

PUBLIC LAW 112-78—DEC. 23, 2011

TEMPORARY PAYROLL TAX CUT
CONTINUATION ACT OF 2011

Public Law 112–78
112th Congress

An Act

Dec. 23, 2011
[H.R. 3765]

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

Temporary
Payroll Tax Cut
Continuation Act
of 2011.
26 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) **TABLE OF CONTENTS.**—The table of contents of 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.

TITLE I—TEMPORARY PAYROLL TAX RELIEF

SEC. 101. EXTENSION OF PAYROLL TAX HOLIDAY.

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

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

“(1) in the case of the tax described in subsection (a)(1), calendar years 2011 and 2012, and

“(2) in the case of the taxes described in subsection (a)(2), the period beginning January 1, 2011, and ending February 29, 2012.”

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

“(f) **SPECIAL RULES FOR 2012.**—

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

“(A) \$18,350, over

“(B) the amount of wages and compensation received during the portion of the payroll tax holiday period occurring during 2012 subject to tax under section 3101(a) of such Code or section 3201(a) of such Code.

“(2) **COORDINATION WITH DEDUCTION FOR EMPLOYMENT TAXES.**—In the case of a taxable year beginning in 2012, subparagraph (A) of subsection (b)(2) shall be applied as if it read as follows:

“(A) the sum of—

“(i) 59.6 percent of the portion of such taxes attributable to the tax imposed by section 1401(a) of such Code (determined after the application of this section) on so much of self-employment income (as defined in section 1402(b) of such Code) as does not exceed the amount of self-employment income described in paragraph (1), plus

“(ii) one-half of the portion of such taxes attributable to the tax imposed by section 1401(a) of such Code (determined without regard to this section) on self-employment income (as so defined) in excess of such amount, plus’.”

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

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

“(1) **IN GENERAL.**—There is hereby imposed on the income of every individual a tax equal to 2 percent of the sum of wages (within the meaning of section 3121(a)(1) of the Internal Revenue Code of 1986) and compensation (to which section

Definition.

Applicability.

3201(a) of such Code applies) received during the period beginning January 1, 2012, and ending February 29, 2012, to the extent the amount of such sum exceeds \$18,350.

“(2) REGULATIONS.—The Secretary of the Treasury or the Secretary’s delegate shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out this subsection, including guidance for payment by the employee of the tax imposed by paragraph (1).”.

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

- (1) by inserting “of such Code” after “164(f)”;
- (2) by inserting “of such Code” after “1401(a)” in subparagraph (A); and
- (3) by inserting “of such Code” after “1401(b)” in subparagraph (B).

(e) EFFECTIVE DATES.—

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

(2) TECHNICAL AMENDMENTS.—The amendments made by subsection (d) shall take effect as if included in the enactment of section 601 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.

26 USC 1401
note.
Applicability.

TITLE II—TEMPORARY EXTENSION OF UNEMPLOYMENT COMPENSATION PROVISIONS

SEC. 201. TEMPORARY EXTENSION OF UNEMPLOYMENT COMPENSA- TION PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) by inserting after subparagraph (G) the following:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312).

26 USC 3304
note.

SEC. 202. EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) EXTENSION.—Section 2(c)(2)(D)(iii) of the Railroad Unemployment Insurance Act, as added by section 2006 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and as amended by section 9 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111-92) and section 505 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312), is amended—

45 USC 352.

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

(2) by striking “December 31, 2011” and inserting “February 29, 2012”.

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

TITLE III—TEMPORARY EXTENSION OF HEALTH PROVISIONS

SEC. 301. MEDICARE PHYSICIAN PAYMENT UPDATE.

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

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

“(A) IN GENERAL.—Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), and (12)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for the period beginning on January 1, 2012, and ending on February 29, 2012, the update to the single conversion factor shall be zero percent.

“(B) NO EFFECT ON COMPUTATION OF CONVERSION FACTOR FOR REMAINING PORTION OF 2012 AND SUBSEQUENT YEARS.—The conversion factor under this subsection shall

be computed under paragraph (1)(A) for the period beginning on March 1, 2012, and ending on December 31, 2012, and for 2013 and subsequent years as if subparagraph (A) had never applied.”.

SEC. 302. 2-MONTH EXTENSION OF MMA SECTION 508 RECLASSIFICATIONS.

42 USC 1395ww
note.

(a) **IN GENERAL.**—Section 106(a) of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395 note), as amended by section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), section 124 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275), sections 3137(a) and 10317 of the Patient Protection and Affordable Care Act (Public Law 111–148), and section 102(a) of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111–309), is amended by striking “September 30, 2011” and inserting “November 30, 2011”.

42 USC 1395ww
note.

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

(1) **IN GENERAL.**—Subject to paragraph (2), for purposes of implementation of the amendment made by subsection (a), including for purposes of the implementation of paragraph (2) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), for the period beginning on October 1, 2011, and ending on November 30, 2011, the Secretary of Health and Human Services shall use the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 18, 2011 (76 Fed. Reg. 51476), and any subsequent corrections.

(2) **EXCEPTION.**—In determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall, for the period beginning on October 1, 2011, and ending on November 30, 2011, include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by subsection (a) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this paragraph shall not be effected in a budget neutral manner.

42 USC 1395ww
note.

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

SEC. 303. EXTENSION OF MEDICARE WORK GEOGRAPHIC ADJUSTMENT FLOOR.

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

SEC. 304. EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.

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

SEC. 305. EXTENSION OF PAYMENT FOR TECHNICAL COMPONENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES.

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by

section 1(a)(6) of Public Law 106-554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w-4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w-4 note), section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110-173), section 136 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110-275), section 3104 of the Patient Protection and Affordable Care Act (Public Law 111-148), and section 105 of the Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309), is amended by striking “and 2011” and inserting “2011, and the first two months of 2012”.

42 USC 1395w-4
note.

SEC. 306. EXTENSION OF AMBULANCE ADD-ONS.

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

(1) in the matter preceding clause (i), by striking “January 1, 2012” and inserting “March 1, 2012”; and

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

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

42 USC 1395m
note.

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

SEC. 307. EXTENSION OF PHYSICIAN FEE SCHEDULE MENTAL HEALTH ADD-ON PAYMENT.

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

42 USC 1395w-4
note.

SEC. 308. EXTENSION OF OUTPATIENT HOLD HARMLESS PROVISION.

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

(1) in subclause (II)—

(A) in the first sentence, by striking “January 1, 2012” and inserting “March 1, 2012”; and

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

(2) in subclause (III)—

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

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

SEC. 309. EXTENDING MINIMUM PAYMENT FOR BONE MASS MEASUREMENT.

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

(1) in subsection (b)—

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

(B) in paragraph (6)—

(i) in the matter preceding subparagraph (A), by striking “and 2011” and inserting “, 2011, and the first 2 months of 2012”; and

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

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

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

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

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

(1) in paragraph (2)—

(A) by striking “and” at the end of subparagraph (O);

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

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

Time period.

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

SEC. 311. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA).

Sections 1902(e)(1)(B) and 1925(f) of the Social Security Act (42 U.S.C. 1396a(e)(1)(B), 1396r–6(f)) are each amended by striking “December 31, 2011” and inserting “February 29, 2012”.

Appropriation authorization.

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

Activities authorized by part A of title IV and section 1108(b) of the Social Security Act (other than under subsections (a)(3) and (b) of section 403 of such Act) shall continue through February 29, 2012, in the manner authorized for fiscal year 2011, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the applicable portion of the second quarter of fiscal year 2012 at the pro rata portion of the level provided for such activities through the second quarter of fiscal year 2011.

TITLE IV—MORTGAGE FEES AND PREMIUMS

SEC. 401. GUARANTEE FEES.

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

“SEC. 1327. ENTERPRISE GUARANTEE FEES.

12 USC 4547.

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

Applicability.

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

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

“(B) includes—

“(i) the guaranty fee charged by the Federal National Mortgage Association with respect to mortgage-backed securities; and

“(ii) the management and guarantee fee charged by the Federal Home Loan Mortgage Corporation with respect to participation certificates.

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

“(b) INCREASE.—

“(1) IN GENERAL.—

“(A) PHASED INCREASE REQUIRED.—Subject to subsection (c), the Director shall require each enterprise to charge a guarantee fee in connection with any guarantee of the timely payment of principal and interest on securities, notes, and other obligations based on or backed by mortgages on residential real properties designed principally for occupancy of from 1 to 4 families, consummated after the date of enactment of this section.

“(B) AMOUNT.—The amount of the increase required under this section shall be determined by the Director to appropriately reflect the risk of loss, as well the cost of capital allocated to similar assets held by other fully private regulated financial institutions, but such amount shall be not less than an average increase of 10 basis points for each origination year or book year above the average fees imposed in 2011 for such guarantees. The Director shall prohibit an enterprise from offsetting the cost of the fee to mortgage originators, borrowers, and investors by decreasing other charges, fees, or premiums, or in any other manner.

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

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

“(B) the risk of loss is allowed to increase, through lowering of the underwriting standards or other means, for the primary purpose of meeting the requirements of this section.

“(3) DEPOSIT IN TREASURY.—Amounts received from fee increases imposed under this section shall be deposited directly into the United States Treasury, and shall be available only to the extent provided in subsequent appropriations Acts. The fees charged pursuant to this section shall not be considered a reimbursement to the Federal Government for the costs or subsidy provided to an enterprise.

“(c) PHASE-IN.—

Time period.

“(1) IN GENERAL.—The Director may provide for compliance with subsection (b) by allowing each enterprise to increase the guarantee fee charged by the enterprise gradually over the 2-year period beginning on the date of enactment of this section, in a manner sufficient to comply with this section. In determining a schedule for such increases, the Director shall—

“(A) provide for uniform pricing among lenders;

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

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

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

Reports.

“(d) INFORMATION COLLECTION AND ANNUAL ANALYSIS.—The Director shall require each enterprise to provide to the Director, as part of its annual report submitted to Congress—

“(1) a description of—

“(A) changes made to up-front fees and annual fees as part of the guarantee fees negotiated with lenders;

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

“(C) any adjustments required to improve for future origination years or book years, in order to be in complete compliance with subsection (b); and

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

“(e) ENFORCEMENT.—

“(1) REQUIRED ADJUSTMENTS.—Based on the information from subsection (d) and any other information the Director deems necessary, the Director shall require an enterprise to make adjustments in its guarantee fee in order to be in compliance with subsection (b).

“(2) NONCOMPLIANCE PENALTY.—An enterprise that has been found to be out of compliance with subsection (b) for any 2 consecutive years shall be precluded from providing any guarantee for a period, determined by rule of the Director, but in no case less than 1 year.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be interpreted as preventing the Director from initiating and implementing an enforcement action against an enterprise, at a time the Director deems necessary, under other existing enforcement authority.

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

SEC. 402. FHA GUARANTEE FEES.

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

“(C)(i) In addition to the premiums under subparagraphs (A) and (B), the Secretary shall establish and collect annual premium payments for any mortgage for which the Secretary collects an annual premium payment under subparagraph (B), in an amount described in clause (ii).

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

“(II) During the 2-year period beginning on the date of enactment of this subparagraph, the Secretary shall increase the number of basis points of the annual premium payment collected under this subparagraph incrementally, as determined appropriate by the Secretary, until the number of basis points of the annual premium payment collected under this subparagraph is equal to the number described in subclause (I).”

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

(c) REPORT REQUIRED.—Not later than 30 days before the date on which the Secretary of Housing and Urban Development makes a determination under subsection (b)(2), the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that—

- (1) explains the basis for the determination; and
- (2) identifies the date on which the Secretary plans to make the determination.

Time period.
Determination.

Effective date.

Determination.
12 USC 1709
note.

TITLE V—OTHER PROVISIONS

Subtitle A—Keystone XL Pipeline

SEC. 501. PERMIT FOR KEYSTONE XL PIPELINE.

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

(b) EXCEPTION.—

(1) IN GENERAL.—The President shall not be required to grant the permit under subsection (a) if the President determines that the Keystone XL pipeline would not serve the national interest.

President.

Deadline.

Determination.

(2) **REPORT.**—If the President determines that the Keystone XL pipeline is not in the national interest under paragraph (1), the President shall, not later than 15 days after the date of the determination, submit to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House of Representatives, the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives a report that provides a justification for determination, including consideration of economic, employment, energy security, foreign policy, trade, and environmental factors.

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

(c) **REQUIREMENTS.**—The permit granted under subsection (a) shall require the following:

(1) The permittee shall comply with all applicable Federal and State laws (including regulations) and all applicable industrial codes regarding the construction, connection, operation, and maintenance of the United States facilities.

(2) The permittee shall obtain all requisite permits from Canadian authorities and relevant Federal, State, and local governmental agencies.

(3) The permittee shall take all appropriate measures to prevent or mitigate any adverse environmental impact or disruption of historic properties in connection with the construction, operation, and maintenance of the United States facilities.

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

(A) the final environmental impact statement issued by the Secretary of State on August 26, 2011, satisfies all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

(B) any modification required by the Secretary of State to the Plan described in paragraph (5)(A) shall not require supplementation of the final environmental impact statement described in that paragraph; and

(C) no further Federal environmental review shall be required.

(5) The construction, operation, and maintenance of the facilities shall be in all material respects similar to that described in the application described in subsection (a) and in accordance with—

(A) the construction, mitigation, and reclamation measures agreed to by the permittee in the Construction Mitigation and Reclamation Plan found in appendix B of the final environmental impact statement issued by the Secretary of State on August 26, 2011, subject to the modification described in subsection (d);

(B) the special conditions agreed to between the permittee and the Administrator of the Pipeline Hazardous

Materials Safety Administration of the Department of Transportation found in appendix U of the final environmental impact statement described in subparagraph (A);

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

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

(6) Other requirements that are standard industry practice or commonly included in Federal permits that are similar to a permit issued under subsection (a).

(d) MODIFICATION.—The permit issued under subsection (a) shall require—

(1) the reconsideration of routing of the Keystone XL pipeline within the State of Nebraska;

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

(3) the President—

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

(B) to approve the route within the State of Nebraska that has been submitted to the Secretary of State by the Governor of Nebraska.

(e) EFFECT OF NO APPROVAL.—If the President does not approve the route within the State of Nebraska submitted by the Governor of Nebraska under subsection (d)(3)(B) not later than 10 days after the date of submission, the route submitted by the Governor of Nebraska under subsection (d)(3)(B) shall be considered approved, pursuant to the terms of the permit described in subsection (a) that meets the requirements of subsection (c) and this subsection, by operation of law.

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

Subtitle B—Budgetary Provisions

SEC. 511. SENATE POINT OF ORDER AGAINST AN EMERGENCY DESIGNATION.

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

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

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

“(e) SENATE POINT OF ORDER AGAINST AN EMERGENCY DESIGNATION.—

“(1) IN GENERAL.—When the Senate is considering a bill, resolution, amendment, motion, amendment between the Houses, or conference report, if a point of order is made by a Senator against an emergency designation in that measure, that provision making such a designation shall be stricken from the measure and may not be offered as an amendment from the floor.

“(2) SUPERMAJORITY WAIVER AND APPEALS.—

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

“(B) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this subsection shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this subsection.

“(3) DEFINITION OF AN EMERGENCY DESIGNATION.—For purposes of paragraph (1), a provision shall be considered an emergency designation if it designates any item pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

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

“(5) CONFERENCE REPORTS.—When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a bill, upon a point of order being made by any Senator pursuant to this section, and such point of order being sustained, such material contained in such conference report shall be deemed stricken, and the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.”.

SEC. 512. PAYGO SCORECARD ESTIMATES.

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

Approved December 23, 2011.

LEGISLATIVE HISTORY—H.R. 3765:

CONGRESSIONAL RECORD, Vol. 157 (2011):

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