

112TH CONGRESS  
1ST SESSION

# S. 1161

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

JUNE 9, 2011

Mr. GRASSLEY (for himself and Mr. JOHNSON of South Dakota) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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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 2011”.

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.”;

25 (2) in subsection (b)—

1 (A) in paragraphs (1), (2), and (3), by  
2 striking “(except a joint venture or a general  
3 partnership)” each place it appears;

4 (B) in paragraph (1)(A), by striking  
5 “\$40,000” and inserting “\$20,000”; and

6 (C) in paragraphs (2) and (3)(A), by strik-  
7 ing “\$65,000” each place it appears and insert-  
8 ing “\$30,000”;

9 (3) in subsection (c)—

10 (A) in paragraphs (1), (2), and (3), by  
11 striking “(except a joint venture or a general  
12 partnership)” each place it appears;

13 (B) in paragraph (1)(A), by striking  
14 “\$40,000” and inserting “\$20,000”; and

15 (C) in paragraphs (2) and (3)(A), by strik-  
16 ing “\$65,000” each place it appears and insert-  
17 ing “\$30,000”;

18 (4) by striking subsection (d) and inserting the  
19 following:

20 “(d) LIMITATIONS ON MARKETING LOAN GAINS,  
21 LOAN DEFICIENCY PAYMENTS, AND COMMODITY CER-  
22 TIFICATE TRANSACTIONS.—The total amount of the fol-  
23 lowing gains and payments that a person or legal entity  
24 may receive during any crop year may not exceed \$75,000:

1           “(1)(A) Any gain realized by a producer from  
2 repaying a marketing assistance loan for 1 or more  
3 loan commodities and peanuts under subtitle B or C  
4 of title I of the Food, Conservation, and Energy Act  
5 of 2008 (7 U.S.C. 8731 et seq.) at a lower level than  
6 the original loan rate established for the loan com-  
7 modity under those subtitles.

8           “(B) In the case of settlement of a marketing  
9 assistance loan for 1 or more loan commodities and  
10 peanuts under those subtitles by forfeiture, the  
11 amount by which the loan amount exceeds the re-  
12 payment amount for the loan if the loan had been  
13 settled by repayment instead of forfeiture.

14           “(2) Any loan deficiency payments received for  
15 1 or more loan commodities and peanuts under  
16 those subtitles.

17           “(3) Any gain realized from the use of a com-  
18 modity certificate issued by the Commodity Credit  
19 Corporation for 1 or more loan commodities and  
20 peanuts, as determined by the Secretary, including  
21 the use of a certificate for the settlement of a mar-  
22 keting assistance loan made under those subtitles or  
23 section 1307 of that Act (7 U.S.C. 7957).”;

24           (5) by redesignating subsections (e) through (h)  
25 as subsections (f) through (i), respectively;

1           (6) by inserting after subsection (d) the fol-  
2           lowing:

3           “(e) SPOUSAL EQUITY.—

4           “(1) IN GENERAL.—Notwithstanding sub-  
5           sections (b) through (d), except as provided in para-  
6           graph (2), if a person and the spouse of the person  
7           are covered by paragraph (2) and receive, directly or  
8           indirectly, any payment or gain covered by this sec-  
9           tion, the total amount of payments or gains (as ap-  
10          pplicable) covered by this section that the person and  
11          spouse may jointly receive during any crop year may  
12          not exceed an amount equal to twice the applicable  
13          dollar amounts specified in subsections (b), (c), and  
14          (d).

15          “(2) EXCEPTIONS.—

16          “(A) SEPARATE FARMING OPERATIONS.—

17          In the case of a married couple in which each  
18          spouse, before the marriage, was separately en-  
19          gaged in an unrelated farming operation, each  
20          spouse shall be treated as a separate person  
21          with respect to a farming operation brought  
22          into the marriage by a spouse, subject to the  
23          condition that the farming operation shall re-  
24          main a separate farming operation, as deter-  
25          mined by the Secretary.

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

10           (7) in paragraph (3)(B) of subsection (g) (as  
11           redesignated by paragraph (5)), by adding at the  
12           end the following:

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

21           (8) in subsection (i) (as redesignated by para-  
22           graph (5)), in the second sentence, by striking “or  
23           other entity” and inserting “or legal entity”.

1 **SEC. 3. SUBSTANTIVE CHANGE; PAYMENTS LIMITED TO AC-**  
 2 **TIVE FARMERS.**

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

6 **“SEC. 1001A. SUBSTANTIVE CHANGE; PAYMENTS LIMITED**  
 7 **TO ACTIVE FARMERS.**

8 “(a) SUBSTANTIVE CHANGE.—

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

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

22 “(3) PRIMARY CONTROL.—To prevent a farm  
 23 from reorganizing in a manner that is inconsistent  
 24 with the purposes of this Act, the Secretary shall  
 25 promulgate such regulations as the Secretary deter-  
 26 mines to be necessary to simultaneously attribute

1 payments for a farming operation to more than 1  
2 person or legal entity, including the person or legal  
3 entity that exercises primary control over the farm-  
4 ing operation, including to respond to—

5 “(A)(i) any instance in which ownership of  
6 a farming operation is transferred to a person  
7 or legal entity under an arrangement that pro-  
8 vides for the sale or exchange of any asset or  
9 ownership interest in 1 or more legal entities at  
10 less than fair market value; and

11 “(ii) the transferor is provided preferential  
12 rights to repurchase the asset or interest at less  
13 than fair market value; or

14 “(B) a sale or exchange of any asset or  
15 ownership interest in 1 or more legal entities  
16 under an arrangement under which rights to  
17 exercise control over the asset or interest are  
18 retained, directly or indirectly, by the trans-  
19 feror.

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

21 “(1) IN GENERAL.—To be eligible to receive, di-  
22 rectly or indirectly, payments or benefits described  
23 as being subject to limitation in subsection (b)  
24 through (d) of section 1001 with respect to a par-  
25 ticular farming operation, a person or legal entity



1 shall be actively engaged in farming with respect to  
2 the farming operation, in accordance with para-  
3 graphs (2), (3), and (4).

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

6 “(A) DEFINITION OF ACTIVE PERSONAL  
7 MANAGEMENT.—In this paragraph, the term  
8 ‘active personal management’ means, with re-  
9 spect to a person, administrative duties carried  
10 out by the person for a farming operation—

11 “(i) that are personally provided by  
12 the person on a regular, continuous, and  
13 substantial basis; and

14 “(ii) relating to the supervision and  
15 direction of—

16 “(I) activities and labor involved  
17 in the farming operation; and

18 “(II) onsite services directly re-  
19 lated and necessary to the farming op-  
20 eration.

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

1           “(i) A person shall be considered to be  
2 actively engaged in farming with respect to  
3 a farming operation if—

4                   “(I) the person makes a signifi-  
5 cant contribution, as determined  
6 under subparagraph (E) (based on the  
7 total value of the farming operation),  
8 to the farming operation of—

9                           “(aa) capital, equipment, or  
10 land; and

11                           “(bb) personal labor and ac-  
12 tive personal management;

13                   “(II) the share of the person of  
14 the profits or losses from the farming  
15 operation is commensurate with the  
16 contributions of the person to the op-  
17 eration; and

18                           “(III) a contribution of the per-  
19 son is at risk.

20           “(ii) A legal entity shall be considered  
21 to be actively engaged in farming with re-  
22 spect to a farming operation if—

23                   “(I) the legal entity makes a sig-  
24 nificant contribution, as determined  
25 under subparagraph (E) (based on the

1 total value of the farming operation),  
2 to the farming operation of capital,  
3 equipment, or land;

4 “(II)(aa) the stockholders or  
5 members that collectively own at least  
6 51 percent of the combined beneficial  
7 interest in the legal entity each make  
8 a significant contribution of personal  
9 labor and active personal management  
10 to the operation; or

11 “(bb) in the case of a legal entity  
12 in which all of the beneficial interests  
13 are held by family members, any  
14 stockholder or member (or household  
15 comprised of a stockholder or member  
16 and the spouse of the stockholder or  
17 member) who owns at least 10 per-  
18 cent of the beneficial interest in the  
19 legal entity makes a significant con-  
20 tribution of personal labor or active  
21 personal management; and

22 “(III) the legal entity meets the  
23 requirements of subclauses (II) and  
24 (III) of clause (i).

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

14          “(D) EQUIPMENT AND PERSONAL  
15          LABOR.—In making determinations under this  
16          subsection regarding equipment and personal  
17          labor, the Secretary shall take into consider-  
18          ation the equipment and personal labor nor-  
19          mally and customarily provided by farm opera-  
20          tors in the area involved to produce program  
21          crops.

22          “(E) SIGNIFICANT CONTRIBUTION OF PER-  
23          SONAL LABOR OR ACTIVE PERSONAL MANAGE-  
24          MENT.—

1           “(i) IN GENERAL.—Subject to clause  
2           (ii), for purposes of subparagraph (B), a  
3           person shall be considered to be providing,  
4           on behalf of the person or a legal entity,  
5           a significant contribution of personal labor  
6           and active personal management, if the  
7           total contribution of personal labor and ac-  
8           tive personal management is at least equal  
9           to the lesser of—

10                   “(I) 1,000 hours; and

11                   “(II) a period of time equal to—

12                           “(aa) 50 percent of the com-  
13                           mensurate share of the total  
14                           number of hours of personal  
15                           labor and active personal man-  
16                           agement required to conduct the  
17                           farming operation; or

18                           “(bb) in the case of a stock-  
19                           holder or member (or household  
20                           comprised of a stockholder or  
21                           member and the spouse of the  
22                           stockholder or member) that  
23                           owns at least 10 percent of the  
24                           beneficial interest in a legal enti-  
25                           ty in which all of the beneficial

1 interests are held by family mem-  
2 bers who do not collectively re-  
3 ceive payments directly or indi-  
4 rectly, including payments re-  
5 ceived by spouses, of more than  
6 twice the applicable limit, 50 per-  
7 cent of the commensurate share  
8 of hours of the personal labor  
9 and active personal management  
10 of all family members required to  
11 conduct the farming operation.

12 “(ii) MINIMUM LABOR HOURS.—For  
13 the purpose of clause (i), the minimum  
14 number of labor hours required to produce  
15 a commodity shall be equal to the number  
16 of hours that would be necessary to con-  
17 duct a farming operation for the produc-  
18 tion of each commodity that is comparable  
19 in size to the commensurate share of a  
20 person or legal entity in the farming oper-  
21 ation for the production of the commodity,  
22 based on the minimum number of hours  
23 per acre required to produce the com-  
24 modity in the State in which the farming

1 operation is located, as determined by the  
2 Secretary.

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

7 “(A) LANDOWNERS.—A person or legal en-  
8 tity that is a landowner contributing owned  
9 land, and that meets the requirements of sub-  
10 clauses (II) and (III) of paragraph (2)(B)(i), if,  
11 as determined by the Secretary—

12 “(i) the landowner share-rents the  
13 land at a rate that is usual and customary;  
14 and

15 “(ii) the share received by the land-  
16 owner is commensurate with the share of  
17 the crop or income received as rent.

18 “(B) FAMILY MEMBERS.—With respect to  
19 a farming operation conducted by persons who  
20 are family members, or a legal entity the major-  
21 ity of the stockholders or members of which are  
22 family members, an adult family member who  
23 makes a significant contribution (based on the  
24 total value of the farming operation) of active  
25 personal management or personal labor and,

1 with respect to such contribution, who meets  
2 the requirements of subclauses (II) and (III) of  
3 paragraph (2)(B)(i).

4 “(C) SHARECROPPERS.—A sharecropper  
5 who makes a significant contribution of per-  
6 sonal labor to the farming operation and, with  
7 respect to such contribution, who meets the re-  
8 quirements of subclauses (II) and (III) of para-  
9 graph (2)(B)(i), and who was receiving pay-  
10 ments from the landowner as a sharecropper  
11 prior to the effective date of the Food, Con-  
12 servation, and Energy Act of 2008 (Public Law  
13 110–246; 122 Stat. 1651).

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

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



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

6           “(5) PERSONAL LABOR AND ACTIVE PERSONAL  
7           MANAGEMENT.—No stockholder or member may  
8           provide personal labor or active personal manage-  
9           ment to meet the requirements of this subsection for  
10          persons or legal entities that collectively receive, di-  
11          rectly or indirectly, an amount equal to more than  
12          twice the applicable limits under subsections (b), (c),  
13          and (d) of section 1001.

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), (c), or (d) of section  
 5       1001 with respect to a particular farming operation  
 6       shall—

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

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

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

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

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

24              (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. REGULATIONS.**

13 (a) IN GENERAL.—The Secretary of Agriculture may  
14 promulgate such regulations as are necessary to imple-  
15 ment this Act and the amendments made by this Act.

16 (b) PROCEDURE.—The promulgation of the regula-  
17 tions and administration of this Act and the amendments  
18 made by this Act shall be made without regard to—

19 (1) the notice and comment provisions of sec-  
20 tion 553 of title 5, United States Code;

21 (2) the Statement of Policy of the Secretary of  
22 Agriculture effective July 24, 1971 (36 Fed. Reg.  
23 13804), relating to notices of proposed rulemaking  
24 and public participation in rulemaking; and

1           (3) chapter 35 of title 44, United States Code  
2           (commonly known as the “Paperwork Reduction  
3           Act”).

4           (c) CONGRESSIONAL REVIEW OF AGENCY RULE-  
5 MAKING.—In carrying out this section, the Secretary shall  
6 use the authority provided under section 808 of title 5,  
7 United States Code.

8 **SEC. 6. BUDGETARY EFFECTS.**

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

○