



# Government Collection of Private Information: Background and Issues Related to the USA PATRIOT Act Reauthorization

*Charles Doyle, Edward C. Liu*

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Congress enacted the USA PATRIOT Act soon after the 9/11 terrorist attacks. The most controversial sections of the act facilitate the federal government's collection of more information, from a greater number of sources, than had previously been authorized in criminal or foreign intelligence investigations. The Foreign Intelligence Surveillance Act (FISA), the Electronic Communications Privacy Act (ECPA), and the national security letter (NSL) statutes were all bolstered. With the changes came greater access to records showing an individual's spending and communication patterns as well as increased authority to intercept e-mail and telephone conversations and to search homes and businesses. In some cases, evidentiary standards required to obtain court approval for the collection of information were lowered. Other approaches included expanding the scope of information subject to search, adding flexibility to the methods by which information could be collected, and broadening the purposes for which information may be sought.

Some perceived the changes as necessary to unearth terrorist cells and update investigative authorities to respond to the new technologies and characteristics of ever-shifting threats. Others argued that authorities granted by the USA PATRIOT Act and subsequent measures could unnecessarily undermine constitutional rights over time. In response to such concerns, sunset provisions were established for many of the changes.

Subsequent legislation made most of these changes permanent. However, a number of authorities affecting the collection of foreign intelligence information are still temporary. Three such provisions (the lone wolf, roving wiretap, and business record sections of FISA) are set to expire on June 1, 2015. Additionally, provisions added by the FISA Amendments Act of 2008, relating to the use of foreign intelligence tools to target individuals while they are reasonably believed to be abroad, will expire on December 31, 2012.

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