

112TH CONGRESS  
2D SESSION

# S. 2216

To amend the Farm Security and Rural Investment Act of 2002 to authorize the Secretary of Agriculture to make loans to certain entities that will use the funds to make loans to consumers to implement cost-effective energy efficiency measures to promote energy cost savings and rural development.

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IN THE SENATE OF THE UNITED STATES

MARCH 21, 2012

Mr. MERKLEY (for himself and Mr. LUGAR) 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 Farm Security and Rural Investment Act of 2002 to authorize the Secretary of Agriculture to make loans to certain entities that will use the funds to make loans to consumers to implement cost-effective energy efficiency measures to promote energy cost savings and rural development.

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 Energy Savings  
5 Program Act”.

1 **SEC. 2. RURAL ENERGY SAVINGS PROGRAM.**

2 Subtitle E of title VI of the Farm Security and Rural  
3 Investment Act of 2002 (Public Law 107–71; 116 Stat.  
4 424) is amended by adding at the end the following:

5 **“SEC. 6407. RURAL ENERGY SAVINGS PROGRAM.**

6 “(a) PURPOSE.—The purpose of this section is to cre-  
7 ate jobs, promote rural development, and help rural fami-  
8 lies and small businesses achieve cost savings by providing  
9 loans to qualified consumers to implement durable cost-  
10 effective energy efficiency measures.

11 “(b) DEFINITIONS.—In this section:

12 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-  
13 tity’ means—

14 “(A) any public power district, public util-  
15 ity district, or similar entity, or any electric co-  
16 operative described in section 501(c)(12) or  
17 1381(a)(2) of the Internal Revenue Code of  
18 1986, that borrowed and repaid, prepaid, or is  
19 paying an electric loan made or guaranteed by  
20 the Rural Utilities Service (or any predecessor  
21 agency);

22 “(B) any entity primarily owned or con-  
23 trolled by one or more entities described in sub-  
24 paragraph (A); or

25 “(C) any other entity that is an eligible  
26 borrower of the Rural Utility Service, as deter-

1           mined under section 1710.101 of title 7, Code  
2           of Federal Regulations (or a successor regula-  
3           tion).

4           “(2) ENERGY EFFICIENCY MEASURES.—The  
5           term ‘energy efficiency measures’ means, for or at  
6           property served by an eligible entity, structural im-  
7           provements and investments in cost-effective, com-  
8           mercial technologies to increase energy efficiency.

9           “(3) QUALIFIED CONSUMER.—The term ‘quali-  
10          fied consumer’ means a consumer served by an eligi-  
11          ble entity that has the ability to repay a loan made  
12          under subsection (d), as determined by the eligible  
13          entity.

14          “(4) SECRETARY.—The term ‘Secretary’ means  
15          the Secretary of Agriculture, acting through the Ad-  
16          ministrators of the Rural Utilities Service.

17          “(c) LOANS TO ELIGIBLE ENTITIES.—

18                 “(1) IN GENERAL.—Subject to paragraph (2),  
19                 the Secretary shall make loans to eligible entities  
20                 that agree to use the loan funds to make loans to  
21                 qualified consumers for the purpose of implementing  
22                 energy efficiency measures.

23                 “(2) REQUIREMENTS.—

1           “(A) IN GENERAL.—As a condition of re-  
2           ceiving a loan under this subsection, an eligible  
3           entity shall—

4                   “(i) establish a list of energy effi-  
5                   ciency measures that is expected to de-  
6                   crease energy use or costs of qualified con-  
7                   sumers;

8                   “(ii) prepare an implementation plan  
9                   for use of the loan funds, including use of  
10                  any interest to be received pursuant to  
11                  subsection (d)(1)(A);

12                  “(iii) provide for appropriate measure-  
13                  ment and verification to ensure—

14                           “(I) the effectiveness of the en-  
15                           ergy efficiency loans made by the eli-  
16                           gible entity; and

17                           “(II) that there is no conflict of  
18                           interest in carrying out this section;  
19                           and

20                   “(iv) demonstrate expertise in effec-  
21                   tive use of energy efficiency measures at  
22                   an appropriate scale.

23           “(B) REVISION OF LIST OF ENERGY EFFI-  
24           CIENCY MEASURES.—Subject to the approval of  
25           the Secretary, an eligible entity may update the

1 list required under subparagraph (A)(i) to ac-  
2 count for newly available efficiency technologies.

3 “(C) EXISTING ENERGY EFFICIENCY PRO-  
4 GRAMS.—An eligible entity that, at any time be-  
5 fore the date that is 60 days after the date of  
6 enactment of this section, has established an  
7 energy efficiency program for qualified con-  
8 sumers may use an existing list of energy effi-  
9 ciency measures, implementation plan, or meas-  
10 urement and verification system of that pro-  
11 gram to satisfy the requirements of subpara-  
12 graph (A) if the Secretary determines the list,  
13 plan, or systems are consistent with the pur-  
14 poses of this section.

15 “(3) NO INTEREST.—A loan under this sub-  
16 section shall bear no interest.

17 “(4) REPAYMENT.—With respect to a loan  
18 under paragraph (1)—

19 “(A) the term shall not exceed 20 years  
20 from the date on which the loan is closed; and

21 “(B) except as provided in paragraph (6),  
22 the repayment of each advance shall be amor-  
23 tized for a period not to exceed 10 years.

24 “(5) AMOUNT OF ADVANCES.—Any advance of  
25 loan funds to an eligible entity in any single year

1 shall not exceed 50 percent of the approved loan  
2 amount.

3 “(6) SPECIAL ADVANCE FOR START-UP ACTIVITIES.—  
4

5 “(A) IN GENERAL.—In order to assist an  
6 eligible entity in defraying the appropriate  
7 start-up costs (as determined by the Secretary)  
8 of establishing new programs or modifying ex-  
9 isting programs to carry out subsection (d), the  
10 Secretary shall allow an eligible entity to re-  
11 quest a special advance.

12 “(B) AMOUNT.—No eligible entity may re-  
13 ceive a special advance under this paragraph  
14 for an amount that is greater than 4 percent of  
15 the loan amount received by the eligible entity  
16 under paragraph (1).

17 “(C) REPAYMENT.—Repayment of the spe-  
18 cial advance—

19 “(i) shall be required during the 10-  
20 year period beginning on the date on which  
21 the special advance is made; and

22 “(ii) at the election of the eligible en-  
23 tity, may be deferred to the end of the 10-  
24 year period.

1           “(7) LIMITATION.—All special advances shall be  
2           made under a loan described in paragraph (1) dur-  
3           ing the first 10 years of the term of the loan.

4           “(d) LOANS TO QUALIFIED CONSUMERS.—

5           “(1) TERMS OF LOANS.—Loans made by an eli-  
6           gible entity to qualified consumers using loan funds  
7           provided by the Secretary under subsection (c)—

8           “(A) may bear interest, not to exceed 3  
9           percent, to be used for purposes that include—

10           “(i) to establish a loan loss reserve;

11           and

12           “(ii) to offset personnel and program  
13           costs of eligible entities to provide the  
14           loans;

15           “(B) shall finance energy efficiency meas-  
16           ures for the purpose of decreasing energy usage  
17           or costs of the qualified consumer by an  
18           amount that ensures, to the maximum extent  
19           practicable, that a loan term of not more than  
20           10 years will not pose an undue financial bur-  
21           den on the qualified consumer, as determined  
22           by the eligible entity;

23           “(C) shall not be used to fund purchases  
24           of, or modifications to, personal property unless  
25           the personal property is or becomes attached to

1 real property (including a manufactured home)  
2 as a fixture;

3 “(D) shall be repaid through charges  
4 added to the electric bill for the property for, or  
5 at which, energy efficiency measures are or will  
6 be implemented, on the condition that this re-  
7 quirement does not prohibit—

8 “(i) the voluntary prepayment of a  
9 loan by the owner of the property; or

10 “(ii) the use of any additional repay-  
11 ment mechanisms that are—

12 “(I) demonstrated to have appro-  
13 priate risk mitigation features, as de-  
14 termined by the eligible entity; or

15 “(II) required if the qualified  
16 consumer is no longer a customer of  
17 the eligible entity; and

18 “(E) shall require an energy audit by an  
19 eligible entity to determine the impact of pro-  
20 posed energy efficiency measures on the energy  
21 costs and consumption of the qualified con-  
22 sumer.

23 “(2) CONTRACTORS.—In addition to any other  
24 qualified general contractor, eligible entities may  
25 serve as general contractors.



1       “(e) CONTRACT FOR MEASUREMENT AND  
2 VERIFICATION, TRAINING, AND TECHNICAL ASSIST-  
3 ANCE.—

4           “(1) IN GENERAL.—Not later than 90 days  
5 after the date of enactment of this section, the Sec-  
6 retary—

7           “(A) shall establish a plan for measure-  
8 ment and verification, training, and technical  
9 assistance of the program; and

10           “(B) may enter into one or more contracts  
11 with a qualified entity for the purposes of—

12           “(i) providing measurement and  
13 verification activities; and

14           “(ii) developing a program to provide  
15 technical assistance and training to the  
16 employees of eligible entities to carry out  
17 this section.

18           “(2) USE OF SUBCONTRACTORS AUTHOR-  
19 IZED.—A qualified entity that enters into a contract  
20 under paragraph (1) may use subcontractors to as-  
21 sist the qualified entity in carrying out the contract.

22       “(f) FAST START DEMONSTRATION PROJECTS.—

23           “(1) IN GENERAL.—The Secretary shall offer to  
24 enter into agreements with eligible entities (or  
25 groups of eligible entities) that have energy effi-

1 efficiency programs described in subsection (c)(2)(C) to  
2 establish an energy efficiency loan demonstration  
3 projects consistent with the purposes of this section.

4 “(2) EVALUATION CRITERIA.—In determining  
5 which eligible entities to award loans under this sec-  
6 tion, the Secretary shall take into consideration eligi-  
7 ble entities that—

8 “(A) implement approaches to energy au-  
9 dits and investments in energy efficiency meas-  
10 ures that yield measurable and predictable sav-  
11 ings;

12 “(B) use measurement and verification  
13 processes to determine the effectiveness of en-  
14 ergy efficiency loans made by eligible entities;

15 “(C) include training for employees of eli-  
16 gible entities, including any contractors of such  
17 entities, to implement or oversee the activities  
18 described in subparagraphs (A) and (B);

19 “(D) provide for the participation of a ma-  
20 jority of eligible entities in a State;

21 “(E) reduce the need for generating capac-  
22 ity;

23 “(F) provide efficiency loans to—

24 “(i) in the case of a single eligible en-  
25 tity, not fewer than 20,000 consumers; or

1                   “(ii) in the case of a group of eligible  
2                   entities, not fewer than 80,000 consumers;  
3                   and

4                   “(G) serve areas in which, as determined  
5                   by the Secretary, a large percentage of con-  
6                   sumers reside—

7                   “(i) in manufactured homes; or

8                   “(ii) in housing units that are more  
9                   than 50 years old.

10                  “(3) DEADLINE FOR IMPLEMENTATION.—To  
11                  the maximum extent practicable, the Secretary shall  
12                  enter into agreements described in paragraph (1) by  
13                  not later than 90 days after the date of enactment  
14                  of this section.

15                  “(4) EFFECT ON AVAILABILITY OF LOANS NA-  
16                  TIONALLY.—Nothing in this subsection shall delay  
17                  the availability of loans to eligible entities on a na-  
18                  tional basis beginning not later than 180 days after  
19                  the date of enactment of this section.

20                  “(5) ADDITIONAL DEMONSTRATION PROJECT  
21                  AUTHORITY.—

22                  “(A) IN GENERAL.—The Secretary may  
23                  conduct demonstration projects in addition to  
24                  the project required by paragraph (1).

1           “(B) INAPPLICABILITY OF CERTAIN CRI-  
2           TERIA.—The additional demonstration projects  
3           may be carried out without regard to subpara-  
4           graphs (D), (F), or (G) of paragraph (2).

5           “(g) ADDITIONAL AUTHORITY.—The authority pro-  
6           vided in this section is in addition to any other authority  
7           of the Secretary to offer loans under any other law.

8           “(h) EFFECTIVE PERIOD.—Subject to the availability  
9           of funds and except as otherwise provided in this section,  
10          the loans and other expenditures required to be made  
11          under this section shall be available until expended, with  
12          the Secretary authorized to make new loans as loans are  
13          repaid.

14          “(i) REGULATIONS.—

15                 “(1) IN GENERAL.—Except as otherwise pro-  
16                 vided in this subsection, not later than 180 days  
17                 after the date of enactment of this section, the Sec-  
18                 retary shall promulgate such regulations as are nec-  
19                 essary to implement this section.

20                 “(2) PROCEDURE.—The promulgation of the  
21                 regulations and administration of this section shall  
22                 be made without regard to—

23                         “(A) the Statement of Policy of the Sec-  
24                         retary of Agriculture effective July 24, 1971  
25                         (36 Fed. Reg. 13804), relating to notices of

1 proposed rulemaking and public participation in  
2 rulemaking; and

3 “(B) chapter 35 of title 44, United States  
4 Code (commonly known as the ‘Paperwork Re-  
5 duction Act’).

6 “(3) CONGRESSIONAL REVIEW OF AGENCY  
7 RULEMAKING.—In carrying out this section, the Sec-  
8 retary shall use the authority provided under section  
9 808 of title 5, United States Code.

10 “(4) INTERIM REGULATIONS.—Notwithstanding  
11 paragraphs (1) and (2), to the extent regulations are  
12 necessary to carry out any provision of this section,  
13 the Secretary shall implement such regulations  
14 through the promulgation of an interim rule.”.

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