 502 loan(s) and final payoff amount and can also be used to establish the market value for the new Form 3550-12, Subsidy Repayment Agreement. Guidance on ordering appraisals for loans without subsidy recapture amounts will be provided separately from this UL.
- A new Flood Hazard Determination will be required.
- A new Lead Based Paint (LBP) compliance key is not required if an existing LBP risk assessment is available in the original loan file (a copy must be placed in the new application file).

- RD Instruction 1970-B, Exhibit D “Categorical Exclusion” is not required if an environmental assessment (e.g. Form 1940-21 or 1940-22) is available in the original loan file (a copy must be placed in the new application file).
- Eligibility of the subject property does NOT need to be re-verified. (Note: loans may be approved even if an area’s designation has changed from rural to non-rural, HB-1-3550, 5.3 C. 6.).

Underwriting/Approval Stage:

- Loan Narrative updated in the ARP Worksheet (502), or 504 Worksheet, to include underwriting details by Loan Approval Official.
- For 502 - Field staff will fax or email HB-1-3550, Attachment 13-A to the Payoff Department once the recapture appraisal has been received. A new task for obtaining the final payoff will be developed in LoanServ and provided to staff once available. Field staff will send this task to the Servicing Office to request a final payoff quote, no later than 25 business days prior to the projected closing date (e.g. payoff effective date). The payoff effective date must be placed in the notes of the task.
- Loan Approval/Obligation should be completed upon receipt of final payoff statement from the Servicing Office.
- The loan may exceed the market value of the property and/or the area loan limit only as necessary to cover the borrower’s outstanding Agency indebtedness (including subsidy recapture if being refinanced), outstanding debt to a prior lien holder (as identified on Form RD 1927-8, Agreement with Prior Lienholder), closing costs associated with the new loan, allowable excess costs, packaging fee, and costs for health and/or safety repairs.

Closing Stage:

- The adjusted income must not exceed the applicable moderate-income limit for 502 and very-low income limit for 504, at the time of closing.
- If debt to a prior lien holder (as identified on Form RD 1927-8, Agreement with Prior Lienholder) will not be refinanced and the lien stays in place, a new Form RD 1927-8 must be obtained to correspond to the Agency’s new loan.
- Remaining escrow balance from the original account will be credited at closing and will be transferred once the original loan is paid in full.
- 502 borrowers must sign a new Form RD 3550-12, Subsidy Repayment Agreement, for the new loan; the original Form 3550-12 remains valid for the deferred subsidy recapture.
- Form RD 1940-43, Notice of Right to Cancel must be given at loan closing to any applicant who already holds title to the dwelling being mortgaged. If a loan is made for less than \$7,500 and no mortgage will be taken, this form does not need to be sent out. Funds cannot be disbursed to applicants with rescission rights until 3 business days have passed because these applicants have a legal right to cancel (rescind) the loan within 3 business days from whichever of the following activities occurs last (HB 8.6 C. 2): execution of the mortgage or deed of trust, receipt of Loan Estimate, receipt of Form RD 1940-43, Notice of Right to Cancel. Do NOT activate until after the rescission period has expired. Send closing documents to Servicing Office within 6 business days. In the top right corner of Form RD 3550-19, Transmittal - Closing Documents mark “RESCISSION LOAN”.
 - Note: See Chapters 5 & 10 of the DLOS Manual for additional guidance on rescission rights.

- While the original Promissory Note will be paid in full, the Agency will leave the original real estate mortgage or deed of trust in place to secure the deferred recapture receivable account. A new 502 loan of less than \$7,500 that is scheduled for repayment within 10 years from the date of the loan may be secured by a Promissory Note only; otherwise, the new Promissory Note must be secured by a new real estate mortgage or deed of trust, which the closing agent/attorney must record upon loan closing. This means the Agency may have multiple mortgages/deeds of trust, one to secure any deferred recapture owed, and another to secure the new debt. It is not necessary to subordinate the Agency's original mortgage/deed of trust, to the Agency's new mortgage/deed of trust.

Please contact Shannon.chase@usda.gov, Ashley.nelson@usda.gov, or Jennifer.rydberg@usda.gov with questions regarding this memorandum.