

112TH CONGRESS  
1ST SESSION

# H. R. 3765

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## 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.*

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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**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.