

# Farmers' Guide to the Inflation Reduction Act of 2022 (IRA)

September 15, 2022

Farmers' Legal Action Group  
Rural Coalition  
Intertribal Agriculture Council  
Land Loss Prevention Project

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## **Farmers' Guide to the Inflation Reduction Act of 2022 (IRA)**

September 15, 2022

Written by Stephen Carpenter and Lindsay Kuehn

Copyedited by Wendy Reid

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## I. Introduction

On August 16, 2022, the Inflation Reduction Act of 2022 (IRA) became law.<sup>1</sup>

This Farmers' Guide to the IRA looks most closely at three different parts of the IRA.

First, it looks at what the IRA calls “relief for borrowers.” This is relief for farmers that have Farm Service Agency (FSA) debt.

Second, this Guide looks at what the IRA calls “Discrimination Financial Assistance.” Discrimination Financial Assistance means payments to USDA farm loan borrowers that are determined to have experienced discrimination.

Third, this Guide looks at changes the IRA makes to the American Rescue Plan Act (ARPA). The IRA removes from ARPA the section that authorized debt payments that would have been made to and for socially disadvantaged farmers and ranchers.

### A. Current as of September 13, 2022

This Farmers' Guide to the IRA is current as of September 13, 2022. In the upcoming weeks and months the Guide will be updated.

### B. Many IRA Details Left to USDA—And Open to Farmer Input

As this Guide will explain below, Congress left many parts of the IRA up to USDA to flesh out.<sup>2</sup> As USDA does this work, there will be chances for farmers and farm organizations to tell USDA how they think these decisions should be made. USDA's website says the Department is “reviewing the provisions in the IRA” and is “working to implement these provisions as expeditiously as possible.”<sup>3</sup>

### C. Collaborative Effort

This Guide is a collaborative effort between Farmers' Legal Action Group, Inc. (FLAG) and Rural Coalition, with support from the W.K. Kellogg Foundation. The Guide was also written in collaboration with Land Loss Prevention Project, the Intertribal Agriculture Council (IAC), and others.<sup>4</sup>

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<sup>1</sup> See The White House, Remarks by President Biden At Signing of H.R. 5376, The Inflation Reduction Act of 2022 (August 16, 2022), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/16/remarks-by-president-biden-at-signing-of-h-r-5376-the-inflation-reduction-act-of-2022/>. The official title of the Act is “To provide for reconciliation pursuant to title II of S. Con. Res. 14.” The important parts of the Act for the purposes of this Guide are at Title I, Subtitle C, Part 2, sections 22006, 22007, and 22008. For the whole Act, see <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>.

<sup>2</sup> So far USDA has not added any detail regarding how the programs will be carried out. See, for example, USDA, Statement from Agriculture Secretary Tom Vilsack on Passage of Inflation Reduction Act, Statement Release No. 017.22 (August 12, 2022), at <https://www.usda.gov/media/press-releases/2022/08/12/statement-agriculture-secretary-tom-vilsack-passage-inflation>.

<sup>3</sup> USDA, American Rescue Plan Debt Payments, at <https://www.farmers.gov/loans/american-rescue-plan> (2022).

<sup>4</sup> FLAG is at <http://www.flaginc.org/>. Rural Coalition is at <https://www.ruralco.org/>. Land Loss Prevention Project is at <https://www.landloss.org/>. Intertribal Agriculture Council is at <https://www.indianag.org/>. The W. K. Kellogg Foundation is at <https://www.wkkf.org/>.

## **D. An Outline for This Guide**

Section II of this Guide looks at the IRA's borrower relief for farmers that have FSA loans. It includes a discussion of the things that USDA must do to implement this relief and notes things that are left open for USDA to decide.

Section III describes the relief given under the IRA to farmers that have been determined to have experienced discrimination. It looks at the requirements set by the IRA for this program, as well as the sorts of things that are left for USDA to decide, such as what counts as discrimination and how it will be determined who experienced discrimination.

Section IV describes the way the IRA changes the American Rescue Plan Act (ARPA). It looks in particular at the situation for farmers that would have benefited from ARPA had it survived. This section considers the lawsuits that attacked ARPA and what may become of them.

Section V discusses the role farmers and farm organizations can play in helping shape how the IRA is carried out. It also includes a list of contacts for organizations that are working on the IRA issues that are discussed in this Guide.

## **E. What This Guide Does Not Cover**

There are many parts of the IRA that affect farmers. The IRA provides significant funds for technical assistance for underserved farmers, for organizations that are working to help farmers with land access, including heirs' property, for research and extension work, and for the USDA Equity Commission.<sup>5</sup> This Guide does not cover these important programs.<sup>6</sup> It also does not cover conservation and other programs that are to be implemented by USDA and funded through the IRA.

## **F. Options for Individual Farmers: A Later Guide**

This Guide aims to describe the actions taken by Congress in the IRA. It does not go through the options that people have and the choices that people will need to make. For ARPA-eligible borrowers, important decisions about the debt they have, and how to act going forward, are complicated and they warrant a completely separate and detailed Guide. Such a Guide will be produced soon.

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<sup>5</sup> IRA section 22007. Under this section, technical assistance receives about 125 million dollars, land loss assistance receives about 250 million dollars, extension about 250 million dollars, and the Equity Commission about ten million dollars.

<sup>6</sup> Other sources that are beginning to discuss aspects of the IRA include Congressional Research Service, Inflation Reduction Act: Agricultural Conservation and Credit, Renewable Energy, and Forestry (August 10, 2022), at <https://crsreports.congress.gov/product/details?prodcode=IN11978>, and Jonathan Coppess et al, Reviewing the Inflation Reduction Act of 2022; Part 1 and Part 2 (August 11, 2022, and August 12, 2022), at <https://farmdocdaily.illinois.edu/2022/08/reviewing-the-inflation-reduction-act-of-2022-part-1.html>, and <https://farmdocdaily.illinois.edu/2022/08/reviewing-the-inflation-reduction-act-of-2022-part-2.html>.

## II. Borrower Relief for Those with FSA Debt

The IRA provides 3.1 billion dollars to provide relief for certain FSA borrowers.<sup>7</sup> It does so in a somewhat unclear way that is quite different from the relief provided in the original American Rescue Plan Act (ARPA). The following sections describe what farmers can get this relief, what sort of loans can be the basis for the relief, and how, in general, the relief will be carried out. There are a number of open questions when it comes to relief for borrowers that USDA will need to figure out.

### A. What Farmers Are Eligible for Borrower Relief

Eligibility for borrower relief is based on the kind of debt the borrower has and on the economic situation of the borrower.

#### 1. FSA Borrower: Either Direct or Guaranteed Loan

To be eligible for IRA borrower relief, the borrower must have FSA debt. That debt can either be either guaranteed or direct.<sup>8</sup>

#### 2. Types of FSA Loans

For a borrower to be eligible the loans must be of a certain kind. The loans themselves must be made possible by certain parts of federal statute.<sup>9</sup>

In general, this means they can be one of three types of loans.

##### a. Real Estate Loans

Loans that can make a borrower eligible for borrower relief include “real estate loans.”<sup>10</sup> Borrowers who have either a guaranteed or direct FSA Farm Ownership (FO) loan fall into this group. So do borrowers with other, less often used, real estate loans.<sup>11</sup>

##### b. Operating Loans

Loans that can make a borrower eligible for borrower relief include “operating loans.”<sup>12</sup> Borrowers who have either a guaranteed or direct FSA Operating Loan (OL) fall into this group. So do borrowers with other, less often used, operating loans.<sup>13</sup>

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<sup>7</sup> IRA section 22006.

<sup>8</sup> The borrower must have a direct or guaranteed loan administered by FSA. IRA section 22006.

<sup>9</sup> IRA section 22006. Loans included in this section of the IRA include those authorized under 7 U.S.C. sections 1922 through 1970.

<sup>10</sup> IRA section 22006. Sections 1922 through 1936c of 7 U.S.C. cover real estate loans.

<sup>11</sup> Future versions of this Guide will have a complete list of the less-used loans that can qualify.

<sup>12</sup> IRA section 22006. Operating loans covered by this section include those authorized under 7 U.S.C. sections 1941 through 1949.

<sup>13</sup> Future versions of this Guide will have a complete list of the less-used loans that can qualify.

### ***c. Emergency Loans***

Loans that can make a borrower eligible for borrower relief include “emergency loans.”<sup>14</sup> Borrowers who have a direct Emergency Loan (EM) fall into this group. Borrowers with other loans might also be eligible.

### **3. “Distressed Borrower”**

In order to be eligible for borrower relief borrowers must be considered “distressed borrowers.”<sup>15</sup> Distressed borrower is not defined by the IRA. That means it will be up to USDA to define the term. It is important to emphasize that USDA has wide discretion in defining what it means to be a distressed borrower.

At times, the term distressed borrower is used in other places by USDA. For example, when servicing a loan, FSA rules say a “financially distressed borrower” is a borrower that is unable to develop a feasible plan for the current or next production cycle.<sup>16</sup> USDA is not, however, required to use the same definition for the IRA that it might have used for other purposes.

Similarly, a number of possible ways to decide if borrowers would be eligible for debt programs were discussed in the run-up to passing the IRA.<sup>17</sup> USDA is not required to use any of those definitions either.

Borrowers and farm organizations will have the chance to weigh in with USDA as it defines this important term.

### **4. Operations “at Financial Risk”**

In order to be eligible for borrower relief the borrower’s agricultural operation must be “at financial risk.”<sup>18</sup> A farm operation in financial risk is not defined by the IRA. That means it will be up to USDA to define the term. It is important to emphasize that USDA has wide discretion in creating a definition.

At first glance, it looks like the term “at financial risk” is not used in USDA loan programs to describe farming operations. Even if it was, however, USDA is not required to use the same definition for this section of the IRA that it might have used for other purposes.

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<sup>14</sup> IRA section 22006. Emergency loans covered by this section of the IRA include 7 U.S.C. sections 1961 through 1971.

<sup>15</sup> IRA section 22006.

<sup>16</sup> FSA Handbook, Direct Loan Servicing – Special and Inventory Property Management, 5-FLP, Exhibit 2, page 13, “Financially distressed borrower” (July 8, 2022).

<sup>17</sup> See, for example, an earlier Senate version of H.R. 5376, “To provide for reconciliation pursuant to title II of S. Con. Res. 14,” section 12101 (August 3, 2022), at <https://www.congress.gov/bill/117th-congress/house-bill/5376/text/pcs>.

<sup>18</sup> IRA section 22006.



Similarly, a number of possible ways to decide if borrowers would be eligible for debt programs were discussed in the run-up to passing the IRA.<sup>19</sup> USDA is not required to use any of those definitions either.

Borrowers and farm organizations will have the chance to weigh in with USDA as it defines this important term.

## **B. How the Borrower Relief Process Might Work**

The IRA provides borrower relief “payments to, for the cost of loans or loan modifications for, or to carry out . . . 7 U.S.C. section 1981(b)(4).”<sup>20</sup> This confusing sentence probably means USDA can do three types of things for borrower relief.

### **1. Likely Three USDA Options**

USDA appears to have three kinds of options for borrower relief. We do not know how USDA itself will understand these options.<sup>21</sup>

#### ***a. Payments***

USDA likely can make payments directly to borrowers. USDA might pay the amount owed on the loan directly to the borrower.

#### ***b. Loan Modifications***

USDA can modify loans. That probably means a form of loan reduction, but might include other changes to the loan.

#### ***c. Debt Settlement***

Under the IRA, USDA can use an already existing statute, 7 U.S.C. section 1981(b)(4), to reduce debt. In general, 7 U.S.C. section 1981(b)(4) authorizes USDA to carry out various types of loan servicing for direct and guaranteed loans. This statute section is usually used by FSA to settle debts.<sup>22</sup> The current rules that use 7 U.S.C. section 1981(b)(4) could be changed as USDA prepares to carry out the IRA.

### **2. Payments or Modifications Equal to All Debt?**

It is not certain that USDA will have the funds to address all of the eligible debt for all eligible borrowers. Congress gave USDA 3.1 billion dollars for this program.<sup>23</sup> We do not know if that will be enough. Congress could give USDA more money for the program if all of the money is used, but there is no guarantee that will happen. If USDA feels that it might not have enough money for the program it might do what is

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<sup>19</sup> See, for example, an earlier Senate version of H.R. 5376, “To provide for reconciliation pursuant to title II of S. Con. Res. 14,” section 12101 (August 3, 2022), at <https://www.congress.gov/bill/117th-congress/house-bill/5376/text/pcs>.

<sup>20</sup> IRA section 22006.

<sup>21</sup> IRA section 22006.

<sup>22</sup> See 7 C.F.R. §§ 761.401-761.408; see also FSA Handbook, Direct Loan Servicing – Debt Collection and Resolution, 7-FLP, pages 12-1 to 12-30, paras. 401-409 (August 4, 2022).

<sup>23</sup> IRA section 22006.

sometimes called providing a pro rata share to each borrower. For example, if the 3.1 billion dollars only covered half of the total eligible borrower debt USDA might provide only 50 percent of the relief that would otherwise have gone to each borrower.

### **C. Sign-Up Process**

Nothing in the IRA explains whether borrowers will need to sign up for borrower relief and if so what the sign-up process might look like. There will likely need to be significant outreach to explain the program and get people signed up.

### **D. Appeals**

The IRA does not mention an appeals process for borrowers that want to use the program but are determined to not be eligible or are approved for a lower payment than the borrower thinks is correct.<sup>24</sup> USDA will need to decide if farmers have the right to appeal USDA decisions. For example, once USDA comes up with a definition of “distressed borrower” and “at financial risk” there will almost for certain be borrowers that do not qualify under those definitions. An important question is who will decide this eligibility for the IRA and whether borrowers will have a right to appeal the decision.

### **E. Federal Income Taxes**

It is highly likely that the Internal Revenue Service (IRS) will consider borrower relief—whether in the form of a payment or some sort of a debt reduction—to be income under federal tax law. This is an important and complicated issue. The IRA does not provide for a separate pot of money that goes to the IRS on behalf of the borrower. In the end borrowers are responsible for understanding and paying their federal income tax. There will likely need to be significant outreach to borrowers that benefit from borrower relief to make sure they are aware of all of the potential tax consequences.

### **F. Long Term Effects for Borrowers**

Some aspects of the borrower relief in the IRA may have a long-term effect for the borrower when it comes to future FSA loans or future FSA loan servicing. This issue will need to be well understood and explained to borrowers. At present, however, we do not know if or how borrower relief under the IRA might impact borrowers in the long term.

### **G. No Funding Past September 31, 2031**

The IRA provides funding for borrower relief that must be used by September 31, 2031.<sup>25</sup>

## **III. Discrimination Financial Assistance**

Under the IRA, 2.2 billion dollars are made available for what is called “discrimination financial assistance.”<sup>26</sup> The following sections describe how this assistance should work. Many important parts of this assistance are left to USDA to make rules for and carry out.

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<sup>24</sup> IRA section 22006.

<sup>25</sup> IRA section 22006.

<sup>26</sup> IRA section 22007.

## **A. Who is Eligible: Farmer, Rancher, or Forest Landowner**

In order to be eligible for discrimination financial assistance a person must be a farmer, a rancher, or a forest landowner.<sup>27</sup>

## **B. Who is Eligible: Those Determined to Have Experienced Discrimination**

In order to be eligible for this assistance the farmer, rancher, or forest landowner must be “determined to have experienced discrimination prior to January 1, 2021.”<sup>28</sup> That eligibility rule has several parts and there is much we do not know about how it will work.

### **1. Discrimination on What Basis**

The IRA does not say what kind of discrimination is covered by the IRA’s Discrimination Financial Assistance. For comparison, USDA’s antidiscrimination policy covers a number of bases for discrimination.<sup>29</sup>

[T]he 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).

It seems likely that USDA will include all of these bases of possible discrimination, and possible that they will add others. If a possible basis for discrimination is not included in the IRA program there is a chance that a farmer, rancher, or forest landowner will go to court to try and get that basis included.

### **2. Discrimination in FSA Farm Lending Programs**

For the discrimination to create eligibility for Discrimination Financial Assistance under the IRA it must have occurred “in [USDA] farm lending programs.”<sup>30</sup> Several points follow from this wording.

#### ***a. Direct FSA Farm Loans—DOES Create Eligibility***

Direct FSA farm loan program loans are eligible.<sup>31</sup>

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<sup>27</sup> IRA section 22007.

<sup>28</sup> IRA section 22007.

<sup>29</sup> USDA, Non-Discrimination Statement (August 15, 2022), at <https://www.usda.gov/non-discrimination-statement>. Additional USDA rules barring various kinds of discrimination can be found at 7 C.F.R. part 15 (2022).

<sup>30</sup> IRA section 22007.

<sup>31</sup> For a short description of what FSA calls its Farm Loan Programs, see USDA, Farm Loan Programs (August 31, 2022), at <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/index>. See, as well, FSA, Your FSA Farm Loan Compass (March 2021), at [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/loan-servicing/fsa\\_farm\\_%20loan\\_compass.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/loan-servicing/fsa_farm_%20loan_compass.pdf).

***b. Non-Farm Loans at USDA—DOES NOT Create Eligibility***

An important point here is that discrimination in USDA programs that are not farm loan programs do not create eligibility. Discrimination in a USDA rural housing loan, for example, will not be eligible for Discrimination Financial Assistance under the IRA.

***c. Non-Guaranteed Private Lenders—DOES NOT Create Eligibility***

In general, discrimination by a Farm Credit System lender, a bank, or other lending institution on a non-FSA guaranteed loan will not be eligible for Discrimination Financial Assistance under the IRA.

***d. Guaranteed Loans and FSA Discrimination—DOES Create Eligibility***

If there is discrimination with a guaranteed farm loan, and the discrimination is by FSA, this discrimination will create eligibility under the IRA.

***e. Guaranteed Loan Discrimination by Lender***

One question that USDA will need to decide is whether discrimination in a guaranteed loan by the lender—and not FSA—creates eligibility for Discrimination Financial Assistance. The IRA is not clear about this. Since guaranteed loans are eligible loans, and the discrimination must have taken place “in” a USDA “farm lending program” it could be argued that if the bank is discriminating in the guaranteed loan program, that discrimination should create eligibility for Discrimination Financial Assistance. Put differently, if Congress wanted only USDA discrimination to create eligibility, it could have done so. Instead, Congress made eligibility based on discrimination taking place “in” a USDA farm lending program without saying that USDA itself must have actively discriminated.

**3. What Counts as Discrimination**

The IRA does not define discrimination.<sup>32</sup> Because the discrimination in question must have taken place in a farm loan program, it seems likely that USDA will follow, at least in part, the Equal Credit Opportunity Act (ECOA) to define discrimination.<sup>33</sup> While there is not room here to discuss ECOA, it is notable that ECOA covers every aspect of a loan transaction. That should mean that the Discrimination Financial Assistance under the IRA could cover discrimination experienced through program loan denials, late loans, underfunded loans, excessive collateral, and the rest of the types of discrimination that have long been a part of FSA loan programs.

<sup>32</sup> IRA section 22007.

<sup>33</sup> Equal Credit Opportunity Act, 15 U.S.C. section 1691 to 1691f. A thorough analysis of all aspects of ECOA can be found in the National Consumer Law Center, Credit Discrimination (8<sup>th</sup> ed. 2022).

#### **4. Discrimination Before January 1, 2021**

The discrimination that a farmer, rancher, or forest landowner experiences must have occurred before January 1, 2021.<sup>34</sup> Discrimination after that point, however, is still illegal even though it is not covered by the Discrimination Financial Assistance under the IRA. In addition, filing a discrimination complaint or a lawsuit for discrimination that took place before January 1, 2021, is still possible. Notably, there is no beginning date for discrimination covered under the IRA. That means the discrimination could have taken place long ago and the farmer, rancher, or forest landowner could be eligible for Discrimination Financial Assistance.

#### **5. Must be “Determined” to Have Experienced Discrimination**

For someone to be eligible for Discrimination Financial Assistance, they must have been “determined” to have experienced discrimination.<sup>35</sup> For many people that determination likely took place long ago. For many others, there will need to be a process to determine whether discrimination took place.

##### ***a. Discrimination Already Determined***

For many people there is already on record a determination that USDA discrimination previously took place. In the various lawsuits against USDA for discrimination and in the internal Hispanic and Women Farmer process, thousands of people were determined to have experienced discrimination. Similarly, a few people got awards from the Office of Civil Rights or won discrimination lawsuits against USDA as individuals. The IRA does not limit in any way those who succeeded with an earlier claim against USDA from also taking part in the Discrimination Financial Assistance program. It seems likely that USDA will allow those earlier determinations to count. It is notable, however, that few of those determinations set a dollar amount on the harm as will be required in this program. So, there will be further decisions to be made on these claims.

##### ***b. No Determination Yet***

It seems highly likely that many farmers, ranchers, and forest landowners will need to file some sort of claim form to receive Discrimination Financial Assistance. Then, a person or organization of some sort will “determine” whether the discrimination took place. This person or organization will likely be outside of USDA. Administration of the program is discussed below. Filing these claims will take a great deal of effort and time by farmers and those assisting them.

#### **C. Discrimination Payments: Up to \$500,000**

Farmers, ranchers, and forest landowners that have been determined to have experienced discrimination in a USDA farm loan program are eligible for a payment under the IRA of up to five hundred thousand dollars.<sup>36</sup> The amount of the payment will be “determined to

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<sup>34</sup> IRA section 22007.

<sup>35</sup> IRA section 22007.

<sup>36</sup> IRA section 22007.

be appropriate based on any consequences experienced from the discrimination.” The IRA does not say this directly, but it seems likely that a person or organization outside of USDA will “determine” the amount of money that is appropriate under the IRA. Administration of the discrimination program is discussed below.

#### **D. Will There Be Enough Money?**

Congress gave USDA 2.2 billion dollars to pay to farmers for Discrimination Financial Assistance.<sup>37</sup> We do not know if that will be enough to cover the assistance that people will be eligible to receive. For example, if 30,000 people are determined to have experienced discrimination, and the average person is determined to be eligible for one hundred thousand dollars, that is 3.0 billion dollars. Congress could give USDA more money for the program if all of the money is used, but there is no guarantee that will happen. If USDA feels that it might not have enough money for the program it might provide what is sometimes called a pro rata share for each farmer. For example, if the 2.2 billion dollars covered only half of the payments for those determined to have experienced discrimination, USDA might provide only 50 percent of the eligible assistance for each farmer, rancher, or forest landowner.

#### **E. Estate Claims?**

As noted above, there is no starting date for eligibility for when the discrimination could take place.<sup>38</sup> The IRA does not say whether estate claims will be allowed for Discrimination Financial Assistance. It will probably be up to USDA to decide how to handle these possible claims for assistance.

One of the main things that discrimination does is limit the ability of farmers and others to accumulate intergenerational wealth. It would seem strange, therefore, to say that a farmer would be eligible for a five-hundred-thousand-dollar payment in this program, but because the farmer died two years ago, the farmer's family should receive nothing.

On the other hand, determining that there was discrimination experienced by a person that is no longer living, and determining the financial cost of that discrimination, is hard. Many farmers that were subjected to discrimination, but who have passed away, did not have an official estate under state law. It is difficult in those instances to know who in the family should receive the payment. These problems are not insurmountable, but they are challenging and require considerable thought, time, effort, and resources to sort out.

A claims process for estates would also create an immense level of work for those filing claims and those assisting them.

#### **F. Federal Income Tax**

It is highly likely that the Internal Revenue Service (IRS) will consider Discrimination Financial Assistance to be income under federal law. This is an important and complicated issue. The IRA does not provide for a separate pot of money that goes to the IRS on behalf of those in the program. In the end farmers, ranchers, and forest landowners are responsible for understanding and paying their federal income tax. There will likely need

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<sup>37</sup> IRA section 22007.

<sup>38</sup> IRA section 22007.

to be significant outreach to those that benefit from Discrimination Financial Assistance under the IRA to make sure they are aware of all of the potential tax consequences of this assistance.

### **G. Appeals**

The IRA does not mention an appeals process for farmers, ranchers, or forest landowners that want to use the Discrimination Financial Assistance program. USDA will need to decide if farmers, ranchers, and forest landowners have the right to appeal decisions on eligibility and the amounts paid to the person making a claim.

### **H. Administration**

Congress set some rules for how the Discrimination Financial Assistance program should be run.<sup>39</sup>

First, the IRA says that the program should be administered through one or more “qualified nongovernment entities” selected by USDA and subject to standards set and enforced by USDA.<sup>40</sup> This seems to mean that the actual administration of the program will be outside of the USDA, but the basic rules for the program—defining discrimination, deciding how to determine the amount that should be paid to someone, and other details—will be decided by USDA.

Second, the IRA commits twenty-four million dollars to administer the program.<sup>41</sup> That money, however, is supposed to cover USDA costs as well as the nongovernmental body that will administer the program. Twenty-four million dollars is a great deal of money. With that sum, an entity is tasked with reviewing what will certainly be tens of thousands of claims, making determinations as to whether discrimination took place, assigning a dollar amount for each award, putting information out about the process, keeping people informed as to progress, and answering many tens of thousands of questions from people who hope to participate in the program.

### **I. No Funding Past September 31, 2031**

The IRA provides that funding for the Discrimination Financial Assistance program must be used by September 31, 2031.<sup>42</sup>

## **IV. The End of ARPA Section 1005**

The IRA repealed Section 1005 of the American Rescue Plan Act of 2021 (ARPA). The American Rescue Plan Act became law on March 11, 2021.<sup>43</sup> Section 1005 was the section that was to provide debt payments to what ARPA called “socially disadvantaged farmers and ranchers” that were FSA borrowers. After ARPA passed, but before USDA was able to move forward with payments, lawsuits were filed in over a dozen courts against USDA. The lawsuits sought to prevent USDA from carrying out the ARPA debt payment program. Rulings in federal court

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<sup>39</sup> IRA section 22007.

<sup>40</sup> IRA section 22007.

<sup>41</sup> IRA section 22007.

<sup>42</sup> IRA section 22007.

<sup>43</sup> The American Rescue Plan Act of 2021, Pub. L. 117-2 (March 11, 2021).

halted debt payments and continue to do so today, although at least one case – *Miller v. Vilsack* -- has been dismissed by the court.<sup>44</sup> Now that the IRA repealed Section 1005 of ARPA, the other lawsuits likely will go away, although it may take a while. Some lawyers may try to argue that the IRA is too close to ARPA and should also not be allowed, but these efforts are not likely to succeed.

Farmers who were eligible for ARPA payments now need to somehow make plans for going forward without ARPA payments. As this Guide explains there will be significant borrower relief in the IRA. Going forward, much depends on the rules USDA creates to implement the various sections of the IRA that affect farmers and ranchers. Many ARPA eligible borrowers will be eligible for both IRA programs—borrower relief and Discrimination Financial Assistance. It is also certain that many ARPA-eligible borrowers will not receive nearly the benefit under the IRA that they would have under ARPA. That will leave these farmers with outstanding debt they expected not to have.

Later versions of this Guide to the IRA will look closely at the rights of ARPA-eligible borrowers and how they can move forward.

## V. Getting Involved and Contact Information

A number of extremely important parts of the IRA are left for USDA to implement. Farmers and farmer organizations can play a crucial role in advocating with USDA as to how the IRA should actually be carried out. What is a distressed borrower? What farms are in financial distress? How should it be “determined” that a farmer experienced discrimination, and if it happened, how should the consequences of the discrimination be calculated in dollars?

Rural Coalition, the Land Loss Prevention Project the Intertribal Agriculture Council (IAC), and other organizations will be working hard both to supply input and recommendations to USDA on implementation and to provide outreach and technical assistance to producers who may be eligible for borrower relief, or Discrimination Financial Assistance, or both once USDA makes them available. Please contact them to stay informed of opportunities and to take part in that work.

**Rural Coalition** - Contact Lorette Picciano ([lpicciano@ruralco.org](mailto:lpicciano@ruralco.org)) and Kenesha Reynolds ([Kenesha@ruralco.org](mailto:Kenesha@ruralco.org)), or see <https://www.ruralco.org>

**Land Loss Prevention Project** - Contact [Savi@landloss.org](mailto:Savi@landloss.org) or [lppinfo@landloss.org](mailto:lppinfo@landloss.org), or see <http://www.landloss.org>.

**Intertribal Agriculture Council** - Contact [iac@indianag.org](mailto:iac@indianag.org), or see [www.indianag.org](http://www.indianag.org).

**Farmers' Legal Action Group, Inc. (FLAG)** – FLAG can be reached at (651) 223-5400 or toll-free (877) 860-4349. The website is <http://www.flaginc.org>. Contact Stephen Carpenter at [scarpenter@flaginc.org](mailto:scarpenter@flaginc.org) and Lindsay Kuehn at [lkuehn@flaginc.org](mailto:lkuehn@flaginc.org).

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<sup>44</sup> See *Miller v. Vilsack* Order, No. 4:21-CV-0595-O, p. 24 (N.D. Tex., July 1, 2021); *Wynn v. Vilsack*, 545 F. Supp. 3d 1271, 1295 (M.D. Fla. 2021); and *Hollman v. Vilsack*, Order Granting Motion for Preliminary Injunction, No. 1:21-cv-01085-STA-jay, p. 24 (W.D. Tenn., July 8, 2021). For the dismissal of *Miller*, see Civil Case Terminated per Joint Stipulation of Dismissal, No. 4:21-CV-0595-O (N.D. Tex., August 30, 2022).