

[Redacted] (OGC) (FBI)

From: [Redacted] (OGC) (FBI)

Sent: Friday, December 02, 2005 2:30 PM

To: [Redacted] (OGC) (FBI)

[Large redacted block]

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[Redacted]; THOMAS, JULIE F. (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted] (CTD) (FBI)

Subject: FW: NSLs

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FYI - these are the NSL topics that I will be (VERY) briefly discussing on Monday at the meeting.

- 1) per the below, putting into our website some general policy as to scope of NSLs.
- 2) drafting policy as to classification of NSL material (see draft document attached)
- 3) drafting policy for uniform treatment of ECPA payments (see draft document attached)
- 4) issue of whether NSLs in which we get the wrong material from the carrier because of carrier mistake should be reported as a potential IOB
- 5) issue as to what we should do with wrong material obtained from carrier (either by our mistake or carrier mistake) - whether FBI has a document destruction policy allowing us to destroy the documents, should they be returned to carrier, should they be sealed, etc.
- 6) drafting policy re serving NSLs by non-secure fax - Security Division says that, in addition to federal expressing NSLs, which has been allowed since spring, they will approve EC authorizing non-secure fax of NSLs by the FBI but will not authorize non-secure fax of the return information by the recipient.

If you can think of any other NSL issues you would like raised, please let me know.

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[Redacted]

-----Original Message-----

From: [Redacted] (OGC) (FBI)

Sent: Thursday, November 10, 2005 12:22 PM

To: FBI_ALL CDCs

Cc: Caproni, Valerie E. (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); [Redacted] (OGC) (FBI); [Redacted]

[Redacted] (OGC) (FBI)

Subject: NSLs

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NSL VIO-19823

12/2/2005

Please help me again. We are getting pummeled with questions here in D.C., in light of a newspaper article, as to the scope of NSLs, and people are bandying about this idea that we get the records of people who were in touch with people who were in touch with people. . . . We would like to combat this notion with a fair explanation as to how we generally perceive the scope of telephone NSLs.

So I am trying to see if there is some sort of consensus as to the breadth of telephone NSLs that we issue. The advice I generally give, and am wondering if it applies to you as well, [redacted]

[redacted]

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That's how I generally see relevance, although obviously in certain cases, there may be reasons to vary the breadth of the request. [redacted]

[redacted] But as far as being able to say that XYZ is generally the policy of the FBI with respect to the scope of telephone NSLs, anyone have any major issues with what is set forth above?

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thanks [redacted]

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[redacted] (OGC) (FBI)

From: BEERS, ELIZABETH RAE (OCA) (FBI)
Sent: Monday, November 28, 2005 2:08 PM
To: b6 CAPRONI, VALERIE E. (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); [redacted]
b7C [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI)
Subject: DOJ Ltr re NSLs

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These letters went to the Hill last week and are provided FYI. Thanks for your efforts on this issue.



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Beth Beers
Special Counsel
Office of Congressional Affairs
202-324-[redacted] b2

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DATE 07-30-2007 BY 65179dmh/ker/lmf

[Redacted] (OGC)(FBI)

From: [Redacted] (OGC) (FBI)

Sent: Thursday, August 04, 2005 8:40 AM

To: [Redacted] (OGC)(FBI); [Redacted]

[Redacted] (OGC) (FBI) [Redacted] (CTD)(FBI)

Cc: BOWMAN, MARION E. (OI) (FBI) [Redacted] (OGC)(FBI)

Subject: FW: 2709 Attachment

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[Redacted] has take a crack at defining "electronic communications transactional records" which we request via NSLs and which is not defined in any way, shape or form in the legislation.

Let me know if you have any comments.

Thanks, [Redacted]

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Unit Chief
National Security Law Policy and Training Unit
FBI HQ Room 7975

STU III: (202) 324 [Redacted]

Unclassified Fax: (202) 324 [Redacted]

Secure Fax: (202) 324 [Redacted]

-----Original Message-----

From: [Redacted] (OGC)(FBI)

Sent: Wednesday, August 03, 2005 11:10 AM

To: [Redacted] (OGC) (FBI) [Redacted] (OGC) (FBI)

Subject: 2709 Attachment

UNCLASSIFIED
NON-RECORD

FYI

[Redacted]
Assistant General Counsel
National Security Law Branch
Office of General Counsel FBI
202-324 [Redacted] Voice
[Redacted] Pager
202-324 [Redacted] Secure Fax
202-324 [Redacted] Fax

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NSL VIO-19859

8/4/2005

RFPA National Security Letter (NSL) Checklist
Financial Records (12 U.S.C. § 3414(a)(5))

Electronic Communication

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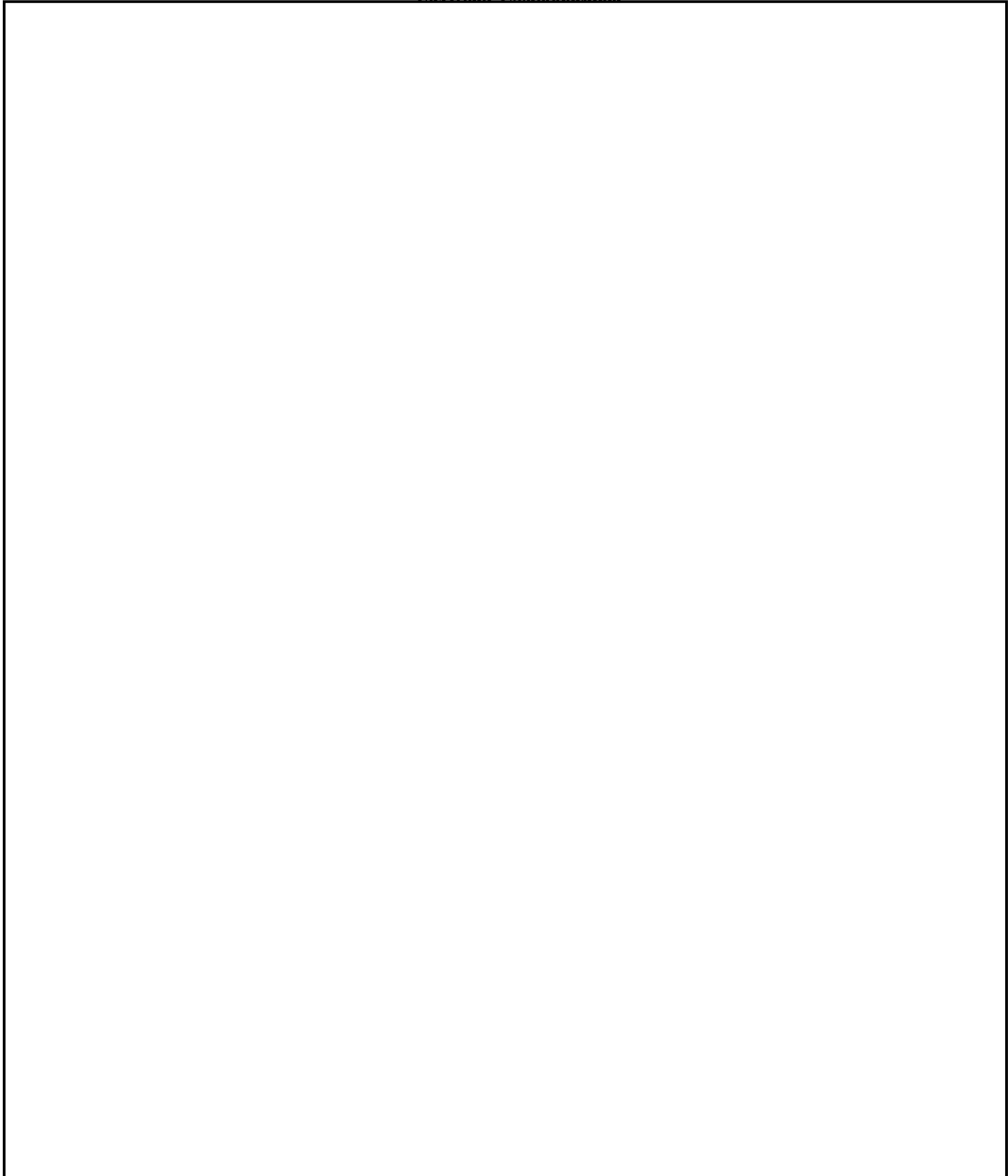
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NSL VIO-19861

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ECPA National Security Letter (NSL) Checklist
Subscriber Information, Toll Billing and Electronic Communication Transactional Records (18 U.S.C. § 2709)

Electronic Communication



FCRA National Security Letter (NSL) Checklist
Identity of Financial Institutions or Consumer Identifying Information (15 U.S.C. § 1681u(a) & (b))

Electronic Communication

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NSL VIO-19863

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RFPA National Security Letter (NSL) Checklist
Financial Records (12 U.S.C. § 3414(a)(5))

Electronic Communication

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NSL VIO-19864

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National Security Letter (NSL) Checklist
Identity of Financial Institutions (15 U.S.C. § 1681u)

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NSL VIO-19865

Rev. 4/01



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- as of 5 Aug 04

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National Security Letters

The moment's hottest issue in national security law is that the issuance of NSL's just got easier. Section 505 of the Anti-Terrorism Bill enacted 10/26/01 (PL 107-56, or the "USA PATRIOT ACT") changed the legal standard for issuance of a National Security Letter to "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities." In addition, the bill authorized delegation of authority to sign NSL's to the SAC level. (See below.)

Delegation of NSL Authority

An EC of 10/26/01 explained the new legal standard for issuance of a "National Security Letter," i.e., that the records sought be "relevant" to an authorized FCI/IT investigation. Pursuant to section 505 of the Anti-Terrorism bill passed 10/26/01, an EC dated 11/09/01 delegates authority to sign NSL's to the Deputy Director; the ADIC's and all DAD's of the National Security Division and the Counterterrorism Division; the General Counsel and the Deputy General Counsel for National Security Affairs; the ADIC's and all SAC's of the New York, Washington and Los Angeles field offices; and the SACs in all other field divisions.

The Director's EC notes that the National Security Law Unit will issue comprehensive guidance on the preparation of NSL's, as well as the relevant reporting requirements. On 12/11/2001 the Director approved the EC transmitting NSLU's guidance for implementing this new NSL authority. Any questions regarding this communication or NSL's in general should be directed to [redacted] at (202) 324-[redacted]

Note that the enclosures to this EC are in WordPerfect format; this was in response to requests from the field for more user-friendly ponies. Your feedback as to the effectiveness of formatting them in WordPerfect would be appreciated. We have also had complaints from several people that they cannot access many of documents using Netscape Navigator, and they don't have Internet Explorer. There's not much NSLU can do about that, except forward your problems/comments to IRD for resolution. Your first -- and probably best -- line of defense is your own computer specialists.

Names and addresses of appropriate offices/persons to whom NSL's should be addressed are also provided [redacted]



The NSL lists are subject to revision/correction from time to time. We

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NSL VIO-19866

2/17/2005

have added the "last updated" feature so that in the future you will be able to tell when these lists were last modified. If you become aware of changes to these lists, please forward that information to [redacted] [redacted] by e-mail. You may also call her at 202-324-[redacted], although e-mail is preferred.

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Service on [redacted]

As of 7/28/04, [redacted]

[redacted] is going out of business and will no longer be able to process requests for any records.

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Last Updated: Thursday, August 05, 2004

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Frequently Asked Questions

Q: Can an Acting SAC sign NSL's?

No. We are awaiting a formal opinion from the Office of Legal Counsel on this subject, but an oral report of their review of this issue is that OLC has determined that allowing an "acting" SAC to sign NSL's is inconsistent with the congressional intent that such delegation go "not lower than" a Special Agent in Charge of a field office. What appears to be the linchpin of their opinion is their view that an "acting" SAC, who is not subjected to the same selection process as the SAC, is lower than the SAC.

Watch this space. Additional details should be forthcoming once we receive OLC's formal opinion on this matter.

Last Updated: Monday, June 28, 2004

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2/17/2005

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NSL > EC-NSL Changes

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 10/26/2001

To: All Divisions

Attn: ADIC, SAC, CDC

From: Office of the General Counsel
NSLU/NSLB, Room 7975

Contact: [Redacted] 202-324-[Redacted]

Approved By: Mueller Robert S III
Pickard Thomas J
Parkinson Larry R
Steele Charles M

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Drafted By: [Redacted]

Case ID #: 66F-HQ-A1247863 (None)

Title: NEW LEGISLATION
REVISIONS TO FCI/IT LEGAL AUTHORITIES
NATIONAL SECURITY LETTERS

Synopsis: Summarizes recent changes to FCI/IT legal authorities relating to NSLs, and describes implementation procedures.

Details:

Background

On October 26, 2001, the President signed the "Uniting and Strengthening America Act" which significantly revises many national security legal authorities. In particular, the Act changes key features of existing National Security Letter (NSL) authority. This communication summarizes the changes to NSL authorities; related serials describe other changes effected by the Act. A separate EC of this same date addresses various other FISA-related provisions of the Act.

NSL are issued in FCI/IT investigations to obtain telephone and electronic communications records from telephone companies and Internet Service Providers (pursuant to the Electronic Communications Privacy Act, or ECPA), records from financial institutions (pursuant to the Right to Financial Privacy Act), and information from credit bureaus (pursuant to the Fair Credit Reporting Act). Delay in obtaining NSLs has long been identified as a significant problem in FCI/IT investigations. Two factors have contributed most prominently to this delay: the complexity of the standard predication for NSLs and the requirement that signature authority be restricted to officials no lower than Deputy Assistant Director. Intending to streamline the investigative process, the new Act addresses both of these issues. Section 505 of the Act changes the standard predication for all three types of NSLs to simple relevance and allows the Director to delegate signature authority to SACs.

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2/17/2005

New Standard Predication

Under the new law, all three NSLs are now available when the signature authority certifies that the information sought is "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States." Prior to the Act, the statutes required both relevance and "specific and articulable facts" giving reason to believe that the subject is an agent of a foreign power (or, in the case of subscriber requests, had been in contact with such an agent). This "agent of a foreign power" prong of the standard made it necessary to collect and document specific facts demonstrating that the standard had been met. This requirement and the complexity of the standard itself often led to extensive delays in generating NSLs. The new law makes the NSL standard roughly analogous to that for a criminal subpoena.

The new standard requires that the information sought be relevant to an "authorized investigation to protect against international terrorism or clandestine intelligence activities." This means investigation properly authorized under the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations ("FCI AGG"). Although the language differs somewhat from that used in the previous versions of the statute, OGC and DOJ take the position that all investigations authorized pursuant to the FCI AGG are "to protect against international terrorism or clandestine intelligence activities."

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The Act also inserts the language "provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States." Congress inserted this to indicate that the techniques will not be used against U.S. persons who are merely exercising constitutionally protected rights. However, it is highly unlikely, if not entirely impossible, for an investigation to be authorized under the FCI AGG that is "solely" based on protected activities. In other words, all authorized investigations of U.S. persons will likely involve some allegation or possibility of illegal activity (e.g., terrorism, espionage, clandestine intelligence activities, etc.) which is not protected by the First Amendment.

Finally, the new standard does not mean that NSLs are available only on the subjects of full investigations. An NSL is available when the information sought is "relevant" to the investigation, as described above. For example, information concerning apparent associates of, or individuals in contact with, the subject of a full investigation, may be relevant.

Signature Authority

The Act allows the Director to delegate signature authority down to Deputy Assistant Directors at FBIHQ and SACs in "designated" field offices. The current statute allows only for delegation to DADs. Thus, NSL authority now is delegated to only the ADs and DADs in NSD and CTD, and to the ADICs at LA, NY, and WFO.

The new legislation allows delegation to the SACs in field offices "designated by the Director." This language reflects Congress' intention that the delegation not occur automatically, but that the Director choose which offices needed, and were properly prepared to exercise, delegated authority. The Director soon will make initial delegations to field offices in a separate communication. Field offices with delegated authority will receive detailed instructions on the process of preparing and issuing NSLs. **SACs should not sign NSLs until they have been properly designated by the Director.** Offices not receiving delegated authority should continue to submit NSL requests through the relevant units in NSD and CTD at FBIHQ. NSLU will continue to prepare these letters.

Changes in Statutory Language

What follows are the actual changes in the three statutes governing NSLs. A "redlined" version showing additions and deletions is given first. A clear copy of the new version then follows.

1. **Electronic Communications Privacy Act (ECPA)** U. 18 U.S.C. § 2709: (S. 1510 Sec. 506)

"Redlined" Text Key: New text ~~Removed text~~

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§ 2709. Counterintelligence access to telephone toll and transactional records

(a) Duty to provide.--A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) Required certification.--The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may--

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee ~~in a position not lower than Deputy Assistant Director~~) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States; and made that--

~~(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and~~

~~(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and~~

(2) request the name, address, and length of service of a person or entity if the Director (or his designee ~~in a position not lower than Deputy Assistant Director~~) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States made that--

~~(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and~~

~~(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with--~~

~~(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(e) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or~~

~~(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(e) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that~~

~~involve or may involve a violation of the criminal statutes of the United States.~~

(Remainder of statute unchanged)

New Version of 18 U.S.C. § 2709 (without redlining)

§ 2709. Counterintelligence access to telephone toll and transactional records

(a) Duty to provide.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

(b) Required certification.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, may—

(1) request the name, address, length of service, and local and long distance toll billing records of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the name, address, length of service, and toll billing records sought are relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States; and

(2) request the name, address, and length of service of a person or entity if the Director (or his designee) certifies in writing to the wire or electronic communication service provider to which the request is made that the information sought is relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States.

(Remainder unchanged)

2. Right to Financial Privacy Act

"Redlined" version of 12 U.S.C. § 3414(a)(5)

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States. ~~sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 1801 of Title 50.~~

(Remainder unchanged)

New version of 12 U.S.C. § 3414(a)(5)

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States.

(Remainder unchanged)

3. Fair Credit Reporting Act

"Redlined" Version of 15 U.S.C. § 1681u

§ 1681u. Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions. Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of Title 12) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States. ~~in writing that—~~

~~(1) such information is necessary for the conduct of an authorized foreign counterintelligence investigation; and~~

~~(2) there are specific and articulable facts giving reason to believe that the consumer—~~

~~(A) is a foreign power (as defined in section 1801 of Title 50) or a person who is not a United States person (as defined in such section 1801 of title 50) and is an official of a foreign power; or~~

~~(B) is an agent of a foreign power and is engaging or has engaged in an act of international terrorism (as that term is defined in section 1801(e) of Title 50) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.~~

(b) Identifying information. Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States. ~~in writing that—~~

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~~(1) such information is necessary to the conduct of an authorized counterintelligence investigation; and~~

~~(2) there is information giving reason to believe that the consumer has been, or is about to be, in contact with a foreign power or an agent of a foreign power (as defined in section 1801 of Title 50).~~

(c) Court order for disclosure of consumer reports. Notwithstanding section 1681b of this title or any other provision of this subchapter, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that the report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States. ~~in camera that~~

~~(1) the consumer report is necessary for the conduct of an authorized foreign counterintelligence investigation; and~~

~~(2) there are specific and articulable facts giving reason to believe that the consumer whose consumer report is sought—~~

~~(A) is an agent of a foreign power, and~~

~~(B) is engaging or has engaged in an act of international terrorism (as that term is defined in section 1801(e) of Title 50) or clandestine intelligence activities that involve or may involve a violation of criminal statutes of the United States.~~

The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(Remainder unchanged)

New Version of 15 U.S.C. § 1681(u)

§ 1681u. Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions. Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of Title 12) at which a consumer maintains or has maintained an account, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States.

(b) Identifying information. Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or

former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States.

(c) Court order for disclosure of consumer reports. Notwithstanding section 1681b of this title or any other provision of this subchapter, if requested in writing by the Director of the Federal Bureau of Investigation, or a designee of the Director in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the Federal Bureau of Investigation, upon a showing in camera that the report is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely on the basis of activities protected by the first amendment of the Constitution of the United States. The terms of an order issued under this subsection shall not disclose that the order is issued for purposes of a counterintelligence investigation.

(Remainder unchanged)

Questions and Additional Information

The National Security Law Unit (202-324-) is available to answer questions about this legislation. In addition, materials relating to the new legislation will be posted on the NSLU FBI Intranet website, which can be found ">http:// or through the OGC page.

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LEAD(s):

Set Lead 1: (Adm)

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Disseminate to personnel involved in FCI/IT operations and to other division personnel as appropriate.

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NSL > SAC's NSL Authority

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 11/09/2003

To: All Divisions

Attn: ADIC; SAC; CDC

From: Office of the General Counsel
NSLU/NSLB, Room 7975

Contact [redacted] 202-324 [redacted]

Approved By: Mueller Robert S III
Pickard Thomas J
Parkinson Larry R
Steele Charles M

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Drafted By: [redacted]

Case ID #: 66F-HQ-A1255972 (None) [Ser 15]

Title: NATIONAL SECURITY LETTERS
DELEGATION OF SIGNATURE AUTHORITY

Synopsis: Delegate signature authority for National Security Letters to SACs and FBIHQ officials.

Details: Public Law 107-56 (the "USA PATRIOT Act"), which the President signed on October 26, 2001 Friday, significantly changes National Security Letter (NSL) authority. Specifically, it reduces the standard for issuing an NSL to one of simple relevance (analogous to a criminal subpoena) and it allows delegation of signature authority to SACs (the current delegation level is no lower than Deputy Assistant Director).

Therefore, in order to enhance the efficiency of NSLs as investigative tools in FCI/IT investigations, I am delegating signature authority for NSLs to the SACs and selected FBIHQ officials. The National Security Law Unit, OGC, will be in charge of implementing the delegated authority, and will provide instructions on issuing NSLs in a separate communication.

This delegation gives field offices an enhanced ability to use NSLs in active investigations. However, it also imposes on field offices a number of legal obligations. Since the FBI is required to report NSL activity to Congress semi-annually, the field will be responsible for timely statistical reporting to NSLU. SACs and other field office supervisors will also be responsible for ensuring that the authorities are used appropriately. The NSL delegation authority, like many of provisions of Public Law 107-56, will expire in four years. The FBI's use of these new, and more broadly available, national security authorities doubtless will be scrutinized by Congress when the law comes up for re-authorization.

Effective immediately, I am delegating the authority to sign National Security Letters issued pursuant to the Electronic Communications Privacy Act (18 U.S.C. § 2709), the Right to Financial Privacy Act (12 U.S.C. § 3414 (a)(5)(A)), and the Fair Credit Reporting Act (15 U.S.C. § 1681u) to the following officials:

http: [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-31-2007 BY 65179dmh/ksr/lmf

NSL 110-19876

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1. The Deputy Director;
2. The Assistant Directors in charge, and all Deputy Assistant Directors, of the Counterterrorism Division and the National Security Division;
3. The General Counsel and the Deputy General Counsel for National Security Affairs;
4. The Assistant Director in Charge, and all SACs, of the New York, Washington, D.C., and Los Angeles field offices;
5. The SACs in all other field divisions.

The National Security Law Unit will issue comprehensive guidance on the preparation of NSLs and the relevant reporting requirements. Field divisions that do not already issue NSLs should await this guidance before issuing their own NSLs.

LEAD(s):

Set Lead 1: (Adm)

ALL RECEIVING OFFICES

Read and clear.

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NSL Page > EC: NSL Guidance

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 12/11/2001

To: All Field Offices
Counterterrorism
National Security

Attn: ADIC; SAC; CDC
FCI/IT Supervisors
AD Watson; DADSS
Section Chiefs
AD Gallagher; DADs
Section Chiefs

From: General Counsel
National Security Law Unit, Room 7075

Contact [Redacted] 202-324 [Redacted]

Approved By: Mueller Robert S III
Pickard Thomas J
Parkinson Larry R
Bowman M E

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Drafted By: [Redacted]

Case ID #: 66F-HQ-A1255972

Title: NATIONAL SECURITY LETTER MATTERS

Synopsis: Provides guidance on the preparation, approval, and service of National Security Letters (NSLs).

Reference: 66F-HQ-A1255972 Serial 15

- Enclosure(s):
- 1) Subscriber Information NSL Model
 - 2) Toll Billing Records NSL Model
 - 3) Electronic Subscriber Information NSL Model
 - 4) Electronic Communication Transactional Records NSL Model
 - 5) Financial Records NSL Model
 - 6) Identity of Financial Institutions NSL Model
 - 7) Consumer Identifying Information NSL Model
 - 8) Subscriber/Electronic Subscriber (EC) Model
 - 9) Toll/Transactional Records EC Model
 - 10) Financial Records EC Model
 - 11) Financial Institutions/Consumer Identity EC Model
 - 12) ECPA NSL Checklist
 - 13) RFPA NSL Checklist
 - 14) FCRA NSL Checklist

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-25-2005 BY 60329dmh/esp/lmf

NSL VIO-19878

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Details: In the referenced communication, dated 11/09/2001, the Director of the FBI delegated the authority to certify NSLs to the following officials: (1) the Deputy Director; (2) The Assistant Directors (ADs) and all Deputy Assistant Directors (DADs) of the Counterterrorism Division (CTD) and the National Security Division (NSD); (3) the General Counsel and the Deputy General Counsel for National Security Affairs (DGC), Office of the General Counsel (OGC); (4) the Assistant Director in Charge (ADIC), and all Special Agents in Charge (SACs), of the New York, Washington, D.C., and Los Angeles field divisions; and (5) the SACs in all other field divisions. The purpose of this electronic communication is to provide comprehensive guidance on the preparation, approval, and service of NSLs.

1. Introduction to National Security Letters

NSLs are administrative subpoenas that can be used to obtain several types of records. There are three types of NSLs. First, pursuant to the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709, the FBI can issue NSLs for: (1) telephone subscriber information (limited to name, address, and length of service); (2) telephone local and long distance toll billing records; and (3) electronic communication transactional records. Second, pursuant to the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3414(a)(5), the FBI can issue NSLs to obtain financial records from banks and other financial institutions. Finally, pursuant to the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681u, the FBI can issue NSLs to obtain consumer identifying information and the identity of financial institutions from credit bureaus.

NSLs are tools available in investigations conducted under the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). The FCIG currently provide that an NSL can be issued during the course of [redacted] international terrorism or foreign counterintelligence investigation. **NSLs cannot be used in criminal investigations unrelated to international terrorism or clandestine intelligence activities.** Given the new statutory language, the OGC and DOJ have taken the position that NSLs also may be authorized in foreign counterintelligence (FCI) and international terrorism (IT) [redacted] [redacted] with prior coordination through the relevant NSD or CTD unit at FBIHQ. This position is based on the conclusion that all investigations authorized under the FCIG, including [redacted] are to "protect against international terrorism or clandestine intelligence activities," as required by the NSL statutory authorities. At present, however, issuing an NSL in the context of a [redacted] will require a waiver or modification of the FCIG. Obtaining such a waiver currently is possible only in international terrorism cases. The FCIG are being revised, but this revision may take some time. Thus, whenever the information sought is relevant to an established [redacted] the field likely will find it more efficient to issue an NSL out of the related [redacted] than to request one in [redacted]

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2. General Policy on the Use of NSL Authority

NSLs are powerful investigative tools, in that they can compel the production of substantial amounts of relevant information. However, they must be used judiciously. The USA PATRIOT Act greatly broadened the FBI's authority to gather this information. However, the provisions of the Act relating to NSLs are subject to a "sunset" provision that calls for the expiration of those provisions in four years. In deciding whether or not to re-authorize the broadened authority, Congress certainly will examine the manner in which the FBI exercised it. Executive Order 12333 and the FCIG require that the FBI accomplish its investigations through the "least intrusive" means. Supervisors should keep this in mind when deciding whether or not a particular use of NSL authority is appropriate. The greater availability of NSLs does not mean that they should be used in every case.

In addition, the removal of any requirement for FBIHQ coordination in the issuing of NSLs creates the possibility of duplicate requests for the same information by different field offices. Field offices must take steps to avoid this. In particular, the field should check FBI databases (ACS, Telephone Application, etc.) and open sources to see if the information sought has already been obtained by the FBI or whether it is publically available. This is particularly important when considering issuing NSLs for telephone or electronic communications data under the Electronic Communications Privacy Act (ECPA). Unlike the criminal authorities in ECPA, the NSL authority does not require the government to reimburse carriers or Internet Service Providers (ISPs) for the cost of producing the requested information. A dramatic increase in duplicate NSLs will only augment existing pressure to require governmental reimbursement.

Individual field offices have the responsibility for establishing and enforcing an appropriate review and approval process for the use of NSL authorities.

3. The Mechanics of Producing NSLs

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For all types of NSLs, the issuing office needs to prepare two documents: (1) the NSL itself; and (2) an EC approving the NSL and documenting the predication. Model NSLs and ECs for all variations of the three types of NSLs are included as attachments to this communication. These materials will also be placed on the NSLU Intranet Website and will be distributed by GroupWise e-mail. Once the initial implementation of these new authorities is accomplished, NSLU will work to develop a macro or form to further streamline the NSL process.

A. The NSL

There are presently seven variations of the three NSL types: 1) subscriber information; 2) toll billing records; 3) electronic subscriber information; 4) electronic communication transactional records; 5) financial records; 6) identity of financial institutions; and 7) consumer identifying information. This section will discuss the features that these variations share in common and highlight the differences.

All NSLs must be addressed to an appropriate company point of contact. NSLU will place a list of known points of contact on its intranet website. However, the responsibility for ensuring that the company point of contact is up to date belongs to the drafting field division. Field divisions should advise NSLU of any new points of contact, or when a particular point of contact is no longer valid. Please note that the company point of contact address does not include a zip code, because NSLs must be hand-delivered.

The first paragraph of every NSL provides the appropriate statutory authority for the request, identifies the types of records requested, and provides available identifying information so that the company can process the NSL request. It is this first paragraph that contains the differences that warrant the seven NSL varieties.

Subscriber and electronic subscriber NSLs should have a specific date for each of the phone numbers/e-mail addresses requested. Typically, the specific date is going to be the date that the phone number or e-mail address was used in communication with the subject of the investigation. Any phone numbers identified in a subscriber request should contain all ten digits of the phone number, including the area code.

Toll billing record and electronic communication transactional record requests should have a range of dates for each of the phone numbers/e-mail addresses requested. The date range may be from inception to present, or some other specified date range relevant to the investigation. Any phone numbers identified in a toll billing record request should contain all ten digits of the phone number, including the area code.

Financial record requests should include all available identifying information to facilitate the financial institution's records search. Typically, such identifying information includes: name, account numbers, social security number, and date of birth. The time period for financial record requests is typically from inception of account(s) to present, although a more specific date range may be used.

Credit record requests are similar to financial requests in that they should include available identifying information to facilitate the credit agency's records search. Typically, such identifying information includes: name, social security number, and date of birth. There is no need to specify a date range for credit record requests because these requests seek all records where the consumer maintains or has maintained an account.

The second paragraph of every NSL contains the statutorily required certification language. The certification language is virtually identical for every NSL. However, please note that the certification language used in the financial records NSLs is slightly different than the others in that it states "the records are sought for foreign counterintelligence purposes" Financial records also contain an additional certification that the FBI has complied with all applicable provisions of the RFPA. Use of the model NSLs will ensure that the proper certifications are made.

The next paragraph contains an admonition for the phone company, ISP, financial institution, or credit agency receiving the NSL. The paragraph warns that no officer, employee, or agent of the company may disclose that the FBI has sought or obtained access to the requested information or records.

The last substantive paragraph instructs the company point of contact to provide the records personally to a representative of the delivering field division. It also states that any questions should be directed to the delivering field division. This last paragraph requires the person preparing the NSL to input the appropriate delivering field division in two places.

The model NSLs for financial records and electronic communication transactional records each have a separate attachment. These attachments provide examples of information which the company might consider to be financial or electronic communication transactional records.

Finally, the NSL is an unclassified document because it does not detail the specific relevance of the requested records to an authorized FBI investigation. There is no need to classify the NSL when attaching it to the cover EC.

B. The Cover EC

The Cover EC serves four essential functions in the NSL process: (1) it documents the predication for the NSL by recording why the information sought is relevant to an investigation; (2) it documents the approval of the NSL by relevant supervisors and the legal review of the document; (3) it contains the information needed to fulfill the Congressional reporting requirements for each type of NSL; and (4) it transmits the NSL to the requesting squad or delivering field division for delivery to the appropriate telecommunications carrier, ISP, financial institution, or credit agency. There are four varieties of model ECs provided with this communication: (1) subscriber/electronic subscriber information; (2) toll billing/electronic communication transactional records; (3) financial records; and (4) credit information. When preparing an NSL request, the field should use one of these model ECs, giving special consideration to the elements discussed in this section.

1) Field Descriptors

This section will generally explain how most of the EC field descriptors should be completed. The "Precedence" descriptor will typically be "ROUTINE." The "Date" descriptor should reflect the date the NSL and the EC were approved. The "To" descriptor will always include "General Counsel" and the requesting squad's field division. It may also include the name of the delivering field division (always [redacted] in the case of FCRA NSLs) and the office of origin, if applicable. The "Attn" descriptor should include the name of the Chief, NSLU, and the squad supervisors and case agents from the requesting squad, delivering field division, and office of origin, if applicable and if known. The credit model EC identifies the FBI personnel working on [redacted] who are currently responsible for the service of FCRA NSLs. The "From" descriptor should identify the certifying official's field division, and include the title of the certifying official. The "Contact" descriptor should reflect the name and phone number of the requesting squad case agent. The "Drafted By" descriptor should reflect the name of the person who prepared the NSL package. The "Case ID #" descriptor must contain the case file number relevant to the request, and the case file numbers indicated in the model EC. The "Title" descriptor should list the subject's name, any known aliases, whether the investigation is an FCI or IT investigation directed at a particular foreign power, and identify the office of origin, e.g., WILLIAM BADGUY, AKA BILL BADGUY, FCI-IRAQ, OO: NEW YORK. The "Synopsis" descriptor should use the standard boilerplate contained in the appropriate model EC. The "Derived From" descriptor should be "G-3" in bold typeface. The "Declassify On" descriptor should be "X1" in bold typeface. the [redacted] descriptor should contain [redacted]

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[redacted] the subject and indicate whether the subject is a U.S. person. Please note that the word "Field" has been deleted from the field descriptor contained in the standard EC macro. In the unlikely event that an NSL is issued [redacted] with prior FBIHQ approval, the field descriptor should be edited to state [redacted]. The remaining descriptors can be filled in according to the model EC being used.

2) Predication and Relevance

The USA PATRIOT Act has greatly simplified the NSL process. The FBI official authorizing the issuance of an NSL is no longer required to certify that there are specific and articulable facts giving reason to believe that the information sought pertains to a foreign power, or an agent of a foreign power. NSLs may now be issued upon a certification of relevance to an authorized investigation to protect against international terrorism or clandestine intelligence activities.

Accordingly, the first paragraph in the "Details" section of the EC should contain the predication for the full investigation and identify the relevance of the requested records to the investigation. Both the predication and relevance should be stated clearly and concisely. The predication should track with the predicates contained in FCIG, Section III.C.1. For example, the predication might state, [redacted] subject, a Non-U.S. person, was authorized in accordance with the Attorney General Guidelines because he may be a [redacted]. Another example might state, [redacted]

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terrorism investigation of subject, a U.S. person, was authorized in accordance with the Attorney General Guidelines because [redacted]

b2 The relevance requirement ties the requested records to the appropriate [redacted]. For example, b7E relevance could be established by stating, "This subscriber information is being requested to determine the [redacted]. Another example might state, "The subject's financial records are being requested to determine [redacted] [redacted]

3) Approval

The second paragraph in the "Details" section and the "Approved By" descriptor field of the EC should reflect the level of the official approving the issuance of the EC and signing the NSL's certification. Prior to certification, every NSL and cover EC issued by the field division should be reviewed by the squad supervisor, the Office of the Chief Division Counsel, and the ASAC. Lawyers reviewing NSL packages should use the checklists provided with this communication to ensure legal sufficiency. The last step in the approval process occurs when the certifying official (Deputy Director, ADs, General Counsel, ADICs, DADs, DGC, or SACs) personally signs the NSL and initials the EC. Certifying officials may not further delegate signature authority.

4) Reporting Requirements

NSLU will continue to prepare the mandatory reports to Congress required for each NSL type. To ensure that NSLU receives sufficient information to prepare these reports, it is critical that the person preparing the NSL package follow the NSL and EC models very carefully. The second lead in every model EC requests NSLU to "record the appropriate information needed to fulfill the Congressional reporting requirements for NSLs." NSLU will be able to compile the reporting data provided that the cover EC includes the case file number, the subject's U.S. person status, the type of NSL issued, and the number of phone numbers, e-mail addresses, account numbers, or individual records being requested in the NSL. Once NSLU has entered this reporting data into its NSL database, it will clear the lead set in the cover EC.

5) Transmittal

Often, the squad requesting the NSL will be able to hand-carry the NSL locally to the appropriate company point of contact. However, in many situations, the field division drafting the NSL will have to get it delivered by another field division. In these situations, the drafting division should attempt to identify the squad and personnel at the delivering field division who will be responsible for delivering the NSL. In the event that the office of origin is different than either the drafting division or delivering division, the person drafting the NSL package should ensure that the case agent from the office of origin receives a copy of the package. The first lead in the model ECs should direct the requesting squad or delivering field division to deliver the attached NSL. If the delivering division is different than the drafting division or the office of origin, then this first lead should also request the delivering division to submit the results to the drafting division and/or the office of origin.

4. NSL Preparation Assistance

Some field divisions may, for a variety of reasons, opt not to exercise their delegated authority to issue NSLs. Other field divisions may exceed their capacity to issue NSLs and seek assistance in handling the overflow. NSLU will continue to process any NSL request that it receives. Field divisions should send their requests directly to NSLU, with information copies to the FBIHQ substantive unit. Such requests must contain all the information identified in this communication as necessary to prepare the NSL package. NSLU anticipates that it will be able to process such requests within one to three business days.

Any questions regarding this communication may be directed to [redacted] NSLU, DGC, at (202) 324-[redacted]

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LEAD(s):

Set Lead 1: (Adm)

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ALL RECEIVING OFFICES

Distribute to all supervisory personnel involved in the National Security Letter process.

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