

**NCIS General Administrative Message J-0002, subject: USA PATRIOT Act
dated 26 Feb 2003**

1. The USA PATRIOT Act expands certain National Security Letter (NSL) authorities to the Director, Naval Criminal Investigative Service or his designee. Previously only the Director or Deputy Director of the Federal Bureau of Investigation (FBI) could issue NSLs.
2. The authority to issue an NSL is found in three statutes: The Right to Financial Privacy Act (RTFPA), The Fair Credit Reporting Act (FCRA), and the Electronic Communications Privacy Act (ECPA). All three statutes contain a provision that prohibits disclosing the request for records to anyone except those with a need to know to process the request. The NSLs are useful because they may establish patterns of a target, identify acquaintances or relationships of a target, identify unexplainable wealth, or develop further leads.
3. Under the RTFPA (12 USC 3414), an NSL may be submitted to any financial institution in the United States or its territories. Financial institutions include banks, savings banks, card issuers, loan companies, savings associations, credit unions, and consumer finance institutions. An NSL may be issued in all cases where the records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, to include espionage. The customer whose records are sought need not be the target of the investigation. In other words, if the target of a terrorism investigation is Mohammed Atta, an NSL may be issued for the records of Atta, as well as others, if those records are relevant to the investigation of Atta. The responsive records are all records the financial institution maintains about that customer, to include IRS records. For example, a mortgage company may have IRS records, tax returns, employer information, payment history, past credit reports, and information on cosigners. The records from a financial institution may show the flow of money into and out of accounts. The records obtained may also establish relationships between targets.
4. The FBI or NCIS may issue an NSL pursuant to the RTFPA. Specifically, within the FBI, the Director, his designee not lower than Deputy Assistant Director (DAD) at FBI Headquarters (HQTRS), or a Special Agent in Charge (SAC) at a field office (FO) may request and compel disclosure of records from a financial institution. Within NCIS, the Director, Deputy Director, Assistant Director for Counterintelligence, Assistant Director for Counterterrorism, Deputy Assistant Director for Counterintelligence and Deputy Assistant Director for Counterterrorism may request the disclosure. Whereas the FBI may compel disclosure of the records, NCIS may only request the disclosure.
5. Two sections of the FCRA (15 USC 1681) provide for the issuance of NSLs. Both sections, Disclosure to FBI for counterintelligence purposes (15 USC 1681u) and Disclosures to governmental agencies for counterterrorism purposes (15 USC 1681v) apply to credit reporting agencies, such as TRW and Equifax. Both sections require the credit reporting agency, upon receipt of an NSL, to provide their records containing names and addresses of all financial institutions at which a consumer maintains or has maintained an account, present and former addresses of the consumer, and names and addresses of present and former employers of the consumer. These records may be useful to identify subsequent financial institutions to which an

NSL under the RTFPA should be issued and to identify past addresses of a target. The consumer need not be the target of the investigation.

6. Pursuant to 15 USC 1681v, the Secretary of the Navy, the General Counsel of the Department of the Navy (GC), or a designated supervisory official may issue an NSL when the records sought are necessary for an investigation or analysis related to international terrorism, and not clandestine intelligence activity. On December 18, 2002, the GC designated the NCIS Director, Deputy Director, Assistant Director for Counterintelligence, Assistant Director for Counterterrorism, Deputy Assistant Director for Counterintelligence and Deputy Assistant Director for Counterterrorism as supervisory officials able to issue an NSL pursuant to 15 USC 1681v.
7. Pursuant to 15 USC 1681u, when the information sought is for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, only the Director, FBI, his designee not lower than DAD at FBI HQTRS, or a SAC at a FBI FO can issue an NSL. NCIS does not have the authority under 15 USC 1681u to issue an NSL.
8. ECPA also contains a section for issuing NSLs. The section titled, Counterintelligence access to telephone toll and transactional records (18 USC 2709), provides for the Director, FBI, his designee not lower than DAD at FBI HQTRS, or a SAC at a FBI FO to issue an NSL to a wire communications provider, such as a telephone company, or an electronic communications provider, such as an Internet service provider (ISP). In response to an NSL, the provider shall provide subscriber information to include the name and address on the account, length of the account, and local and long distance records. This section applies when the records sought are relevant to an authorized investigation of international terrorism or clandestine intelligence activities. The subscriber need not be the target of the investigation. Only the FBI has the authority to issue an NSL under ECPA.
9. Another valuable tool, although not an NSL, is governed by Requests by authorized investigative agencies, 50 USC 436. This section authorizes NCIS to request from financial agencies, financial institutions, consumer reporting agencies, and commercial entities with records pertaining to travel outside the U.S., all financial records and information and records pertaining to travel outside the U.S. The request must contain a written certification signed by the NCIS Director, Deputy Director, Assistant Director for Counterintelligence, or Assistant Director for Counterterrorism. The certification must state that the person concerned is or was an employee of the Executive Branch, which includes persons on active duty and DoD civilians; the person signed a consent form for such records; and the person has or had access to classified material within the last three years. The request may be pursued only if reasonable grounds exist to believe that the person is or may be disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power; the person has incurred excessive indebtedness or has acquired a level of affluence which cannot be explained by other information; or the person had the capability and opportunity to disclose classified information which is known to have been lost or compromised to a foreign power or agent of a foreign power.

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10. Although NCIS has the authority to issue an NSL in many cases, we should do so only in those cases in which NCIS exercises primary jurisdiction or the FBI has deferred jurisdiction. Case agents must submit a draft NSL and the supporting documentation to the desk officer when requesting NCIS to issue an NSL. The desk officer will provide the draft NSL to an attorney in the National Security Law Unit (NSLU) for a legal review before submitting the NSL for signature. The case agent must contact the anticipated recipient of the NSL before the NSL is issued.

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