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## ***IDENTITY THEFT RED FLAGS RULE DELAYED AGAIN***

Once again, the Federal Trade Commission (FTC) is delaying enforcement of the so-called “Red Flags” Rule through December 31, 2010. The Rule has been controversial from the “get-go.” The Rule was developed under the Fair and Accurate Credit Transactions Act, in which Congress directed the FTC and other agencies to develop regulations requiring “creditors” and “financial institutions” to address the risk of identity theft. The resulting Red Flags Rule requires all such “entities” that have “covered accounts” to develop and implement written identity theft prevention programs to help identify, detect, and respond to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft. The definitions seem to cover everybody and their brothers including a lot of retailers and consumer service providers.

The Rule became effective on January 1, 2008, with full compliance for all covered entities originally required by November 1, 2008. The FTC has delayed the effective date several times now.

The impression is the FTC has been hoping Congress would save it from itself. Said the FTC in announcing the new delay, “The Commission urges Congress to act quickly to pass legislation that will resolve any questions as to which entities are covered by the Rule and obviate the need for further enforcement delays.”

## ***BRANDING***

The new health care law is the Patient Protection and Affordable Care Act. In the world of Washington that should boil down to the acronym “PPACA.” Looks like the law is getting a face lift already. We noticed in executive branch circles, the short hand they are using is “ACA” for the Affordable Care Act. Just want to keep you ahead of the fashion trends.

## ***COMPETES ACT***

I have been reporting on the see-saw ride the COMPETES Act, H.R. 5116, has been on in the House. (See the Weekly of 5-10-10 for the details of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act.)

Passage became a tussle of wills between the majority and minority regarding the size of government. When I last reported, the Republicans used a parliamentary maneuver, a motion to recommit with instructions, to stop the bill. Basically, the motion tells a committee to amend the text in a certain way before bringing the bill back. Generally, the bill does not return. Immediately after the motion to recommit was passed, the majority “postponed” the proceedings.

Just before the House went home for the Memorial Day recess, the Democrats pulled out an even fancier parliamentary maneuver that is rarely used and I had not seen before myself. The Chair announced the unfinished business was the resumption of proceedings on H.R. 5116. At the time when proceedings had been postponed on May 13, 2010, the motion to recommit with instructions had been adopted and pursuant to the instructions contained in the motion, the amendment required to be reported back to the House had not yet been submitted. Pursuant to the instructions contained in the motion, the Chair recognized the chairman of the committee of jurisdiction (Representative Bart

Gordon (D-TN) of the Science and Technology Committee) for the purpose of offering the amendment. Representative Gordon demanded the question of adoption on the amendment be divided into each 9 of its components. The Chair announced that the question would be divided and began putting the question of adoption on each portion. Some passed, some failed, but in the end the House ended up passing the bill.

### ***EXTENDERS***

The House passed H.R. 4213, the American Jobs and Closing Tax Loopholes Act, on May 28, 2010 by a 215-204 vote. The bill passed by the House was a “slimmed down” version of the extender bill that had grown to a \$200 billion waistline. The House-passed version has been described as a \$110+ billion version and about \$50+ billion of it is not offset. The big ticket items dropped were an extension of the COBRA subsidies and some Medicaid assistance for the states.

Most of the temporary one year renewals of expiring and expired tax credits and deductions such as the R&D Credit and the retailer store improvements accelerated write off, remain in the bill. So do the revenue offsets including the professional-services-S Corporation-shareholder-income-recharacterization-as-wages provision.

The reality is the House passed version is never going to make it into law “as is.” The Senate went home before the House acted. It is pretty clear that the Senate will make significant modifications to it when they get to it upon their return. Some Senate Democrats have already indicated that they will not vote for it in its current form.