As laws and government regulations are an important consideration for all of us in the cash flow business we must understand which ones affect – or will affect – our cash flow business and how.

Existing and newly proposed laws and/or regulations can have intended or unintended consequences for the economy on the whole, for specific markets, and even for certain businesses and individuals in particular.

They can have an impact on your business directly – or even indirectly, depending on how your clients and prospects are affected.

Nevertheless, it’s difficult to speculate what kind of future laws and government regulations might come into play and how they could affect the cash flow industry on a whole or specific cash flow niches in particular. What we can do however, is look at the status quo and how people “think” they might be affected.

Unfortunately, much of what people think these days is based on the talking points touted by the media and government officials, which, in turn, are heavily clouded by ideology and agenda.

Therefore, you have to choose what you believe to be true, and so it ultimately comes down to your own belief system or ideology anyway.
OK, so what is the status quo regarding laws, rules, and regulations in the cash flow industry?

Well, as many of you know, some cash flow niches are “regulated” while others are not.

For example, here in the US, one of the more recent big regulatory frameworks was signed into law in 2010 as the Dodd-Frank act. It deals with Wall Street Reform and the Consumer Protection Act.

Following the housing market collapse with all its financial implications, the Dodd-Frank act’s stated objectives – in a nutshell – were primarily to ensure that the stability of the US financial system is not at risk and that consumers are protected from “predatory” financial practices and their consequences.

While this may sound great at the outset, the full implementation of the Dodd-Frank act will nevertheless have consequences for investors and buyers of private notes. And they had better get ahead of the curve and be aware of what those consequences are.

While the notes business is just one example, generally speaking, in the US, cash flows dealing with consumer payments, equity, and securities typically do have some form of a state and/or federal regulatory framework, while others, such as factoring and leasing for instance, do not.

**FACTORING FALLS UNDER EACH COUNTRY’S LAWS THAT GOVERN CONTRACTS BETWEEN PARTIES AND THE ASSIGNMENT OF RECEIVABLES**

But it’s not quite that simple. Factoring, for example, is by no means “lawless”. In fact, it is indeed embedded in a variety of legal and regulatory settings, but they depend on the country where factoring is being used. Factoring falls under each country’s laws that govern contracts between parties and the assignment of receivables.

Now, when looking at the historical development of factoring, we find that in countries where such laws are well established and “court-tested” – as is the case in the US and some European countries – factoring has matured without the need for any specific regulatory framework or overseeing body.

Factoring companies follow their own corporate governance rules and their contractual agreements and obligations. That arrangement has promoted and advanced the evolution of factoring in these countries.
By the way, besides common law, contract law, state and local law, the regulations most germane and relevant to the governance of factoring in the US are summarized within the Uniform Commercial Code (UCC) in general and its Article 9 in particular.

THE PRESENCE OF A MYRIAD OF GOVERNMENT REGULATIONS restricts and limits, while the absence of government regulations and restrictions promotes the development of factoring.

At the other end of the scale are countries such as China and Russia with their extremely tight oversight and regulations.

For example, and among other restrictions, factoring may only be provided by licensed, commercial banks. Such overly restrictive regulations can prevent factoring from developing properly in a country.

Taking a 10,000 ft view, one could probably surmise that the presence of a myriad of government regulations restricts and limits, while the absence of government regulations and restrictions promotes the development of factoring.

Perhaps similar observations could even be made for other financial instruments of a similar ilk, if such trended, historical data existed.

The next logical conclusion would then be to deduce that depending on one’s objectives one would either use tight oversight, regulations, and restrictions to suppress something, or leave it up to “the market” (with its existing law) to regulate itself, if one wanted it to thrive.

By the way and as a side note, industry experts estimate that if today, factoring ceased to exist in the US, thousands of businesses would have to close their doors (and many more would have to struggle to get by), billions of sales would be lost for the economy, and the unemployment rate would increase by two percentage points.

OK, so what is the next “big thing” coming down the line that will affect the economy and thus our industry?

The current elephant in the room is the ACA (Affordable Care Act aka ObamaCare), which represents the most significant government expansion and regulatory overhaul of the country’s healthcare system since the passage of Medicare and Medicaid in 1965.

How will it affect us? Who knows! I guess it depends on whom you ask. In the early days, no one really knew.

Remember the former Speaker of the House talking about the initial bill
saying, “you have to pass it first, to find out what’s in it”?

Well they did pass it, and then opinions were just split right down ideology lane and party lines as could have been expected. Again, not very helpful.

Of course, you could read the 2,400+ pages of the initial act that was written into law in 2010 and try to make sense of it yourself. But even if you managed that, there are still so many associated regulations that still need to be written, so you’d still not even know half of it.

Case in point: back in 2011, one journalist reported that the first set of regulations covered six pages of the actual legislation – but resulted in 429 pages of regulations. Well, if we use this 5:1 ratio and project it onto the entire ACA, we’d end up with more than 170,000 pages. Hmmmm… did anyone think that the US tax code with about 13,000 pages or so was perhaps a bit too much?

So how do we know in the end if ACA will have an overall positive or negative effect on things?

In absence of “clean” (i.e., unbiased) information, all we can really do is take the pulse of the market and then simply choose what we want to believe.

Well, I’ve tried to do just that. Here are some things I’ve noticed:

WE’RE NOW PAYING EXACTLY TWICE AS MUCH FOR HEALTH CARE INSURANCE PER YEAR AS WE HAD BEEN PAYING DURING EACH OF THE PREVIOUS THREE YEARS

On the personal side, effective August 1, 2013 our own health care insurance premium (while with the same insurance company and with the same deductible since 2010) has been increased by a whopping 100%.

The reason for this increase we were told had absolutely nothing to do with us and was “not because of an increase in your claims, but because of the general increase in cost for this particular plan”. Seriously? Affordable care or just fair share?

Either way, we’re now paying exactly twice as much for health care insurance per year as we had been paying during each of the previous three years.

The next thing I noticed was that while opinions regarding ACA were split down party lines in the beginning – as would be expected – there now seems to be some “unusual” movement or even dissent, as we get closer to 2014.

For one, the Democrat and senior US senator from Montana, Max Baucus, who has played an influential role in the
debate over the US health care reform, now calls the ACA a “train wreck”.

But perhaps because of his ties to the health insurance and pharmaceutical industries, and having been one of the largest beneficiaries in the Senate of campaign contributions from these industries, such a break with the party line may not be all that surprising.

Still – a “train wreck” is a rather gruesome moniker and a scary perspective.

And the fact that even the President is now asking to delay the employer mandate – but not the individual one – for a year may indeed lend some credence to concerns about the new law and how well it may have been thought through to begin with.

If it’s all about the people and the “middle class”, then why should only the employer mandate be delayed?

In a letter to Nancy Pelosi and Harry Reid Hoffa said, “Right now, unless you and the Obama Administration enact an equitable fix, the ACA will shatter not only our hard-earned health benefits, but destroy the foundation of the 40 hour work week that is the backbone of the American middle class.”

Somehow, you might get a feeling that a law may not be quite so good when even the Teamsters – who previously supported it – are turning on it.

And here is yet another unexpected and perhaps interesting situation: The NTEU (the IRS employees union) doesn’t seem to like ObamaCare either.

Although thousands of new IRS agents are going to make sure that we all comply with the law, those same agents (including their current chief, Acting Commissioner, Daniel Werfel) are now looking to avoid moving to an ACA health care plan themselves.

In fact, the union officials are encouraging their union members to write a letter to their congressional representatives to let them know that the members are opposed to receiving coverage through ACA.

Currently, their health care insurance is provided through the Federal
Employees Health Benefits Program, the same program that covers members of Congress.

And while members of Congress have already been exempt from the new law, their staffers, too, are now looking for a way out, because they are afraid they couldn’t afford the higher cost of health care under ACA and would thus probably have to quit their jobs.

So, with Congress, staffers, and IRS agents all trying to scramble, why is ACA good for the goose if it’s not good for the gander?

Finally, how does Joe Public feel about all this ACA jazz? Here are some anecdotes with interesting narratives.

When asked about the impact of ACA on small businesses, in a survey conducted by the US Chamber of Commerce between June 21 – July 8, 2013 among 1,200 small businesses, 20% of respondents said they will cut hours to reduce the number of their full-time employees. 24% stated that they will reduce hiring, and another 23% claimed they will replace full-timers with part-timers.

If we choose to believe that this will indeed happen, then someone should really explain to me how such a response could possibly fuel the economy and the job market – because I sure don’t get it.

Next, a 2013 Deloitte survey among some 600+ US physicians found that 62% of them are planning to retire over the next one to three years. About four out of ten of them cite ACA as the reason.

**SINCE BUSINESSES ARE INTRINSICALLY LINKED WITH THE ECONOMY, EVERY BUSINESS CLOSURE HAS AN EFFECT ON SOMETHING ELSE**

A case in point: After 40 years in practice, a gynecologist in Texas is closing his office because he is finally no longer able to provide the level of service he considers necessary to take care of his patients.

In the interview, he said that costs are going up and reimbursements are going down, and that there is too much bureaucracy.

With increasing costs and decreasing reimbursements, he is facing a decline in revenue in conjunction with an increase in overhead.

He said that a doctor now only has seven minutes to service a patient in order to guarantee that the reimbursements are sufficient to cover the expenses. He believes this is not enough time to provide the necessary
care patients need and deserve and that is why he will rather provide no service than poor service.

And as he was not able to collect enough to cover his salary plus the overhead, he had not gotten a paycheck from his practice since 2010 but instead had to take $200K of his personal savings to survive.

**MORE UN- AND UNDER-EMPLOYMENT, MORE POVERTY, AND LESS AVAILABLE SPENDING DOLLARS WOULD ALL LEAD TO LESS DEMAND AND CONSEQUENTLY TO LESS SUPPLY**

I don’t know, but loosing experienced physicians at such a rate would actually be quite a bleak outlook just from a health care point of view alone.

But let’s not forget, since businesses are intrinsically linked with the economy, every business closure has an effect on something else. It can affect its vendors, its customers (i.e., patients in this case), the social footprint and infrastructure of its local community, and of course, the economy overall.

Will the loss of physicians also affect the cash flow industry? Maybe the medical receivables or equipment-leasing sector might notice the change.

Last but not least, there was that recent TV interview with Bob Westbrook. For almost 20 years, Bob has been a CiCi’s Pizza franchise owner. But despite the fact that his Texas stores were the top three franchise performers, they didn’t make him enough money to provide health insurance to all his 90+ full-time employees.

Bob said that even the penalty would have cost him $78,000 more than what he earned him in 2011. He blames the ACA’s employer mandate for now having to sell his restaurants rather than pizza and thus killing his entrepreneurial dream.

My take: Sometimes anecdotes are just that and nothing more. However, if they should prove to be an early indication of what we can expect when ACA is in full bloom, I’m guessing that it will not be pretty.

If the cost of the new health care law to small businesses should indeed force some of them to close their doors (or even just to reduce the number of their [full-time] employees and/or their output), we are likely to see some drastic changes in our economy.

More un- and under-employment, more poverty, and less available spending dollars would all lead to less demand and consequently to less supply.

This would become a vicious circle and harder and harder to break over time.
And since our economy is heavily reliant on consumer spending, where would it all end?

And what about the cash flow industry? Frankly, I think there are still so many variables and hypotheticals in play that any specific assumption or conclusion beyond the obvious (e.g. if it’s good it will be good, if it’s bad it will be bad) would be premature and still well beyond speculation.

But as I said early on, there is no crystal ball, and in absence of “clean” (unbiased) information, we just choose what and whom we want to believe.

Meanwhile, we just continue to step up to the plate and try to hit it out of the park whenever it’s time to play!

To your success,

Ralf Bieler

Co-Founder, President, Chief Executive Officer
Cash Flow Exclusive, LLC
Ralf@CashFlowExclusive.com