

The PATRIOT Act

Public Law 107-56

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (The PATRIOT Act). The PATRIOT Act focuses on strengthening the ability of law enforcement to fight terrorism. The following areas of higher education are affected by the PATRIOT Act.

Student Educational Records

The PATRIOT Act amends the Family Educational Rights and Privacy Act (FERPA) to permit educational institutions to disclose, without the student's consent or knowledge, personally identifiable information from the student's educational records to the U.S. Attorney General (or his/her designee), in response to an *ex parte* order in connection with an investigation or prosecution of specified terrorism crimes. (See 18 U.S. Code 2332b(g)(5)(B) and 2331).

The Attorney General must certify that there are specific facts giving reason to believe that the educational records are likely to contain relevant information. If an educational institution releases a student's educational record pursuant to this provision, then the institution is immune from liability under FERPA.

Also, the PATRIOT Act expands FERPA's health or safety exception, which permits educational agencies and institutions to disclose personally identifiable information from a student's education record without the written consent of the student in the case of an immediate threat to the health or safety of students or other individuals. The exception now allows the release of personally identifiable information associated with a terrorist attack.

Immigration

The PATRIOT Act establishes a comprehensive system for tracking foreign students (known as SEVIS). Educational institutions must provide electronic certification to the U.S. State Department concerning a foreign student's visa status. The U.S. State Department must notify the U.S. Citizenship and Immigration Service ("USCIS") each time it issues a student visa. Then, the USCIS notifies the educational institution when the student has entered the country. The educational institution is required to contact the USCIS if the student does not enroll within thirty (30) days of the registration deadline set forth on the immigration permission Form I-20.

In addition, educational institutions must collect and maintain information about foreign students, including their local address, their academic status, and whether they have been subject to disciplinary action as a result of having been convicted of a crime in the U.S.

Finally, the PATRIOT Act requires people from a list of countries to register with immigration authorities upon their entry into the United States.

Biological Agents

The PATRIOT Act makes it a crime to knowingly possess a biological agent, toxin, or delivery system of a type or in a quantity not “reasonably justified” by research or other peaceful purposes. It also makes it a crime for any alien from Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria to possess a biological agent.

Electronic Communications

Prior to the PATRIOT Act, law enforcement’s access to stored voice mail communications was governed by the federal wiretap statute (18 USC§2510(1)). Under the federal wiretap statute, wiretap orders were required in order to access voice mail. The procedure for obtaining a wiretap order is more complex and time consuming than the procedure for obtaining a search warrant. The PATRIOT Act relaxes those procedures and law enforcement need only obtain a search warrant to access voice mail.