

112TH CONGRESS
2D SESSION

S. 2217

To amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2012

Mr. GRASSLEY (for himself, Mr. JOHNSON of South Dakota, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mr. ENZI, Mr. NELSON of Nebraska, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rural America Preser-
5 vation Act of 2012”.

6 **SEC. 2. PAYMENT LIMITATIONS.**

7 Section 1001 of the Food Security of 1985 (7 U.S.C.
8 1308) is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

“(3) LEGAL ENTITY.—

“(A) IN GENERAL.—The term ‘legal entity’ means—

“(i) an organization that (subject to the requirements of this section and section 1001A) is eligible to receive a payment under a provision of law referred to in subsection (b), (c), or (d);

“(ii) a corporation, joint stock company, association, limited partnership, limited liability company, limited liability partnership, charitable organization, estate, irrevocable trust, grantor of a revocable trust, or other similar entity (as determined by the Secretary); and

“(iii) an organization that is participating in a farming operation as a partner in a general partnership or as a participant in a joint venture.

“(B) EXCLUSION.—The term ‘legal entity’ does not include a general partnership or joint venture.”;

1 (2) by striking subsections (b) through (d) and
2 inserting the following:

3 “(b) LIMITATION ON PAYMENTS FOR COVERED COM-
4 MODITIES.—The total amount of payments received, di-
5 rectly or indirectly, by a person or legal entity for any
6 crop year for 1 or more covered commodities (except for
7 peanuts) under title I of the Food, Conservation, and En-
8 ergy Act of 2008 (7 U.S.C. 8701 et seq.) (or a successor
9 provision) may not exceed \$125,000, of which—

10 “(1) not more than \$75,000 may consist of
11 marketing loan gains and loan deficiency payments
12 under subtitle B or C of title I of the Food, Con-
13 servation, and Energy Act of 2008 (7 U.S.C. 8731
14 et seq.) (or a successor provision); and

15 “(2) not more than \$50,000 may consist of any
16 other payments made for covered commodities under
17 title I of the Food, Conservation, and Energy Act of
18 2008 (7 U.S.C. 8702 et seq.) (or a successor provi-
19 sion).

20 “(c) LIMITATION ON PAYMENTS FOR PEANUTS.—
21 The total amount of payments received, directly or indi-
22 rectly, by a person or legal entity for any crop year for
23 peanuts under title I of the Food, Conservation, and En-
24 ergy Act of 2008 (7 U.S.C. 8701 et seq.) (or a successor
25 provision) may not exceed \$125,000, of which—

1 “(1) not more than \$75,000 may consist of
 2 marketing loan gains and loan deficiency payments
 3 under subtitle B or C of title I of the Food, Con-
 4 servation, and Energy Act of 2008 (7 U.S.C. 8731
 5 et seq.) (or a successor provision); and

6 “(2) not more than \$50,000 may consist of any
 7 other payments made for peanuts under title I of the
 8 Food, Conservation, and Energy Act of 2008 (7
 9 U.S.C. 8702 et seq.) (or a successor provision).

10 “(d) SPOUSAL EQUITY.—

11 “(1) IN GENERAL.—Notwithstanding sub-
 12 sections (b) and (c), except as provided in paragraph
 13 (2), if a person and the spouse of the person are
 14 covered by paragraph (2) and receive, directly or in-
 15 directly, any payment or gain covered by this sec-
 16 tion, the total amount of payments or gains (as ap-
 17 plicable) covered by this section that the person and
 18 spouse may jointly receive during any crop year may
 19 not exceed an amount equal to twice the applicable
 20 dollar amounts specified in subsections (b) and (c).

21 “(2) EXCEPTIONS.—

22 “(A) SEPARATE FARMING OPERATIONS.—

23 In the case of a married couple in which each
 24 spouse, before the marriage, was separately en-
 25 gaged in an unrelated farming operation, each

1 spouse shall be treated as a separate person
 2 with respect to a farming operation brought
 3 into the marriage by a spouse, subject to the
 4 condition that the farming operation shall re-
 5 main a separate farming operation, as deter-
 6 mined by the Secretary.

7 “(B) ELECTION TO RECEIVE SEPARATE
 8 PAYMENTS.—A married couple may elect to re-
 9 ceive payments separately in the name of each
 10 spouse if the total amount of payments and
 11 benefits described in subsections (b) and (c)
 12 that the married couple receives, directly or in-
 13 directly, does not exceed an amount equal to
 14 twice the applicable dollar amounts specified in
 15 those subsections.”;

16 (3) in paragraph (3)(B) of subsection (f), by
 17 adding at the end the following:

18 “(iii) IRREVOCABLE TRUSTS.—In pro-
 19 mulgating regulations to define the term
 20 ‘legal entity’ as the term applies to irrev-
 21 ocable trusts, the Secretary shall ensure
 22 that irrevocable trusts are legitimate enti-
 23 ties that have not been created for the pur-
 24 pose of avoiding a payment limitation.”;
 25 and

1 (4) in subsection (h), in the second sentence, by
 2 striking “or other entity” and inserting “or legal en-
 3 tity”.

4 **SEC. 3. SUBSTANTIVE CHANGE; PAYMENTS LIMITED TO AC-**
 5 **TIVE FARMERS.**

6 The Food Security Act of 1985 is amended by strik-
 7 ing section 1001A (7 U.S.C. 1308–1) and inserting the
 8 following:

9 **“SEC. 1001A. SUBSTANTIVE CHANGE; PAYMENTS LIMITED**
 10 **TO ACTIVE FARMERS.**

11 **“(a) SUBSTANTIVE CHANGE.—**

12 **“(1) IN GENERAL.—**For purposes of the appli-
 13 cation of limitations under this section, the Sec-
 14 retary shall not approve any change in a farming op-
 15 eration that otherwise would increase the number of
 16 persons or legal entities to which the limitations
 17 under this section apply, unless the Secretary deter-
 18 mines that the change is bona fide and substantive.

19 **“(2) SEPARATE EQUIPMENT AND LABOR.—**For
 20 the purpose of paragraph (1), any division of a
 21 farming operation into 2 or more units under which
 22 the equipment and labor are not substantially sepa-
 23 rate shall not be considered bona fide and sub-
 24 stantive.

1 “(3) FAMILY MEMBERS.—For the purpose of
2 paragraph (1), the addition of a family member to
3 a farming operation under the criteria established
4 under subsection (b)(3)(B) shall be considered to be
5 a bona fide and substantive change in the farming
6 operation.

7 “(4) PRIMARY CONTROL.—To prevent a farm-
8 ing operation from reorganizing in a manner that is
9 inconsistent with the purposes of this Act, the Sec-
10 retary shall promulgate such regulations as the Sec-
11 retary determines to be necessary to simultaneously
12 attribute payments for a farming operation to more
13 than 1 person or legal entity, including the person
14 or legal entity that exercises primary control over
15 the farming operation, including to respond to—

16 “(A)(i) any instance in which ownership of
17 a farming operation is transferred to a person
18 or legal entity under an arrangement that pro-
19 vides for the sale or exchange of any asset or
20 ownership interest in 1 or more legal entities at
21 less than fair market value; and

22 “(ii) the transferor is provided preferential
23 rights to repurchase the asset or interest at less
24 than fair market value; or

“(B) a sale or exchange of any asset or ownership interest in 1 or more legal entities under an arrangement under which rights to exercise control over the asset or interest are retained, directly or indirectly, by the transferor.

“(b) PAYMENTS LIMITED TO ACTIVE FARMERS.—

“(1) IN GENERAL.—To be eligible to receive, directly or indirectly, payments or benefits described as being subject to limitation in subsection (b) or (c) of section 1001 with respect to a particular farming operation, a person or legal entity shall be actively engaged in farming with respect to the farming operation, in accordance with paragraphs (2), (3), and (4).

“(2) GENERAL CLASSES ACTIVELY ENGAGED IN FARMING.—

“(A) DEFINITION OF ACTIVE PERSONAL MANAGEMENT.—In this paragraph, the term ‘active personal management’ means, with respect to a person, management duties carried out by the person for a farming operation that are personally provided by the person on a regular, continuous, and substantial basis, including the supervision and direction of—

1 “(i) activities and labor involved in
2 the farming operation; and

3 “(ii) onsite services directly related
4 and necessary to the farming operation.

5 “(B) ACTIVE ENGAGEMENT.—Except as
6 provided in paragraph (3), for purposes of
7 paragraph (1), the following shall apply:

8 “(i) A person shall be considered to be
9 actively engaged in farming with respect to
10 a farming operation if—

11 “(I) the person makes a signifi-
12 cant contribution, as determined
13 under subparagraph (E) (based on the
14 total value of the farming operation),
15 to the farming operation of—

16 “(aa) capital, equipment, or
17 land; and

18 “(bb) personal labor or ac-
19 tive personal management;

20 “(II) the share of the profits or
21 losses of the person from the farming
22 operation is commensurate with the
23 contributions of the person to the op-
24 eration; and

1 “(III) a contribution of the per-
2 son is at risk.

3 “(ii) A legal entity shall be considered
4 to be actively engaged in farming with re-
5 spect to a farming operation if—

6 “(I) the legal entity makes a sig-
7 nificant contribution, as determined
8 under subparagraph (E) (based on the
9 total value of the farming operation),
10 to the farming operation of capital,
11 equipment, or land;

12 “(II)(aa) the stockholders or
13 members that collectively own at least
14 51 percent of the combined beneficial
15 interest in the legal entity each make
16 a significant contribution of personal
17 labor or active personal management
18 to the operation; or

19 “(bb) in the case of a legal entity
20 in which all of the beneficial interests
21 are held by family members, any
22 stockholder or member (or household
23 comprised of a stockholder or member
24 and the spouse of the stockholder or
25 member) who owns at least 10 per-

1 cent of the beneficial interest in the
2 legal entity makes a significant con-
3 tribution of personal labor or active
4 personal management; and

5 “(III) the legal entity meets the
6 requirements of subclauses (II) and
7 (III) of clause (i).

8 “(C) CERTAIN ENTITIES MAKING SIGNIFI-
9 CANT CONTRIBUTIONS.—If a general partner-
10 ship, joint venture, or similar entity (as deter-
11 mined by the Secretary) separately makes a sig-
12 nificant contribution (based on the total value
13 of the farming operation involved) of capital,
14 equipment, or land, the partners or members
15 making a significant contribution of personal
16 labor or active personal management and meet-
17 ing the standards provided in subclauses (II)
18 and (III) of subparagraph (B)(i) shall be con-
19 sidered to be actively engaged in farming with
20 respect to the farming operation involved.

21 “(D) EQUIPMENT AND PERSONAL
22 LABOR.—In making determinations under this
23 subsection regarding equipment and personal
24 labor, the Secretary shall take into consider-
25 ation the equipment and personal labor nor-

1 mally and customarily provided by farm opera-
 2 tors in the area involved to produce program
 3 crops.

4 “(E) SIGNIFICANT CONTRIBUTION OF PER-
 5 SONAL LABOR OR ACTIVE PERSONAL MANAGE-
 6 MENT.—

7 “(i) IN GENERAL.—Subject to clause
 8 (ii), for purposes of subparagraph (B), a
 9 person shall be considered to be providing,
 10 on behalf of the person or a legal entity,
 11 a significant contribution of personal labor
 12 or active personal management, if the total
 13 contribution of personal labor and active
 14 personal management is at least equal to
 15 the lesser of—

16 “(I) 1,000 hours; or

17 “(II) a period of time equal to—

18 “(aa) 50 percent of the com-
 19 mensurate share of the total
 20 number of hours of personal
 21 labor or active personal manage-
 22 ment required to conduct the
 23 farming operation; or

24 “(bb) in the case of a stock-
 25 holder or member (or household

1 comprised of a stockholder or
2 member and the spouse of the
3 stockholder or member) that
4 owns at least 10 percent of the
5 beneficial interest in a legal enti-
6 ty in which all of the beneficial
7 interests are held by family mem-
8 bers who do not collectively re-
9 ceive payments directly or indi-
10 rectly, including payments re-
11 ceived by spouses, of more than
12 twice the applicable limit, 50 per-
13 cent of the commensurate share
14 of hours of the personal labor or
15 active personal management of
16 all family members required to
17 conduct the farming operation.

18 “(ii) MINIMUM LABOR HOURS.—For
19 the purpose of clause (i), the minimum
20 number of labor hours required to produce
21 a commodity shall be equal to the number
22 of hours that would be necessary to con-
23 duct a farming operation for the produc-
24 tion of each commodity that is comparable
25 in size to the commensurate share of a

1 person or legal entity in the farming oper-
 2 ation for the production of the commodity,
 3 based on the minimum number of hours
 4 per acre required to produce the com-
 5 modity in the State in which the farming
 6 operation is located, as determined by the
 7 Secretary.

8 “(3) SPECIAL CLASSES ACTIVELY ENGAGED IN
 9 FARMING.—Notwithstanding paragraph (2), the fol-
 10 lowing persons shall be considered to be actively en-
 11 gaged in farming with respect to a farm operation:

12 “(A) LANDOWNERS.—A person or legal en-
 13 tity that is a landowner contributing owned
 14 land, and that meets the requirements of sub-
 15 clauses (II) and (III) of paragraph (2)(B)(i), if,
 16 as determined by the Secretary—

17 “(i) the landowner share-rents the
 18 land at a rate that is usual and customary;
 19 and

20 “(ii) the share received by the land-
 21 owner is commensurate with the share of
 22 the crop or income received as rent.

23 “(B) FAMILY MEMBERS.—With respect to
 24 a farming operation conducted by persons who
 25 are family members, or a legal entity the major-

ity of the stockholders or members of which are family members, an adult family member who makes a significant contribution (based on the total value of the farming operation) of active personal management or personal labor and, with respect to such contribution, who meets the requirements of subclauses (II) and (III) of paragraph (2)(B)(i).

“(C) SHARECROPPERS.—A sharecropper who makes a significant contribution of personal labor to the farming operation and, with respect to such contribution, who meets the requirements of subclauses (II) and (III) of paragraph (2)(B)(i), and who was receiving payments from the landowner as a sharecropper prior to the effective date of the Food, Conservation, and Energy Act of 2008 (Public Law 110–246; 122 Stat. 1651).

“(D) FARM MANAGERS.—A person who otherwise meets the requirements of this subsection other than paragraph (2)(E) if—

“(i) the individual—

“(I)(aa) provides more than 50 percent of the commensurate share of the total number of hours of active

1 personal management required to con-
2 duct the farming operation; and

3 “(bb) is, with respect to the com-
4 mensurate share of the individual, the
5 only party who is providing active per-
6 sonal management and who is at risk,
7 other than a landlord, if any, de-
8 scribed in subparagraph (A); or

9 “(II)(aa) is the only individual
10 qualifying the farming operation (in-
11 cluding a sole proprietorship, legal en-
12 tity, general partnership, or joint ven-
13 ture) as actively engaged in farming;
14 and

15 “(bb) qualifies only a single sole
16 proprietorship, legal entity, general
17 partnership, or joint venture as ac-
18 tively engaged in farming;

19 “(ii) the individual does not provide
20 active personal management to meet the
21 requirements of this subsection for persons
22 or legal entities that collectively receive, di-
23 rectly or indirectly, an amount equal to
24 more than the applicable limits under sub-

1 sections (b), (c), and (d) of section 1001;
2 and

3 “(iii) the individual manages a farm
4 operation that is not jointly managed with
5 persons or legal entities that collectively re-
6 ceive, directly or indirectly, an amount
7 equal to more than the applicable limits
8 under subsections (b), (c), and (d) of sec-
9 tion 1001.

10 “(4) PERSONS AND LEGAL ENTITIES NOT AC-
11 TIVELY ENGAGED IN FARMING.—For the purposes of
12 paragraph (1), except as provided in paragraph (3),
13 the following persons and legal entities shall not be
14 considered to be actively engaged in farming with re-
15 spect to a farm operation:

16 “(A) LANDLORDS.—A landlord contrib-
17 uting land to the farming operation if the land-
18 lord receives cash rent, or a crop share guaran-
19 teed as to the amount of the commodity to be
20 paid in rent, for such use of the land.

21 “(B) OTHER PERSONS AND LEGAL ENTI-
22 TIES.—Any other person or legal entity, or
23 class of persons or legal entities, that fails to
24 meet the requirements of paragraphs (2) and
25 (3), as determined by the Secretary.

1 “(5) PERSONAL LABOR OR ACTIVE PERSONAL
2 MANAGEMENT.—No stockholder or other member of
3 a legal entity or person may provide personal labor
4 or active personal management to meet the require-
5 ments of this subsection for persons or legal entities
6 that collectively receive, directly or indirectly, an
7 amount equal to—

8 “(A) more than the applicable limits under
9 subsections (b) and (c) of section 1001; or

10 “(B) in the case of a stockholder or mem-
11 ber in conjunction with the spouse of the stock-
12 holder or member, more than the applicable
13 limits described in subparagraph (A).

14 “(6) CUSTOM FARMING SERVICES.—A person or
15 legal entity receiving custom farming services will be
16 considered separately eligible for payment limitation
17 purposes if the person or legal entity is actively en-
18 gaged in farming based on paragraphs (1) through
19 (3).

20 “(7) GROWERS OF HYBRID SEED.—To deter-
21 mine whether a person or legal entity growing hy-
22 brid seed under contract shall be considered to be
23 actively engaged in farming, the Secretary shall not
24 take into consideration the existence of a hybrid seed
25 contract.

1 “(c) NOTIFICATION BY LEGAL ENTITIES.—To facili-
 2 tate the administration of this section, each legal entity
 3 that receives payments or benefits described as being sub-
 4 ject to limitation in subsection (b) or (c) of section 1001
 5 with respect to a particular farming operation shall—

6 “(1) notify each person or other legal entity
 7 that acquires or holds a beneficial interest in the
 8 farming operation of the requirements and limita-
 9 tions under this section; and

10 “(2) provide to the Secretary, at such times and
 11 in such manner as the Secretary may require, the
 12 name and social security number of each person, or
 13 the name and taxpayer identification number of each
 14 legal entity, that holds or acquires such a beneficial
 15 interest.”.

16 **SEC. 4. FOREIGN PERSONS AND LEGAL ENTITIES MADE IN-**
 17 **ELIGIBLE FOR PROGRAM BENEFITS.**

18 Section 1001C of the Food Security Act of 1985 (7
 19 U.S.C. 1308–3) is amended—

20 (1) in the section heading, by striking “**PER-**
 21 **SONS**” and inserting “**PERSONS AND LEGAL EN-**
 22 **TITIES**”;

23 (2) in subsection (b)—

1 (A) in the subsection heading, by striking
 2 “CORPORATION OR OTHER” and inserting
 3 “LEGAL”;

4 (B) in the first sentence, by striking “a
 5 corporation or other entity shall be considered
 6 a person that” and inserting “a legal entity”;
 7 and

8 (C) in the second sentence, by striking “an
 9 entity” and inserting “a legal entity”; and

10 (3) in subsection (c), by striking “person” and
 11 inserting “legal entity or person”.

12 **SEC. 5. BUDGETARY EFFECTS.**

13 The budgetary effects of this Act, for the purpose of
 14 complying with the Statutory Pay-As-You-Go Act of 2010,
 15 shall be determined by reference to the latest statement
 16 titled “Budgetary Effects of PAYGO Legislation” for this
 17 Act, submitted for printing in the Congressional Record
 18 by the Chairman of the Senate Budget Committee, pro-
 19 vided that such statement has been submitted prior to the
 20 vote on passage.

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