

112TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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 \_\_\_\_\_

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

3           “(3) LEGAL ENTITY.—

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

6                           “(i) an organization that (subject to  
7                           the requirements of this section and sec-  
8                           tion 1001A) is eligible to receive a pay-  
9                           ment under a provision of law referred to  
10                          in subsection (b), (c), or (d);

11                           “(ii) a corporation, joint stock com-  
12                           pany, association, limited partnership, lim-  
13                           ited liability company, limited liability  
14                           partnership, charitable organization, es-  
15                           tate, irrevocable trust, grantor of a rev-  
16                           ocable trust, or other similar entity (as de-  
17                           termined by the Secretary); and

18                           “(iii) an organization that is partici-  
19                           pating in a farming operation as a partner  
20                           in a general partnership or as a participant  
21                           in a joint venture.

22                          “(B) EXCLUSION.—The term ‘legal entity’  
23           does not include a general partnership or joint  
24           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

1           “(B) a sale or exchange of any asset or  
2           ownership interest in 1 or more legal entities  
3           under an arrangement under which rights to  
4           exercise control over the asset or interest are  
5           retained, directly or indirectly, by the trans-  
6           feror.

7           “(b) PAYMENTS LIMITED TO ACTIVE FARMERS.—

8           “(1) IN GENERAL.—To be eligible to receive, di-  
9           rectly or indirectly, payments or benefits described  
10          as being subject to limitation in subsection (b) or (c)  
11          of section 1001 with respect to a particular farming  
12          operation, a person or legal entity shall be actively  
13          engaged in farming with respect to the farming op-  
14          eration, in accordance with paragraphs (2), (3), and  
15          (4).

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

18                 “(A) DEFINITION OF ACTIVE PERSONAL  
19                 MANAGEMENT.—In this paragraph, the term  
20                 ‘active personal management’ means, with re-  
21                 spect to a person, management duties carried  
22                 out by the person for a farming operation that  
23                 are personally provided by the person on a reg-  
24                 ular, continuous, and substantial basis, includ-  
25                 ing 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-



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.