

It's Back: Legislation to Regulate "Political Intelligence" Activities is Re-Introduced in the House

September 2014

On September 18, 2014, Rep. Louise Slaughter (D-NY), along with principal co-sponsors John Duncan (R-TN) and Tim Walz (D-MN), introduced legislation to amend the Lobbying Disclosure Act of 1995 (LDA) to require registration, quarterly disclosures of clients, income, and activities, and semi-annual disclosures of certain contributions, by "political intelligence consultants" and "political intelligence firms." This legislation—entitled the Political Intelligence Transparency Act of 2014—would also amend post-government employment conflict of interest provisions, (set forth in the federal criminal code at Title 18 U.S.C. Section 207), to prohibit "political intelligence" gathering contacts by covered former executive branch and legislative branch officials and employees with their former employing offices, agencies, and departments; violations of these provisions could be punished as felonies.

Significant provisions of the Political Intelligence Transparency Act include the following:

- A "political intelligence contact" is defined as "any oral or written communication (including an electronic communication)" to a covered executive branch or legislative branch official "the information derived from which is for use in analyzing the markets for securities, commodities for future delivery, swaps, or security-based swaps, or in informing investment decisions in any such market"
- Although this definition of "political intelligence contact" is still arguably overbroad, the approach taken to defining this term

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in the Political Intelligence Transparency Act does represent a modification of the blunderbuss approach used to define the term in the political intelligence provisions eventually removed from the STOCK Act of 2012. As defined in that earlier legislation, a "political intelligence contact" would have included *any* communication with a government official the information derived from which was intended for use "in informing investment decisions," without limitation to investment decisions concerning a securities, commodities, or swaps related market.

- A "political intelligence firm" is defined as any "person or entity that has 1 or more employees who are political intelligence consultants"
- A "political intelligence consultant" is "any individual who is employed or retained by a client for financial or other compensation for services that include one or more political intelligence contacts, including an individual who provides brokerage and research services"
- Two important points should be noted about this definition. First, this is a "one and done" definition. One political intelligence contact, or one prospective contact, is all it takes to cross the threshold. Unlike with the definition of "lobbyist" under the LDA, to meet the definition of "political intelligence consultant" there would be no additional requirement that an individual spend a particular percentage of his or her time for a client on political intelligence activities. Second, individuals providing brokerage or research services are swept up in this definition. This point will be of substantial interest to firms in the financial services sector.
- The term "political intelligence contact" includes an exception for any communication "made by a representative of a media organization . . . if the purpose of the communication is gathering and disseminating news and information to the public." The definition of "media organization" is that used in the LDA: "a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication."
- As noted above, provisions of the Political Intelligence Transparency Act would criminalize certain contacts by covered former government officials with their former employing entities if such contacts are made during relevant post-government employment time periods and are made "with the intent to gain information for use in analyzing securities or commodities markets, or in informing investment decisions in securities or commodities markets."

In introducing the Political Intelligence Transparency Act, Rep. Slaughter fulfilled a pledge she made to re-introduce legislation to regulate and require disclosure of political intelligence activities after the STOCK Act of 2012 was passed by Congress, and enacted, without inclusion of provisions relating to political intelligence. Rep. Slaughter renewed that pledge in the wake of allegations that an April 2013 leak of confidential government information regarding the determination of Medicare reimbursement rates may have provided the basis for a spike in the trading volume and value of the securities of certain health insurance firms. Sen. Charles Grassley (R-IA) – who conducted an investigation into the alleged Medicare reimbursement rate leak and subsequent trading and who had successfully amended the Senate version of the STOCK Act of 2012 to include provisions concerning political intelligence—has also pledged to reintroduce legislation to regulate political intelligence activities. As of the date of the writing of this article, however, Sen. Grassley had not

introduced companion legislation to the Political Intelligence Transparency Act in the Senate.

It is not known whether the title of the Political Intelligence Transparency Act was chosen in spite, or because, of the colloquial definition of the related acronym.