

111TH CONGRESS
2D SESSION

S. 3701

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

AUGUST 4, 2010

Mr. GRASSLEY (for himself and Mr. FEINGOLD) 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 2010”.

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

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

9 (1) in subsection (a)—

1 (A) in paragraph (2), by striking “a per-
 2 son” and inserting “an individual”; and

3 (B) by striking paragraphs (3) and (4) and
 4 inserting the following:

5 “(3) INDIVIDUAL.—The term ‘individual’
 6 means—

7 “(A) a natural person, and any minor child
 8 of the natural person (as determined by the
 9 Secretary), who, subject to the requirements of
 10 this section and section 1001A, is eligible to re-
 11 ceive a payment under a provision of law re-
 12 ferred to in subsection (b), (c), or (d); and

13 “(B) a natural person participating in a
 14 farming operation as a partner in a general
 15 partnership, a participant in a joint venture, a
 16 grantor of a revocable trust, or a participant in
 17 a similar entity (as determined by the Sec-
 18 retary).

19 “(4) LEGAL ENTITY.—

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

22 “(i) an organization that (subject to
 23 the requirements of this section and sec-
 24 tion 1001A) is eligible to receive a pay-

ment under a provision of law referred to
in subsection (b) or (c);

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

“(iii) an organization that is partici-
pating 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.

“(C) ESTATES.—In promulgating regula-
tions to define the term ‘legal entity’ as the
term applies to estates, the Secretary shall en-
sure that fair and equitable treatment is given
to estates and the beneficiaries of estates.

“(D) IRREVOCABLE TRUSTS.—In promul-
gating regulations to define the term ‘legal enti-
ty’ as the term applies to irrevocable trusts, the
Secretary shall ensure that irrevocable trusts

are legitimate entities that have not been created for the purpose of avoiding a payment limitation.”;

(2) in subsection (b)—

(A) by striking “a person” each place it appears and inserting “an individual”;

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

(C) in paragraphs (2) and (3), by striking “the person” each place it appears and inserting “the individual”; and

(D) in paragraphs (2) and (3)(A), by striking “\$65,000” each place it appears and inserting “\$30,000”;

(3) in subsection (c)—

(A) by striking “a person” each place it appears and inserting “an individual”;

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

(C) in paragraphs (2) and (3), by striking “the person” each place it appears and inserting “the individual”; and

(D) in paragraphs (2) and (3)(A), by striking “\$65,000” each place it appears and inserting “\$30,000”;

1 (4) by striking subsection (d) and inserting the
2 following:

3 “(d) LIMITATIONS ON MARKETING LOAN GAINS,
4 LOAN DEFICIENCY PAYMENTS, AND COMMODITY CER-
5 TIFICATE TRANSACTIONS.—The total amount of the fol-
6 lowing gains and payments that an individual or legal enti-
7 ty may receive during any crop year may not exceed
8 \$75,000:

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

16 “(B) In the case of settlement of a marketing
17 assistance loan for 1 or more loan commodities and
18 peanuts under those subtitles by forfeiture, the
19 amount by which the loan amount exceeds the re-
20 payment amount for the loan if the loan had been
21 settled by repayment instead of forfeiture.

22 “(2) Any loan deficiency payments received for
23 1 or more loan commodities and peanuts under
24 those subtitles.

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

8 (5) by striking subsection (e);

9 (6) by redesignating subsections (f), (g), and
 10 (h) as subsections (i), (j), and (k), respectively;

11 (7) by inserting after subsection (d) the fol-
 12 lowing:

13 “(e) PAYMENTS TO INDIVIDUALS AND LEGAL ENTI-
 14 TIES.—Notwithstanding subsections (b) through (d), an
 15 individual or legal entity may receive, directly or indi-
 16 rectly, through all ownership interests of the individual or
 17 legal entity, from all sources, payments or gains (as appli-
 18 cable) for a crop year that shall not exceed an amount
 19 equal to twice the applicable dollar amounts specified in
 20 subsections (b), (c), and (d).

21 “(f) SPOUSAL EQUITY.—

22 “(1) IN GENERAL.—Notwithstanding sub-
 23 sections (b) through (e), except as provided in para-
 24 graph (2), if an individual and the spouse of the in-
 25 dividual are covered by paragraph (2) and receive,

1 directly or indirectly, any payment or gain covered
2 by this section, the total amount of payments or
3 gains (as applicable) covered by this section that the
4 individual and spouse may jointly receive during any
5 crop year may not exceed an amount equal to twice
6 the applicable dollar amounts specified in sub-
7 sections (b), (c), and (d).

8 “(2) EXCEPTIONS.—

9 “(A) SEPARATE FARMING OPERATIONS.—

10 In the case of a married couple in which each
11 spouse, before the marriage, was separately en-
12 gaged in an unrelated farming operation, each
13 spouse shall be treated as a separate individual
14 with respect to a farming operation brought
15 into the marriage by a spouse, subject to the
16 condition that the farming operation shall re-
17 main a separate farming operation, as deter-
18 mined by the Secretary.

19 “(B) ELECTION TO RECEIVE SEPARATE
20 PAYMENTS.—A married couple may elect to re-
21 ceive payments separately in the name of each
22 spouse if the total amount of payments and
23 benefits described in subsections (b), (c), and
24 (d) that the married couple receives, directly or
25 indirectly, does not exceed an amount equal to

1 twice the applicable dollar amounts specified in
2 those subsections.

3 “(g) ATTRIBUTION OF PAYMENTS.—

4 “(1) IN GENERAL.—The Secretary shall issue
5 such regulations as are necessary to ensure that all
6 payments or gains (as applicable) are attributed to
7 an individual by taking into account the direct and
8 indirect ownership interests of the individual in a
9 legal entity that is eligible to receive such payments
10 or gains (as applicable).

11 “(2) PAYMENTS TO AN INDIVIDUAL.—Every
12 payment made directly to an individual shall be com-
13 bined with the individual’s pro rata interest in pay-
14 ments received by a legal entity or entities in which
15 the individual has a direct or indirect ownership in-
16 terest.

17 “(3) PAYMENTS TO A LEGAL ENTITY.—

18 “(A) IN GENERAL.—Every payment or
19 gain (as applicable) made to a legal entity shall
20 be attributed to those individuals who have a
21 direct or indirect ownership in the legal entity.

22 “(B) ATTRIBUTION OF PAYMENTS.—

23 “(i) PAYMENT LIMITS.—Except as
24 provided by clause (ii), payments or gains
25 (as applicable) made to a legal entity shall

not exceed twice the amounts specified in subsections (b) through (d).

“(ii) EXCEPTION.—Payments or gains (as applicable) made to a joint venture or a general partnership shall not exceed, for each payment or gain (as applicable) specified in subsections (b) through (d), the amount determined by multiplying twice the maximum payment amount specified in subsections (b), (c), and (d) by the number of individuals and legal entities (other than joint ventures and general partnerships) that comprise the ownership of the joint venture or general partnership.

“(4) 4 LEVELS OF ATTRIBUTION FOR EMBEDDED LEGAL ENTITIES.—

“(A) IN GENERAL.—Attribution of payments or gains (as applicable) made to legal entities shall be traced through 4 levels of ownership in legal entities.

“(B) FIRST LEVEL.—Any payments or gains (as applicable) made to a legal entity (a first-tier legal entity) that is owned in whole or in part by an individual shall be attributed to the individual in an amount that represents the

1 direct ownership in the first-tier legal entity by
2 the individual.

3 “(C) SECOND LEVEL.—

4 “(i) IN GENERAL.—Any payments or
5 gains (as applicable) made to a first-tier
6 legal entity that is owned in whole or in
7 part by another legal entity (a second-tier
8 legal entity) shall be attributed to the sec-
9 ond-tier legal entity in proportion to the
10 ownership interest of the second-tier legal
11 entity in the first-tier legal entity.

12 “(ii) OWNERSHIP BY INDIVIDUAL.—If
13 the second-tier legal entity is owned in
14 whole or in part by an individual, the
15 amount of the payment made to the first-
16 tier legal entity shall be attributed to the
17 individual in the amount the Secretary de-
18 termines to represent the indirect owner-
19 ship in the first-tier legal entity by the in-
20 dividual.

21 “(D) THIRD AND FOURTH LEVELS.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in clause (ii), the Secretary shall at-
24 tribute payments or gains (as applicable)
25 at the third and fourth tiers of ownership

in the same manner as specified in subparagraph (C).

“(ii) **FOURTH-TIER OWNERSHIP BY LEGAL ENTITY.**—If the fourth-tier of ownership is that of a fourth-tier legal entity, the Secretary shall reduce the amount of the payment to be made to the first-tier legal entity in the amount that the Secretary determines to represent the indirect ownership in the first-tier legal entity by the fourth-tier legal entity.”;

(8) in subsection (i) (as redesignated by paragraph (6))—

(A) in paragraphs (2) and (7)(A), by striking “persons” each place it appears and inserting “individuals”; and

(B) in paragraphs (4)(A) and (8)(A), by striking “person” each place it appears and inserting “individual”; and

(9) in subsection (k) (as redesignated by paragraph (6)), in the second sentence, by striking “or other entity” and inserting “or legal entity”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 531 of the Federal Crop Insurance Act (7 U.S.C. 1531) is amended—

1 (A) in subsection (f)(4)—

2 (i) in subparagraph (A)—

3 (I) in the heading, by striking
4 “PERSON” and inserting “INDI-
5 VIDUAL”; and

6 (II) by striking “person” and in-
7 serting “individual”; and

8 (ii) in subparagraphs (B) and (C), by
9 striking “a person” each place it appears
10 and inserting “an individual”; and

11 (B) in subsection (h)—

12 (i) in paragraph (1), in the heading,
13 by striking “PERSON” and inserting “INDI-
14 VIDUAL”; and

15 (ii) in paragraph (2), by striking “a
16 person” and inserting “an individual”.

17 (2) Section 196(i) of the Federal Agriculture
18 Improvement and Reform Act of 1996 (7 U.S.C.
19 7333(i)) is amended—

20 (A) in paragraph (1), by striking “person”
21 and inserting “individual”;

22 (B) in paragraphs (2) and (5)(B), by strik-
23 ing “a person” each place it appears and insert-
24 ing “an individual”; and

1 (C) in paragraph (4), by striking “A per-
 2 son” and inserting “An individual”.

3 (3) Section 1001D of the Food Security Act of
 4 1985 (7 U.S.C. 1308–3a) is amended—

5 (A) by striking “a person” each place it
 6 appears and inserting “an individual”;

7 (B) by striking “the person” each place it
 8 appears and inserting “the individual”;

9 (C) in subsection (a)(3)—

10 (i) in the matter preceding subpara-
 11 graph (A), by striking “any person” and
 12 inserting “any individual”; and

13 (ii) by striking “the persons” each
 14 place it appears and inserting “the individ-
 15 uals”;

16 (D) in subsection (d)(3), by striking “per-
 17 sons” and inserting “individuals”; and

18 (E) in subsection (e), by striking “each
 19 person” and inserting “each individual”.

20 (4) Section 1201(a)(19) of the Food Security
 21 Act of 1985 (16 U.S.C. 3801(a)(19)) is amended—

22 (A) in the heading, by striking “PERSON”
 23 and inserting “INDIVIDUAL”; and

24 (B) by striking “person” and inserting “in-
 25 dividual”.

1 (5) Section 1234(f) of the Food Security Act of
2 1985 (16 U.S.C. 3834(f)) is amended—

3 (A) in paragraph (1), by striking “a per-
4 son” and inserting “an individual”;

5 (B) in paragraph (4), by striking “any per-
6 son” and inserting “any individual”; and

7 (C) by redesignating paragraphs (3) and
8 (4) as paragraphs (2) and (3), respectively.

9 (6) Section 1237A(f)(4) of the Food Security
10 Act of 1985 (16 U.S.C. 3837a(f)(4)) is amended by
11 striking “a person” and inserting “an individual”.

12 (7) Section 1237D(c)(1) of the Food Security
13 Act of 1985 (16 U.S.C. 3837d(c)(1)) is amended by
14 striking “a person” and inserting “an individual”.

15 (8) Section 1238G(g) of the Food Security Act
16 of 1985 (16 U.S.C. 3838g(g)) is amended by strik-
17 ing “A person” and inserting “An individual”.

18 (9) Section 1238P(b) of the Food Security Act
19 of 1985 (16 U.S.C. 3838p(b)) is amended—

20 (A) in paragraph (2)(B), by striking “a
21 person” and inserting “an individual”; and

22 (B) in paragraph (4)(B), by striking “a
23 person” and inserting “an individual”.

24 (10) Section 1240B(i)(3) of the Food Security
25 Act of 1985 (16 U.S.C. 3839aa–2(i)(3)) is amended

1 in the first sentence by striking “a person” and in-
2 serting “an individual”.

3 (11) Section 1240G(a) of the Food Security Act
4 of 1985 (16 U.S.C. 3839aa–7) is amended—

5 (A) by striking “a person” and inserting
6 “an individual”; and

7 (B) by striking “the person” and inserting
8 “the individual”.

9 (12) Section 1240N(e) of the Food Security Act
10 of 1985 (16 U.S.C. 3839bb–1(e)) is amended by
11 striking “a person” and inserting “an individual”.

12 (13) Section 901 of the Trade Act of 1974 (19
13 U.S.C. 2497) is amended—

14 (A) in subsection (f)(4)—

15 (i) in subparagraph (A)—

16 (I) in the paragraph heading, by
17 striking “PERSON” and inserting “IN-
18 DIVIDUAL”; and

19 (II) by striking “person” and in-
20 serting “individual”; and

21 (ii) in subparagraphs (B) and (C), by
22 striking “a person” each place it appears
23 and inserting “an individual”; and

24 (B) in subsection (h)—

1 (i) in paragraph (1), in the heading,
 2 by striking “PERSON” and inserting “INDI-
 3 VIDUAL”; and

4 (ii) in paragraph (2), by striking “a
 5 person” and inserting “an individual”.

6 **SEC. 3. SUBSTANTIVE CHANGE; PAYMENTS LIMITED TO AC-**
 7 **TIVE FARMERS.**

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

11 **“SEC. 1001A. SUBSTANTIVE CHANGE; PAYMENTS LIMITED**
 12 **TO ACTIVE FARMERS.**

13 “(a) SUBSTANTIVE CHANGE.—

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

21 “(2) FAMILY MEMBERS.—For the purpose of
 22 paragraph (1), the addition of a family member (as
 23 defined in subsection (b)(2)(A)) to a farming oper-
 24 ation under the criteria established under subsection

(b)(3)(B) shall be considered to be a bona fide and substantive change in the farming operation.

“(3) PRIMARY CONTROL.—To prevent a farm from reorganizing in a manner that is inconsistent with the purposes of this Act, the Secretary shall promulgate such regulations as the Secretary determines to be necessary to simultaneously attribute payments for a farming operation to more than 1 individual or legal entity, including the individual or legal entity that exercises primary control over the farming operation, including to respond to—

“(A)(i) any instance in which ownership of a farming operation is transferred to an individual or legal entity under an arrangement that provides for the sale or exchange of any asset or ownership interest in 1 or more legal entities at less than fair market value; and

“(ii) the transferor is provided preferential rights to repurchase the asset or interest at less 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

1 retained, directly or indirectly, by the trans-
 2 feror.

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

4 “(1) IN GENERAL.—To be eligible to receive, di-
 5 rectly or indirectly, payments or benefits described
 6 as being subject to limitation in subsection (b)
 7 through (d) of section 1001 with respect to a par-
 8 ticular farming operation, an individual or legal enti-
 9 ty (as defined in section 1001(a)) shall be actively
 10 engaged in farming with respect to the farming op-
 11 eration, in accordance with paragraphs (2), (3), and
 12 (4).

13 “(2) GENERAL CLASSES ACTIVELY ENGAGED IN
 14 FARMING.—For purposes of paragraph (1), except
 15 as otherwise provided in paragraph (3):

16 “(A) DEFINITIONS.—In this paragraph:

17 “(i) ACTIVE PERSONAL MANAGE-
 18 MENT.—The term ‘active personal manage-
 19 ment’ means, with respect to an individual,
 20 administrative duties carried out by the in-
 21 dividual for a farming operation—

22 “(I) that are personally provided
 23 by the individual on a regular, sub-
 24 stantial, and continuing basis; and

1 “(II) relating to the supervision
2 and direction of—

3 “(aa) activities and labor in-
4 volved in the farming operation;
5 and

6 “(bb) onsite services directly
7 related and necessary to the
8 farming operation.

9 “(ii) FAMILY MEMBER.—The term
10 ‘family member’, with respect to an indi-
11 vidual participating in a farming operation,
12 means an individual who is related to the
13 individual as a lineal ancestor, a lineal de-
14 scendant, or a sibling (including a spouse
15 of such an individual).

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

19 “(i) An individual shall be considered
20 to be actively engaged in farming with re-
21 spect to a farming operation if—

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

1 total value of the farming operation),
2 to the farming operation of—

3 “(aa) capital, equipment, or
4 land; and

5 “(bb) personal labor and ac-
6 tive personal management;

7 “(II) the share of the individual
8 of the profits or losses from the farm-
9 ing operation is commensurate with
10 the contributions of the individual to
11 the operation; and

12 “(III) a contribution of the indi-
13 vidual is at risk.

14 “(ii) A legal entity shall be considered
15 to be actively engaged in farming with re-
16 spect to a farming operation if—

17 “(I) the legal entity makes a sig-
18 nificant contribution, as determined
19 under subparagraph (E) (based on the
20 total value of the farming operation),
21 to the farming operation of capital,
22 equipment, or land;

23 “(II)(aa) the stockholders or
24 members that collectively own at least
25 51 percent of the combined beneficial

1 interest in the legal entity each make
2 a significant contribution of personal
3 labor and active personal management
4 to the operation; or

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

16 “(III) the legal entity meets the
17 requirements of subclauses (II) and
18 (III) of clause (i).

19 “(C) LEGAL ENTITIES MAKING SIGNIFI-
20 CANT CONTRIBUTIONS.—If a general partner-
21 ship, joint venture, or similar entity (as deter-
22 mined by the Secretary) separately makes a sig-
23 nificant contribution (based on the total value
24 of the farming operation involved) of capital,
25 equipment, or land, the partners or members

1 making a significant contribution of personal
 2 labor or active personal management and meet-
 3 ing the standards provided in subclauses (II)
 4 and (III) of subparagraph (B)(i) shall be con-
 5 sidered to be actively engaged in farming with
 6 respect to the farming operation involved.

7 “(D) EQUIPMENT AND PERSONAL
 8 LABOR.—In making determinations under this
 9 subsection regarding equipment and personal
 10 labor, the Secretary shall take into consider-
 11 ation the equipment and personal labor nor-
 12 mally and customarily provided by farm opera-
 13 tors in the area involved to produce program
 14 crops.

15 “(E) SIGNIFICANT CONTRIBUTION OF PER-
 16 SONAL LABOR OR ACTIVE PERSONAL MANAGE-
 17 MENT.—

18 “(i) IN GENERAL.—Subject to clause
 19 (ii), for purposes of subparagraph (B), an
 20 individual shall be considered to be pro-
 21 viding, on behalf of the individual or a
 22 legal entity, a significant contribution of
 23 personal labor and active personal manage-
 24 ment, if the total contribution of personal

labor and active personal management is
at least equal to the lesser of—

“(I) 1,000 hours; and

“(II) a period of time equal to—

“(aa) 50 percent of the commensurate share of the total number of hours of personal labor and active personal management required to conduct the farming operation; or

“(bb) in the case of a stockholder or member (or household comprised of a stockholder or member and the spouse of the stockholder or member) that owns at least 10 percent of the beneficial interest in a legal entity in which all of the beneficial interests are held by family members who do not collectively receive payments directly or indirectly, including payments received by spouses, of more than twice the applicable limit, 50 percent of the commensurate share

1 of hours of the personal labor
2 and active personal management
3 of all family members required to
4 conduct the farming operation.

5 “(ii) MINIMUM LABOR HOURS.—For
6 the purpose of clause (i), the minimum
7 number of labor hours required to produce
8 a commodity shall be equal to the number
9 of hours that would be necessary to con-
10 duct a farming operation for the produc-
11 tion of each commodity that is comparable
12 in size to the commensurate share of an
13 individual or legal entity in the farming op-
14 eration for the production of the com-
15 modity, based on the minimum number of
16 hours per acre required to produce the
17 commodity in the State in which the farm-
18 ing operation is located, as determined by
19 the Secretary.

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

24 “(A) LANDOWNERS.—An individual or
25 legal entity that is a landowner contributing

owned land, and that meets the requirements of subclauses (II) and (III) of paragraph (2)(B)(i), if, as determined by the Secretary—

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

“(ii) the share received by the landowner is commensurate with the share of the crop or income received as rent.

“(B) FAMILY MEMBERS.—With respect to a farming operation conducted by individuals who are family members, or a legal entity the majority 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 para-

graph (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).

“(4) INDIVIDUALS AND LEGAL ENTITIES NOT ACTIVELY ENGAGED IN FARMING.—For the purposes of paragraph (1), except as provided in paragraph (3), the following individuals and legal entities shall not be considered to be actively engaged in farming with respect to a farm operation:

“(A) LANDLORDS.—A landlord contributing land to the farming operation if the landlord receives cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for such use of the land.

“(B) OTHER INDIVIDUALS AND LEGAL ENTITIES.—Any other individual or legal entity, or class of individuals or legal entities, that fails to meet the requirements of paragraphs (2) and (3), as determined by the Secretary.

“(5) PERSONAL LABOR AND ACTIVE PERSONAL MANAGEMENT.—No stockholder or member may provide personal labor or active personal management to meet the requirements of this subsection for

1 individuals or legal entities that collectively receive,
2 directly or indirectly, an amount equal to more than
3 twice the applicable limits under subsections (b), (c),
4 and (d) of section 1001.

5 “(6) CUSTOM FARMING SERVICES.—An indi-
6 vidual or legal entity receiving custom farming serv-
7 ices will be considered separately eligible for pay-
8 ment limitation purposes if the individual or legal
9 entity is actively engaged in farming based on para-
10 graphs (1) through (3).

11 “(7) GROWERS OF HYBRID SEED.—To deter-
12 mine whether an individual or legal entity growing
13 hybrid seed under contract shall be considered to be
14 actively engaged in farming, the Secretary shall not
15 take into consideration the existence of a hybrid seed
16 contract.

17 “(c) NOTIFICATION BY LEGAL ENTITIES.—To facili-
18 tate the administration of this section, each legal entity
19 that receives payments or benefits described as being sub-
20 ject to limitation in subsection (b), (c), or (d) of section
21 1001 with respect to a particular farming operation
22 shall—

23 “(1) notify each individual or other legal entity
24 that acquires or holds a beneficial interest in the

1 farming operation of the requirements and limita-
 2 tions under this section; and

3 “(2) provide to the Secretary, at such times and
 4 in such manner as the Secretary may require, the
 5 name and social security number of each individual,
 6 or the name and taxpayer identification number of
 7 each legal entity, that holds or acquires such a bene-
 8 ficial interest.”.

9 **SEC. 4. SCHEMES OR DEVICES.**

10 The Food Security Act of 1985 is amended by strik-
 11 ing section 1001B (7 U.S.C. 1308–2) and inserting the
 12 following:

13 **“SEC. 1001B. SCHEMES OR DEVICES.**

14 “(a) IN GENERAL.—If the Secretary determines that
 15 any individual or legal entity has adopted a scheme or de-
 16 vice to evade, or that has the purpose of evading, section
 17 1001, 1001A, or 1001C, such individual or legal entity
 18 shall be ineligible to receive farm program payments (as
 19 described in subsections (b), (c), and (d) of section 1001
 20 as being subject to limitation) applicable to the crop year
 21 for which the scheme or device was adopted and the suc-
 22 ceeding crop year.

23 “(b) EXTENDED INELIGIBILITY.—If the Secretary
 24 determines that an individual or legal entity, for the ben-
 25 efit of the individual or legal entity or of any other indi-

vidual or legal entity, has knowingly engaged in, or aided in the creation of fraudulent documents, failed to disclose material information relevant to the administration of this subtitle requested by the Secretary, or committed other equally serious actions as identified in regulations issued by the Secretary, the Secretary may for a period not to exceed 5 crop years deny the issuance of payments to the individual or legal entity.

“(c) FRAUD.—If fraud is committed by an individual or legal entity in connection with a scheme or device to evade, or that has the purpose of evading, section 1001, 1001A, or 1001C, the individual or legal entity shall be ineligible to receive farm program payments described as being subject to limitation in subsection (b), (c), or (d) of section 1001 for—

“(1) the crop year for which the scheme or device is adopted; and

“(2) the succeeding 5 crop years.

“(d) JOINT AND SEVERAL LIABILITY.—Any individual or legal entity that participates in a scheme or device described in subsection (a) or (b) shall be jointly and severally liable for any and all overpayments resulting from the scheme or device, and subject to program ineligibility resulting from the scheme or device, regardless of

1 whether a particular individual or legal entity was a pay-
 2 ment recipient.

3 “(e) WAIVER AUTHORITY.—

4 “(1) IN GENERAL.—The Secretary may fully or
 5 partially release an individual or legal entity from li-
 6 ability for repayment of program proceeds under
 7 subsection (d) if the individual or legal entity co-
 8 operates with the Department of Agriculture by dis-
 9 closing a scheme or device to evade section 1001,
 10 1001A, or 1001C or any other provision of law ad-
 11 ministered by the Secretary that imposes a payment
 12 limitation.

13 “(2) DISCRETION.—The decision of the Sec-
 14 retary under this subsection is vested in the sole dis-
 15 cretion of the Secretary.”.

16 **SEC. 5. FOREIGN INDIVIDUALS AND LEGAL ENTITIES MADE**
 17 **INELIGIBLE 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 “**INDIVIDUALS AND LEGAL**
 22 **ENTITIES**”;

23 (2) in subsection (a), by striking “person” each
 24 place it appears and inserting “individual”;

25 (3) 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—

5 (i) by striking “a corporation or other
 6 entity shall be considered a person that”
 7 and inserting “a legal entity”; and

8 (ii) by striking “persons” both places
 9 it appears and inserting “individuals”; and

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

12 (4) in subsection (c), by striking “person” and
 13 inserting “legal entity or individual”.

14 **SEC. 6. REGULATIONS.**

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

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

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

23 (2) the Statement of Policy of the Secretary of
 24 Agriculture effective July 24, 1971 (36 Fed. Reg.

1 13804), relating to notices of proposed rulemaking
2 and public participation in rulemaking; and

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

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

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