

112TH CONGRESS
1ST SESSION

H. R. 3765

AN ACT

To extend the payroll tax holiday, unemployment compensation, Medicare physician payment, provide for the consideration of the Keystone XL pipeline, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Temporary Payroll Tax Cut Continuation Act of 2011”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—TEMPORARY PAYROLL TAX RELIEF

Sec. 101. Extension of payroll tax holiday.

TITLE II—TEMPORARY EXTENSION OF UNEMPLOYMENT
COMPENSATION PROVISIONS

Sec. 201. Temporary extension of unemployment compensation provisions.

Sec. 202. Extended unemployment benefits under the Railroad Unemployment
Insurance Act.

TITLE III—TEMPORARY EXTENSION OF HEALTH PROVISIONS

Sec. 301. Medicare physician payment update.

Sec. 302. 2-month extension of MMA section 508 reclassifications.

Sec. 303. Extension of Medicare work geographic adjustment floor.

Sec. 304. Extension of exceptions process for Medicare therapy caps.

Sec. 305. Extension of payment for technical component of certain physician
pathology services.

Sec. 306. Extension of ambulance add-ons.

Sec. 307. Extension of physician fee schedule mental health add-on payment.

Sec. 308. Extension of outpatient hold harmless provision.

Sec. 309. Extending minimum payment for bone mass measurement.

Sec. 310. Extension of the qualifying individual (QI) program.

Sec. 311. Extension of Transitional Medical Assistance (TMA).

Sec. 312. Extension of the temporary assistance for needy families program.

TITLE IV—MORTGAGE FEES AND PREMIUMS

Sec. 401. Guarantee Fees.

Sec. 402. FHA guarantee fees.

TITLE V—OTHER PROVISIONS

Subtitle A—Keystone XL Pipeline

Sec. 501. Permit for Keystone XL pipeline.

Subtitle B—Budgetary Provisions

Sec. 511. Senate point of order against an emergency designation.

Sec. 512. PAYGO scorecard estimates.

1 **TITLE I—TEMPORARY PAYROLL**
2 **TAX RELIEF**

3 **SEC. 101. EXTENSION OF PAYROLL TAX HOLIDAY.**

4 (a) IN GENERAL.—Subsection (c) of section 601 of
5 the Tax Relief, Unemployment Insurance Reauthorization,
6 and Job Creation Act of 2010 (26 U.S.C. 1401 note) is
7 amended to read as follows:

8 “(c) **PAYROLL TAX HOLIDAY PERIOD.**—The term
9 ‘payroll tax holiday period’ means—

10 “(1) in the case of the tax described in sub-
11 section (a)(1), calendar years 2011 and 2012, and

12 “(2) in the case of the taxes described in sub-
13 section (a)(2), the period beginning January 1,
14 2011, and ending February 29, 2012.”.

15 (b) **SPECIAL RULES FOR 2012.**—Section 601 of such
16 Act (26 U.S.C. 1401 note) is amended by adding at the
17 end the following new subsection:

18 “(f) **SPECIAL RULES FOR 2012.**—

19 “(1) **LIMITATION ON SELF-EMPLOYMENT IN-**
20 **COME.**—In the case of any taxable year beginning in
21 2012, subsection (a)(1) shall only apply with respect
22 to so much of the taxpayer’s self-employment income
23 (as defined in section 1402(b) of the Internal Rev-
24 enue Code of 1986) as does not exceed the excess (if
25 any) of—

1 “(A) \$18,350, over

2 “(B) the amount of wages and compensa-
3 tion received during the portion of the payroll
4 tax holiday period occurring during 2012 sub-
5 ject to tax under section 3101(a) of such Code
6 or section 3201(a) of such Code.

7 “(2) COORDINATION WITH DEDUCTION FOR EM-
8 PLOYMENT TAXES.—In the case of a taxable year
9 beginning in 2012, subparagraph (A) of subsection
10 (b)(2) shall be applied as if it read as follows:

11 ““(A) the sum of—

12 ““(i) 59.6 percent of the portion of
13 such taxes attributable to the tax imposed
14 by section 1401(a) of such Code (deter-
15 mined after the application of this section)
16 on so much of self-employment income (as
17 defined in section 1402(b) of such Code)
18 as does not exceed the amount of self-em-
19 ployment income described in paragraph
20 (1), plus

21 ““(ii) one-half of the portion of such
22 taxes attributable to the tax imposed by
23 section 1401(a) of such Code (determined
24 without regard to this section) on self-em-

1 ployment income (as so defined) in excess
2 of such amount, plus’.”.

3 (c) **RECAPTURE OF EXCESS BENEFIT.**—Section 601
4 of such Act (26 U.S.C. 1401 note), as amended by sub-
5 section (b), is further amended by adding at the end the
6 following new subsection:

7 “(g) **RECAPTURE OF EXCESS BENEFIT.**—

8 “(1) **IN GENERAL.**—There is hereby imposed on
9 the income of every individual a tax equal to 2 per-
10 cent of the sum of wages (within the meaning of sec-
11 tion 3121(a)(1) of the Internal Revenue Code of
12 1986) and compensation (to which section 3201(a)
13 of such Code applies) received during the period be-
14 ginning January 1, 2012, and ending February 29,
15 2012, to the extent the amount of such sum exceeds
16 \$18,350.

17 “(2) **REGULATIONS.**—The Secretary of the
18 Treasury or the Secretary’s delegate shall prescribe
19 such regulations or other guidance as may be nec-
20 essary or appropriate to carry out this subsection,
21 including guidance for payment by the employee of
22 the tax imposed by paragraph (1).”.

23 (d) **TECHNICAL AMENDMENTS.**—Paragraph (2) of
24 section 601(b) of such Act (26 U.S.C. 1401 note) is
25 amended—

1 (1) by inserting “of such Code” after “164(f)”;

2 (2) by inserting “of such Code” after
3 “1401(a)” in subparagraph (A); and

4 (3) by inserting “of such Code” after
5 “1401(b)” in subparagraph (B).

6 (e) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the amendments made by this section
9 shall apply to remuneration received, and taxable
10 years beginning, after December 31, 2011.

11 (2) TECHNICAL AMENDMENTS.—The amend-
12 ments made by subsection (d) shall take effect as if
13 included in the enactment of section 601 of the Tax
14 Relief, Unemployment Insurance Reauthorization,
15 and Job Creation Act of 2010.

16 **TITLE II—TEMPORARY EXTEN-**
17 **SION OF UNEMPLOYMENT**
18 **COMPENSATION PROVISIONS**

19 **SEC. 201. TEMPORARY EXTENSION OF UNEMPLOYMENT**
20 **COMPENSATION PROVISIONS.**

21 (a) IN GENERAL.—(1) Section 4007 of the Supple-
22 mental Appropriations Act, 2008 (Public Law 110–252;
23 26 U.S.C. 3304 note) is amended—

24 (A) by striking “January 3, 2012” each place
25 it appears and inserting “March 6, 2012”;

1 (B) in the heading for subsection (b)(2), by
2 striking “JANUARY 3, 2012” and inserting “MARCH 6,
3 2012”; and

4 (C) in subsection (b)(3), by striking “June 9,
5 2012” and inserting “August 15, 2012”.

6 (2) Section 2005 of the Assistance for Unemployed
7 Workers and Struggling Families Act, as contained in
8 Public Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444),
9 is amended—

10 (A) by striking “January 4, 2012” each place
11 it appears and inserting “March 7, 2012”; and

12 (B) in subsection (c), by striking “June 11,
13 2012” and inserting “August 15, 2012”.

14 (3) Section 5 of the Unemployment Compensation
15 Extension Act of 2008 (Public Law 110–449; 26 U.S.C.
16 3304 note) is amended by striking “June 10, 2012” and
17 inserting “August 15, 2012”.

18 (4) Section 203 of the Federal-State Extended Un-
19 employment Compensation Act of 1970 (26 U.S.C. 3304
20 note) is amended—

21 (A) in subsection (d), in the second sentence of
22 the flush matter following paragraph (2), by striking
23 “December 31, 2011” and inserting “February 29,
24 2012”; and

1 (B) in subsection (f)(2), by striking “December
2 31, 2011” and inserting “February 29, 2012”.

3 (b) FUNDING.—Section 4004(e)(1) of the Supple-
4 mental Appropriations Act, 2008 (Public Law 110–252;
5 26 U.S.C. 3304 note) is amended—

6 (1) in subparagraph (F), by striking “and” at
7 the end; and

8 (2) by inserting after subparagraph (G) the fol-
9 lowing:

10 “(H) the amendments made by section
11 201(a)(1) of the Temporary Payroll Tax Cut
12 Continuation Act of 2011; and”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect as if included in the enact-
15 ment of the Tax Relief, Unemployment Insurance Reau-
16 thorization, and Job Creation Act of 2010 (Public Law
17 111–312).

18 **SEC. 202. EXTENDED UNEMPLOYMENT BENEFITS UNDER**
19 **THE RAILROAD UNEMPLOYMENT INSURANCE**
20 **ACT.**

21 (a) EXTENSION.—Section 2(c)(2)(D)(iii) of the Rail-
22 road Unemployment Insurance Act, as added by section
23 2006 of the American Recovery and Reinvestment Act of
24 2009 (Public Law 111–5) and as amended by section 9
25 of the Worker, Homeownership, and Business Assistance

1 Act of 2009 (Public Law 111–92) and section 505 of the
2 Tax Relief, Unemployment Insurance Reauthorization,
3 and Job Creation Act of 2010 (Public Law 111–312), is
4 amended—

5 (1) by striking “June 30, 2011” and inserting
6 “August 31, 2011”; and

7 (2) by striking “December 31, 2011” and in-
8 serting “February 29, 2012”.

9 (b) CLARIFICATION ON AUTHORITY TO USE
10 FUNDS.—Funds appropriated under either the first or
11 second sentence of clause (iv) of section 2(c)(2)(D) of the
12 Railroad Unemployment Insurance Act shall be available
13 to cover the cost of additional extended unemployment
14 benefits provided under such section 2(c)(2)(D) by reason
15 of the amendments made by subsection (a) as well as to
16 cover the cost of such benefits provided under such section
17 2(c)(2)(D), as in effect on the day before the date of the
18 enactment of this Act.

19 **TITLE III—TEMPORARY EXTEN-** 20 **SION OF HEALTH PROVISIONS**

21 **SEC. 301. MEDICARE PHYSICIAN PAYMENT UPDATE.**

22 Section 1848(d) of the Social Security Act (42 U.S.C.
23 1395w–4(d)) is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(13) UPDATE FOR FIRST TWO MONTHS OF
2 2012.—

3 “(A) IN GENERAL.—Subject to paragraphs
4 (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), and
5 (12)(B), in lieu of the update to the single con-
6 version factor established in paragraph (1)(C)
7 that would otherwise apply for the period begin-
8 ning on January 1, 2012, and ending on Feb-
9 ruary 29, 2012, the update to the single conver-
10 sion factor shall be zero percent.

11 “(B) NO EFFECT ON COMPUTATION OF
12 CONVERSION FACTOR FOR REMAINING PORTION
13 OF 2012 AND SUBSEQUENT YEARS.—The con-
14 version factor under this subsection shall be
15 computed under paragraph (1)(A) for the pe-
16 riod beginning on March 1, 2012, and ending
17 on December 31, 2012, and for 2013 and sub-
18 sequent years as if subparagraph (A) had never
19 applied.”.

20 **SEC. 302. 2-MONTH EXTENSION OF MMA SECTION 508 RE-**
21 **CLASSIFICATIONS.**

22 (a) IN GENERAL.—Section 106(a) of division B of
23 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
24 1395 note), as amended by section 117 of the Medicare,
25 Medicaid, and SCHIP Extension Act of 2007 (Public Law

1 110–173), section 124 of the Medicare Improvements for
2 Patients and Providers Act of 2008 (Public Law 110–
3 275), sections 3137(a) and 10317 of the Patient Protec-
4 tion and Affordable Care Act (Public Law 111–148), and
5 section 102(a) of the Medicare and Medicaid Extenders
6 Act of 2010 (Public Law 111–309), is amended by strik-
7 ing “September 30, 2011” and inserting “November 30,
8 2011”.

9 (b) SPECIAL RULE FOR OCTOBER AND NOVEMBER
10 2011.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 for purposes of implementation of the amendment
13 made by subsection (a), including for purposes of
14 the implementation of paragraph (2) of section
15 117(a) of the Medicare, Medicaid, and SCHIP Ex-
16 tension Act of 2007 (Public Law 110–173), for the
17 period beginning on October 1, 2011, and ending on
18 November 30, 2011, the Secretary of Health and
19 Human Services shall use the hospital wage index
20 that was promulgated by the Secretary of Health
21 and Human Services in the Federal Register on Au-
22 gust 18, 2011 (76 Fed. Reg. 51476), and any subse-
23 quent corrections.

24 (2) EXCEPTION.—In determining the wage
25 index applicable to hospitals that qualify for wage

1 index reclassification, the Secretary shall, for the pe-
2 riod beginning on October 1, 2011, and ending on
3 November 30, 2011, include the average hourly wage
4 data of hospitals whose reclassification was extended
5 pursuant to the amendment made by subsection (a)
6 only if including such data results in a higher appli-
7 cable reclassified wage index. Any revision to hos-
8 pital wage indexes made as a result of this para-
9 graph shall not be effected in a budget neutral man-
10 ner.

11 (c) TIMEFRAME FOR PAYMENTS.—The Secretary
12 shall make payments required under subsections (a) and
13 (b) by not later than December 31, 2012.

14 **SEC. 303. EXTENSION OF MEDICARE WORK GEOGRAPHIC**
15 **ADJUSTMENT FLOOR.**

16 Section 1848(e)(1)(E) of the Social Security Act (42
17 U.S.C. 1395w-4(e)(1)(E)) is amended by striking “before
18 January 1, 2012” and inserting “before March 1, 2012”.

19 **SEC. 304. EXTENSION OF EXCEPTIONS PROCESS FOR MEDI-**
20 **CARE THERAPY CAPS.**

21 Section 1833(g)(5) of the Social Security Act (42
22 U.S.C. 1395l(g)(5)) is amended by striking “December
23 31, 2011” and inserting “February 29, 2012”.

1 **SEC. 305. EXTENSION OF PAYMENT FOR TECHNICAL COM-**
2 **PONENT OF CERTAIN PHYSICIAN PATHOL-**
3 **OGY SERVICES.**

4 Section 542(c) of the Medicare, Medicaid, and
5 SCHIP Benefits Improvement and Protection Act of 2000
6 (as enacted into law by section 1(a)(6) of Public Law 106–
7 554), as amended by section 732 of the Medicare Prescrip-
8 tion Drug, Improvement, and Modernization Act of 2003
9 (42 U.S.C. 1395w–4 note), section 104 of division B of
10 the Tax Relief and Health Care Act of 2006 (42 U.S.C.
11 1395w–4 note), section 104 of the Medicare, Medicaid,
12 and SCHIP Extension Act of 2007 (Public Law 110–
13 173), section 136 of the Medicare Improvements for Pa-
14 tients and Providers Act of 2008 (Public Law 110–275),
15 section 3104 of the Patient Protection and Affordable
16 Care Act (Public Law 111–148), and section 105 of the
17 Medicare and Medicaid Extenders Act of 2010 (Public
18 Law 111–309), is amended by striking “and 2011” and
19 inserting “2011, and the first two months of 2012”.

20 **SEC. 306. EXTENSION OF AMBULANCE ADD-ONS.**

21 (a) GROUND AMBULANCE.—Section 1834(l)(13)(A)
22 of the Social Security Act (42 U.S.C. 1395m(l)(13)(A))
23 is amended—

24 (1) in the matter preceding clause (i), by strik-
25 ing “January 1, 2012” and inserting “March 1,
26 2012”; and

1 (2) in each of clauses (i) and (ii), by striking
2 “January 1, 2012” and inserting “March 1, 2012”
3 each place it appears.

4 (b) AIR AMBULANCE.—Section 146(b)(1) of the
5 Medicare Improvements for Patients and Providers Act of
6 2008 (Public Law 110–275), as amended by sections
7 3105(b) and 10311(b) of Public Law 111–148 and section
8 106(b) of the Medicare and Medicaid Extenders Act of
9 2010 (Public Law 111–309), is amended by striking “De-
10 cember 31, 2011” and inserting “February 29, 2012”.

11 (c) SUPER RURAL AMBULANCE.—Section
12 1834(l)(12)(A) of the Social Security Act (42 U.S.C.
13 1395m(l)(12)(A)) is amended by striking “January 1,
14 2012” and inserting “March 1, 2012”.

15 **SEC. 307. EXTENSION OF PHYSICIAN FEE SCHEDULE MEN-**
16 **TAL HEALTH ADD-ON PAYMENT.**

17 Section 138(a)(1) of the Medicare Improvements for
18 Patients and Providers Act of 2008 (Public Law 110–
19 275), as amended by section 3107 of the Patient Protec-
20 tion and Affordable Care Act (Public Law 111–148) and
21 section 107 of the Medicare and Medicaid Extenders Act
22 of 2010 (Public Law 111–309), is amended by striking
23 “December 31, 2011” and inserting “February 29,
24 2012”.

1 **SEC. 308. EXTENSION OF OUTPATIENT HOLD HARMLESS**
2 **PROVISION.**

3 Section 1833(t)(7)(D)(i) of the Social Security Act
4 (42 U.S.C. 1395l(t)(7)(D)(i)), as amended by section
5 3121(a) of the Patient Protection and Affordable Care Act
6 (Public Law 111–148) and section 108 of the Medicare
7 and Medicaid Extenders Act of 2010 (Public Law 111–
8 309), is amended—

9 (1) in subclause (II)—

10 (A) in the first sentence, by striking “Jan-
11 uary 1, 2012” and inserting “March 1, 2012”;
12 and

13 (B) in the second sentence, by striking “or
14 2011” and inserting “2011, or the first two
15 months of 2012”; and

16 (2) in subclause (III)—

17 (A) in the first sentence, by striking
18 “2009, and” and all that follows through “for
19 which” and inserting “2009, and before March
20 1, 2012, for which”; and

21 (B) in the second sentence, by striking
22 “2010, and” and all that follows through “the
23 preceding” and inserting “2010, and before
24 March 1, 2012, the preceding”.

1 **SEC. 309. EXTENDING MINIMUM PAYMENT FOR BONE MASS**
2 **MEASUREMENT.**

3 Section 1848 of the Social Security Act (42 U.S.C.
4 1395w-4) is amended—

5 (1) in subsection (b)—

6 (A) in paragraph (4)(B), by striking “and
7 2011” and inserting “, 2011, and the first 2
8 months of 2012”; and

9 (B) in paragraph (6)—

10 (i) in the matter preceding subpara-
11 graph (A), by striking “and 2011” and in-
12 sserting “, 2011, and the first 2 months of
13 2012”; and

14 (ii) in subparagraph (C), by striking
15 “and 2011” and inserting “, 2011, and the
16 first 2 months of 2012”; and

17 (2) in subsection (c)(2)(B)(iv)(IV), by striking
18 “or 2011” and inserting “, 2011, or the first 2
19 months of 2012”.

20 **SEC. 310. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI)**
21 **PROGRAM.**

22 (a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the
23 Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is
24 amended by striking “December 2011” and inserting
25 “February 2012”.

1 (b) EXTENDING TOTAL AMOUNT AVAILABLE FOR
2 ALLOCATION.—Section 1933(g) of such Act (42 U.S.C.
3 1396u–3(g)) is amended—

4 (1) in paragraph (2)—

5 (A) by striking “and” at the end of sub-
6 paragraph (O);

7 (B) in subparagraph (P), by striking the
8 period at the end and inserting “; and”; and

9 (C) by adding at the end the following new
10 subparagraph:

11 “(Q) for the period that begins on January
12 1, 2012, and ends on February 29, 2012, the
13 total allocation amount is \$150,000,000.”.

14 **SEC. 311. EXTENSION OF TRANSITIONAL MEDICAL ASSIST-**
15 **ANCE (TMA).**

16 Sections 1902(e)(1)(B) and 1925(f) of the Social Se-
17 curity Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are
18 each amended by striking “December 31, 2011” and in-
19 serting “February 29, 2012”.

20 **SEC. 312. EXTENSION OF THE TEMPORARY ASSISTANCE**
21 **FOR NEEDY FAMILIES PROGRAM.**

22 Activities authorized by part A of title IV and section
23 1108(b) of the Social Security Act (other than under sub-
24 sections (a)(3) and (b) of section 403 of such Act) shall
25 continue through February 29, 2012, in the manner au-

1 thORIZED for fiscal year 2011, and out of any money in
2 the Treasury of the United States not otherwise appro-
3 priated, there are hereby appropriated such sums as may
4 be necessary for such purpose. Grants and payments may
5 be made pursuant to this authority through the applicable
6 portion of the second quarter of fiscal year 2012 at the
7 pro rata portion of the level provided for such activities
8 through the second quarter of fiscal year 2011.

9 **TITLE IV—MORTGAGE FEES AND**
10 **PREMIUMS**

11 **SEC. 401. GUARANTEE FEES.**

12 Subpart A of part 2 of subtitle A of title XIII of the
13 Housing and Community Development Act of 1992 is
14 amended by adding after section 1326 (12 U.S.C. 4546)
15 the following new section:

16 **“SEC. 1327. ENTERPRISE GUARANTEE FEES.**

17 “(a) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:

19 “(1) GUARANTEE FEE.—The term ‘guarantee
20 fee’—

21 “(A) means a fee described in subsection
22 (b); and

23 “(B) includes—

24 “(i) the guaranty fee charged by the
25 Federal National Mortgage Association

1 with respect to mortgage-backed securities;
2 and

3 “(ii) the management and guarantee
4 fee charged by the Federal Home Loan
5 Mortgage Corporation with respect to par-
6 ticipation certificates.

7 “(2) AVERAGE FEES.—The term ‘average fees’
8 means the average contractual fee rate of single-
9 family guaranty arrangements by an enterprise en-
10 tered into during 2011, plus the recognition of any
11 up-front cash payments over an estimated average
12 life, expressed in terms of basis points. Such defini-
13 tion shall be interpreted in a manner consistent with
14 the annual report on guarantee fees by the Federal
15 Housing Finance Agency.

16 “(b) INCREASE.—

17 “(1) IN GENERAL.—

18 “(A) PHASED INCREASE REQUIRED.—Sub-
19 ject to subsection (c), the Director shall require
20 each enterprise to charge a guarantee fee in
21 connection with any guarantee of the timely
22 payment of principal and interest on securities,
23 notes, and other obligations based on or backed
24 by mortgages on residential real properties de-
25 signed principally for occupancy of from 1 to 4

1 families, consummated after the date of enact-
2 ment of this section.

3 “(B) AMOUNT.—The amount of the in-
4 crease required under this section shall be de-
5 termined by the Director to appropriately re-
6 flect the risk of loss, as well the cost of capital
7 allocated to similar assets held by other fully
8 private regulated financial institutions, but such
9 amount shall be not less than an average in-
10 crease of 10 basis points for each origination
11 year or book year above the average fees im-
12 posed in 2011 for such guarantees. The Direc-
13 tor shall prohibit an enterprise from offsetting
14 the cost of the fee to mortgage originators, bor-
15 rowers, and investors by decreasing other
16 charges, fees, or premiums, or in any other
17 manner.

18 “(2) AUTHORITY TO LIMIT OFFER OF GUAR-
19 ANTEE.—The Director shall prohibit an enterprise
20 from consummating any offer for a guarantee to a
21 lender for mortgage-backed securities, if—

22 “(A) the guarantee is inconsistent with the
23 requirements of this section; or

24 “(B) the risk of loss is allowed to increase,
25 through lowering of the underwriting standards

1 or other means, for the primary purpose of
2 meeting the requirements of this section.

3 “(3) DEPOSIT IN TREASURY.—Amounts re-
4 ceived from fee increases imposed under this section
5 shall be deposited directly into the United States
6 Treasury, and shall be available only to the extent
7 provided in subsequent appropriations Acts. The fees
8 charged pursuant to this section shall not be consid-
9 ered a reimbursement to the Federal Government
10 for the costs or subsidy provided to an enterprise.

11 “(c) PHASE-IN.—

12 “(1) IN GENERAL.—The Director may provide
13 for compliance with subsection (b) by allowing each
14 enterprise to increase the guarantee fee charged by
15 the enterprise gradually over the 2-year period be-
16 ginning on the date of enactment of this section, in
17 a manner sufficient to comply with this section. In
18 determining a schedule for such increases, the Direc-
19 tor shall—

20 “(A) provide for uniform pricing among
21 lenders;

22 “(B) provide for adjustments in pricing
23 based on risk levels; and

24 “(C) take into consideration conditions in
25 financial markets.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 this subsection shall be interpreted to undermine the
3 minimum increase required by subsection (b).

4 “(d) INFORMATION COLLECTION AND ANNUAL
5 ANALYSIS.—The Director shall require each enterprise to
6 provide to the Director, as part of its annual report sub-
7 mitted to Congress—

8 “(1) a description of—

9 “(A) changes made to up-front fees and
10 annual fees as part of the guarantee fees nego-
11 tiated with lenders;

12 “(B) changes to the riskiness of the new
13 borrowers compared to previous origination
14 years or book years; and

15 “(C) any adjustments required to improve
16 for future origination years or book years, in
17 order to be in complete compliance with sub-
18 section (b); and

19 “(2) an assessment of how the changes in the
20 guarantee fees described in paragraph (1) met the
21 requirements of subsection (b).

22 “(e) ENFORCEMENT.—

23 “(1) REQUIRED ADJUSTMENTS.—Based on the
24 information from subsection (d) and any other infor-
25 mation the Director deems necessary, the Director

1 shall require an enterprise to make adjustments in
2 its guarantee fee in order to be in compliance with
3 subsection (b).

4 “(2) NONCOMPLIANCE PENALTY.—An enter-
5 prise that has been found to be out of compliance
6 with subsection (b) for any 2 consecutive years shall
7 be precluded from providing any guarantee for a pe-
8 riod, determined by rule of the Director, but in no
9 case less than 1 year.

10 “(3) RULE OF CONSTRUCTION.—Nothing in
11 this subsection shall be interpreted as preventing the
12 Director from initiating and implementing an en-
13 forcement action against an enterprise, at a time the
14 Director deems necessary, under other existing en-
15 forcement authority.

16 “(f) EXPIRATION.—The provisions of this section
17 shall expire on October 1, 2021.”

18 **SEC. 402. FHA GUARANTEE FEES.**

19 (a) AMENDMENT.—Section 203(c)(2) of the National
20 Housing Act (12 U.S.C. 1709(c)(2)) is amended by adding
21 at the end the following:

22 “(C)(i) In addition to the premiums under sub-
23 paragraphs (A) and (B), the Secretary shall estab-
24 lish and collect annual premium payments for any
25 mortgage for which the Secretary collects an annual

1 premium payment under subparagraph (B), in an
2 amount described in clause (ii).

3 “(ii)(I) Subject to subclause (II), with respect
4 to a mortgage, the amount described in this clause
5 is 10 basis points of the remaining insured principal
6 balance (excluding the portion of the remaining bal-
7 ance attributable to the premium collected under
8 subparagraph (A) and without taking into account
9 delinquent payments or prepayments).

10 “(II) During the 2-year period beginning on the
11 date of enactment of this subparagraph, the Sec-
12 retary shall increase the number of basis points of
13 the annual premium payment collected under this
14 subparagraph incrementally, as determined appro-
15 priate by the Secretary, until the number of basis
16 points of the annual premium payment collected
17 under this subparagraph is equal to the number de-
18 scribed in subclause (I).”.

19 (b) PROSPECTIVE REPEAL.—Section 203(c)(2) of the
20 National Housing Act (12 U.S.C. 1709(c)(2)) is amended
21 by striking subparagraph (C), as added by subsection (a),
22 effective on October 1, 2021.

23 (c) REPORT REQUIRED.—Not later than 30 days be-
24 fore the date on which the Secretary of Housing and
25 Urban Development makes a determination under sub-

1 section (b)(2), the Secretary shall submit to the Com-
2 mittee on Banking, Housing, and Urban Affairs of the
3 Senate and the Committee on Financial Services of the
4 House of Representatives a report that—

5 (1) explains the basis for the determination;

6 and

7 (2) identifies the date on which the Secretary
8 plans to make the determination.

9 **TITLE V—OTHER PROVISIONS**

10 **Subtitle A—Keystone XL Pipeline**

11 **SEC. 501. PERMIT FOR KEYSTONE XL PIPELINE.**

12 (a) **IN GENERAL.**—Except as provided in subsection
13 (b), not later than 60 days after the date of enactment
14 of this Act, the President, acting through the Secretary
15 of State, shall grant a permit under Executive Order No.
16 13337 (3 U.S.C. 301 note; relating to issuance of permits
17 with respect to certain energy-related facilities and land
18 transportation crossings on the international boundaries
19 of the United States) for the Keystone XL pipeline project
20 application filed on September 19, 2008 (including amend-
21 ments).

22 (b) **EXCEPTION.**—

23 (1) **IN GENERAL.**—The President shall not be
24 required to grant the permit under subsection (a) if

1 the President determines that the Keystone XL
2 pipeline would not serve the national interest.

3 (2) REPORT.—If the President determines that
4 the Keystone XL pipeline is not in the national in-
5 terest under paragraph (1), the President shall, not
6 later than 15 days after the date of the determina-
7 tion, submit to the Committee on Foreign Relations
8 of the Senate, the Committee on Foreign Affairs of
9 the House of Representatives, the majority leader of
10 the Senate, the minority leader of the Senate, the
11 Speaker of the House of Representatives, and the
12 minority leader of the House of Representatives a
13 report that provides a justification for determina-
14 tion, including consideration of economic, employ-
15 ment, energy security, foreign policy, trade, and en-
16 vironmental factors.

17 (3) EFFECT OF NO FINDING OR ACTION.—If a
18 determination is not made under paragraph (1) and
19 no action is taken by the President under subsection
20 (a) not later than 60 days after the date of enact-
21 ment of this Act, the permit for the Keystone XL
22 pipeline described in subsection (a) that meets the
23 requirements of subsections (c) and (d) shall be in
24 effect by operation of law.

1 (c) REQUIREMENTS.—The permit granted under sub-
2 section (a) shall require the following:

3 (1) The permittee shall comply with all applica-
4 ble Federal and State laws (including regulations)
5 and all applicable industrial codes regarding the con-
6 struction, connection, operation, and maintenance of
7 the United States facilities.

8 (2) The permittee shall obtain all requisite per-
9 mits from Canadian authorities and relevant Fed-
10 eral, State, and local governmental agencies.

11 (3) The permittee shall take all appropriate
12 measures to prevent or mitigate any adverse envi-
13 ronmental impact or disruption of historic properties
14 in connection with the construction, operation, and
15 maintenance of the United States facilities.

16 (4) For the purpose of the permit issued under
17 subsection (a) (regardless of any modifications under
18 subsection (d))—

19 (A) the final environmental impact state-
20 ment issued by the Secretary of State on Au-
21 gust 26, 2011, satisfies all requirements of the
22 National Environmental Policy Act of 1969 (42
23 U.S.C. 4321 et seq.) and section 106 of the Na-
24 tional Historic Preservation Act (16 U.S.C.
25 470f);

1 (B) any modification required by the Sec-
2 retary of State to the Plan described in para-
3 graph (5)(A) shall not require supplementation
4 of the final environmental impact statement de-
5 scribed in that paragraph; and

6 (C) no further Federal environmental re-
7 view shall be required.

8 (5) The construction, operation, and mainte-
9 nance of the facilities shall be in all material re-
10 spects similar to that described in the application
11 described in subsection (a) and in accordance with—

12 (A) the construction, mitigation, and rec-
13 lamation measures agreed to by the permittee
14 in the Construction Mitigation and Reclamation
15 Plan found in appendix B of the final environ-
16 mental impact statement issued by the Sec-
17 retary of State on August 26, 2011, subject to
18 the modification described in subsection (d);

19 (B) the special conditions agreed to be-
20 tween the permittee and the Administrator of
21 the Pipeline Hazardous Materials Safety Ad-
22 ministration of the Department of Transpor-
23 tation found in appendix U of the final environ-
24 mental impact statement described in subpara-
25 graph (A);

1 (C) if the modified route submitted by the
2 Governor of Nebraska under subsection
3 (d)(3)(B) crosses the Sand Hills region, the
4 measures agreed to by the permittee for the
5 Sand Hills region found in appendix H of the
6 final environmental impact statement described
7 in subparagraph (A); and

8 (D) the stipulations identified in appendix
9 S of the final environmental impact statement
10 described in subparagraph (A).

11 (6) Other requirements that are standard in-
12 dustry practice or commonly included in Federal
13 permits that are similar to a permit issued under
14 subsection (a).

15 (d) MODIFICATION.—The permit issued under sub-
16 section (a) shall require—

17 (1) the reconsideration of routing of the Key-
18 stone XL pipeline within the State of Nebraska;

19 (2) a review period during which routing within
20 the State of Nebraska may be reconsidered and the
21 route of the Keystone XL pipeline through the State
22 altered with any accompanying modification to the
23 Plan described in subsection (c)(5)(A); and

24 (3) the President—

1 (A) to coordinate review with the State of
2 Nebraska and provide any necessary data and
3 reasonable technical assistance material to the
4 review process required under this subsection;
5 and

6 (B) to approve the route within the State
7 of Nebraska that has been submitted to the
8 Secretary of State by the Governor of Ne-
9 braska.

10 (e) EFFECT OF NO APPROVAL.—If the President
11 does not approve the route within the State of Nebraska
12 submitted by the Governor of Nebraska under subsection
13 (d)(3)(B) not later than 10 days after the date of submis-
14 sion, the route submitted by the Governor of Nebraska
15 under subsection (d)(3)(B) shall be considered approved,
16 pursuant to the terms of the permit described in sub-
17 section (a) that meets the requirements of subsection (c)
18 and this subsection, by operation of law.

19 (f) PRIVATE PROPERTY SAVINGS CLAUSE.—Nothing
20 in this section alters the Federal, State, or local processes
21 or conditions in effect on the date of enactment of this
22 Act that are necessary to secure access from private prop-
23 erty owners to construct the Keystone XL pipeline.

1 **Subtitle B—Budgetary Provisions**

2 **SEC. 511. SENATE POINT OF ORDER AGAINST AN EMER-** 3 **GENCY DESIGNATION.**

4 Section 314 of the Congressional Budget Act of 1974
5 is amended by—

6 (1) redesignating subsection (e) as subsection
7 (f); and

8 (2) inserting after subsection (d) the following:

9 “(e) SENATE POINT OF ORDER AGAINST AN EMER-
10 GENCY DESIGNATION.—

11 “(1) IN GENERAL.—When the Senate is consid-
12 ering a bill, resolution, amendment, motion, amend-
13 ment between the Houses, or conference report, if a
14 point of order is made by a Senator against an
15 emergency designation in that measure, that provi-
16 sion making such a designation shall be stricken
17 from the measure and may not be offered as an
18 amendment from the floor.

19 “(2) SUPERMAJORITY WAIVER AND APPEALS.—

20 “(A) WAIVER.—Paragraph (1) may be
21 waived or suspended in the Senate only by an
22 affirmative vote of three-fifths of the Members,
23 duly chosen and sworn.

24 “(B) APPEALS.—Appeals in the Senate
25 from the decisions of the Chair relating to any

1 provision of this subsection shall be limited to
2 1 hour, to be equally divided between, and con-
3 trolled by, the appellant and the manager of the
4 bill or joint resolution, as the case may be. An
5 affirmative vote of three-fifths of the Members
6 of the Senate, duly chosen and sworn, shall be
7 required to sustain an appeal of the ruling of
8 the Chair on a point of order raised under this
9 subsection.

10 “(3) DEFINITION OF AN EMERGENCY DESIGNA-
11 TION.—For purposes of paragraph (1), a provision
12 shall be considered an emergency designation if it
13 designates any item pursuant to section
14 251(b)(2)(A)(i) of the Balanced Budget and Emer-
15 gency Deficit Control Act of 1985.

16 “(4) FORM OF THE POINT OF ORDER.—A point
17 of order under paragraph (1) may be raised by a
18 Senator as provided in section 313(e) of the Con-
19 gressional Budget Act of 1974.

20 “(5) CONFERENCE REPORTS.—When the Sen-
21 ate is considering a conference report on, or an
22 amendment between the Houses in relation to, a bill,
23 upon a point of order being made by any Senator
24 pursuant to this section, and such point of order
25 being sustained, such material contained in such

1 conference report shall be deemed stricken, and the
2 Senate shall proceed to consider the question of
3 whether the Senate shall recede from its amendment
4 and concur with a further amendment, or concur in
5 the House amendment with a further amendment,
6 as the case may be, which further amendment shall
7 consist of only that portion of the conference report
8 or House amendment, as the case may be, not so
9 stricken. Any such motion in the Senate shall be de-
10 batable. In any case in which such point of order is
11 sustained against a conference report (or Senate
12 amendment derived from such conference report by
13 operation of this subsection), no further amendment
14 shall be in order.”.

15 **SEC. 512. PAYGO SCORECARD ESTIMATES.**

16 The budgetary effects of this Act shall not be entered
17 on either PAYGO scorecard maintained pursuant to sec-
18 tion 4(d) of the Statutory Pay-As-You-Go Act of 2010.

Passed the House of Representatives December 23,
2011.

Attest:

Clerk.

112TH CONGRESS
1ST SESSION

H. R. 3765

AN ACT

To extend the payroll tax holiday, unemployment compensation, Medicare physician payment, provide for the consideration of the Keystone XL pipeline, and for other purposes.