

Chart comparing national security letter (NSL) provisions of current law, S. 1686 (Feingold – JUSTICE Act), H.R. 1800 (Nadler – NSL Reform Act), and S. 1692 (Leahy- PATRIOT Act Sunset Extension Act).

NSL Attribute	Current Law	S. 1686 – Feingold	H.R. 1800 – Nadler	S. 1692 - Leahy
Standard for Issuance	Mere relevance. Gov't must certify that information sought is relevant to authorized investigation to protect against int'l terrorism or clandestine intel activity. Investigation cannot be based solely on First Amendment activity of US Person.	Sec. 101: Records must pertain to person tied to AFP. Info sought must be relevant to ongoing and authorized NS investigation and there must be specific & articulable facts that records pertain to i) AFP or person subject to NS investigation, or ii) person in contact with such an individual, or iii) activities of AFP that are under investigation and least intrusive means required.	Sec. 3: Return to pre-Patriot AFP standard. Official must certify that there are specific and articulable facts giving reason to believe that the info/records sought pertain to a foreign power or AFP. NSLs may not be sought in investigations based solely on activities protected by the First Amendment.	Sec. 7: Same as current law, but also requires that the government include in the NSL itself a statement of facts showing reasonable grounds to believe that records sought are relevant to an investigation.
Coverage of records held by Wire & Electronic Service Providers	18 USC 2709 - Wire or electronic communications service provider must provide name, address, length of service, call toll billing records, subscriber info, transactional records. Includes email and telephone logs.	Sec. 101: Wire/electronic communications service providers must provide customer records: name, address, telephone number, duration and type of services, bank/credit card no., names of other service providers. Excludes email and phone logs, which are available using other authorities, e.g. 215.	Same as current law.	Same as current law.

NSL Attribute	Current Law	S. 1686 – Feingold	H.R. 1800 – Nadler	S. 1692 - Leahy
Coverage of records held by Financial Institutions	12 USC 3414: Financial institutions must provide financial records (any record pertaining to customer's relationship with financial institution). 12 USC 3401: Definition of financial records includes both transactional and identifying information. 31 USC 5312: Definition of financial institution includes casinos, pawnbrokers, car dealers, travel agents, etc.	Sec. 101: NSLs may be served on financial institutions to obtain identifying information only: name &, address of individual or institution, length & type of service, account number or unique identifier. Definition of financial institution remains same as current law.	Same as current law.	Same as current law.
Coverage of records held by Consumer Reporting Agencies	15 USC 1681u & 1681v: Consumer reporting agency must furnish entire credit report and all other info in consumer's file, including individual's name & addresses, employer, financial institutions.	Sec. 101: Repeals 15 USC 1681v, removing credit reports from scope of NSL. NSL could still be used to obtain name, address, employers and list of financial institutions from a consumer reporting agency.	Same as current law.	Same as current law.
Judicial Review of Requests for Info	18 USC 3511: Upon petition filed by NSL recipient, U.S. District court may set aside NSL request for records if	Sec. 101: Same as current law. Also establishes procedure for an aggrieved person may make motion to suppress info obtained by	Sec. 3: Person may petition court to modify or set aside NSL not later than 20 days after receipt for unlawfulness or	Same as current law.

NSL Attribute	Current Law	S. 1686 – Feingold	H.R. 1800 – Nadler	S. 1692 - Leahy
	compliance would be unreasonable, oppressive, or otherwise unlawful.	NSL if used in court/hearing. Challenge must be on grounds that NSL was unlawful or noncompliant. If motion is made, court may review all necessary materials in camera. Motion must be made before hearing if possible. Similar to 1806(e)-(f).	noncompliance with the law. Motion to suppress similar to Feingold bill.	
Gag Provision	Gov't must certify that disclosure would result in danger to NS, interference with investigation, or danger to safety of any person. Can't disclose to anyone that FBI has sought or obtained access to info with an NSL. Gag does not apply to disclosures to persons who must carry out the order, and attorney. Gag stays in place forever unless it is successfully challenged in a court of law.	Sec. 101: Gov't must certify that disclosure would result in flight from prosecution, danger to safety of any person, evidence tampering, witness intimidation, interference with diplomatic relations, or seriously endangering NS by alerting target or AFP. Certification must be narrowly tailored to harm. Gag does not apply to disclosures to persons who must carry out NSL order, or attorney. Gag may not last longer than a year, but can be extended with additional certifications. Gag must give notice of right to judicial review.	Sec. 3: Application for nondisclosure must state specific & articulable facts that disclosure would result in flight, danger to safety of any person, evidence tampering, endangering NS, etc. Court may issue ex parte if narrowly tailored to compelling interest. No one shall disclose that FBI sought or obtained info/records under NSL for 30 days after receipt of request. Gag does not apply to disclosures to persons who must carry out NSL order, attorney. Gov't may apply for order	Sec. 5: Gov't must certify that disclosure would result interference with investigation, danger to safety of any person, endangering NS for any reason, or interference with diplomatic relations. Can't disclose to anyone that FBI has sought or obtained access to info with an NSL. Exception: persons who must carry out NSL order, attorney, other persons designated by FBI. Gag may not last longer than a year, but can be extended with additional certifications. Gag must give notice of

NSL Attribute	Current Law	S. 1686 – Feingold	H.R. 1800 – Nadler	S. 1692 - Leahy
			extending nondisclosure for 180 days. Gag must give notice of right to judicial review.	right to judicial review.
Judicial Review of Gag Order	18 USC 3511: Court sets aside gag only if there is no reason to believe that disclosure may endanger NS, interfere with investigation, endanger safety of any person, or interfere with diplomatic relations. Gov't certification that disclosure will cause such harm is conclusive unless made in bad faith.	Sec. 101: Codifies 2d Cir. decision. Right to judicial review of nondisclosure and extension orders expires 21 days after receipt. Sec. 102: NSL recipient notifies gov't, which makes application to court containing: statement of specific/articulable facts justifying certification criteria and explanation of narrow tailoring. [Substantially similar to Leahy bill but with narrower NS exception.]	Sec. 3: Recipient may file petition for judicial review no more than 20 days after receipt. Court must set aside unless the NSL complies with this section and violates no law or privilege.	Sec. 5 & 6: Codifies 2d Cir. decision. Right to judicial review of nondisclosure order. Must notify gov't no later than 21 days after receipt. Then gov't has 21 days to make application for order containing certification criteria. [Substantially similar to Feingold bill, but with broader NS exception for maintaining the gag.]
Private Right of Action	No private right of action specifically for NSLs. Underlying privacy statutes sometimes establish a private right of action that can be triggered by misuse of an NSL or intentional over-production of info sought with an NSL. See, e.g., 18 USC 2712 & 2707,	Same as current law.	Sec. 4: Creates cause of civil action for misuse of NSLs if NSL was unlawful or certification was without factual foundation. Liable for the greater of \$50K or actual damages.	Same as current law.

NSL Attribute	Current Law	S. 1686 – Feingold	H.R. 1800 – Nadler	S. 1692 - Leahy
	and 15 USC 1681u and 12 USC 3417.			
Public Reporting & Audits	FBI director must fully inform House & Senate Intel Committees concerning all electronic/wire, financial, consumer reporting NSL requests. Raw numbers are reported; other information is classified. No Inspector General audits required by Patriot Reauthorization Act in 2006 are outstanding.	Sec. 101: FBI must report to House & Senate Intel Committees semiannually re all NSLs. Report must cover AG guidelines for destruction & minimization , summary of petitions or court proceedings, description of how NSL info aided intelligence & criminal investigations & prosecutions. Sec. 104: Each report shall include total number of requests concerning US persons, non-US persons, persons subject to NS investigations, persons not subject to NS investigations. [Similar to Leahy and Nadler bills.]	Sec. 6: AG must report (unclassified) to House & Senate Intel Committees semiannually on number of NSLs issued concerning US persons, non-US persons, minimization & destruction procedures, summary of court challenges, description of how NSLs have helped investigations & prosecutions. [Similar to Feingold and Leahy bill.]	Sec. 8: Gov't must report on total number of requests concerning US persons, non-US persons, persons subject to NS investigations. [Similar to Feingold and Nadler bill.] Sec. 10: Requires additional Inspector General audits covering the years 2007 -2013.
Sunsets	No sunset.	No sunset.	Sec. 5: All authority to issue NSLs, including pre-Patriot Act authority, expires 5 years after enactment. Prior to sunset, AG reports to Congress on usefulness of NSLs.	Sec. 2: All authority to issue NSLs, including pre-Patriot Act authority, expires Dec. 31, 2013.