OMB WATCHER

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In This Issue

Updates for Your Information

OMB Watch's New Data Quality Resource Page

In order to better track the impacts of the Data Quality Act upon agencies' use and dissemination of information OMB Watch has established a data quality resource page. While OMB Watch supports efforts to ensure that data disseminated to the public is of high quality, we believe this should not inhibit public

access to government information, nor interfere with existing rulemaking processes. A major concern remains that the data quality guidelines will be misused to delay, manipulate, and unfairly affect the outcome of the agencies' activities. One of the main focuses of the page will be to track and analyze data quality challenges made to various agencies. The page also features a great deal of background on the development of the data quality guidelines including links to the various agencies' data quality guideline pages.

Go to Tracking Data Quality page

CDF Hosts Rally and Presidential Candidates Forum April 9

On Wednesday, April 9, from 2-3 pm, join the Children's Defense Fund for a rally to remind Congress how to really Leave No Child Behind. The rally will be held in the Upper Senate Park (at the corner of Louisiana and New Jersey Avenues, NW). Register for the event by calling 202-662-3582. Later that night, at 7 pm, CDF will hold a Presidential Candidates Forum in Washington, DC. The candidates include all the Democratic challengers and the forum will be moderated by CNN's Judy Woodruff. **No more tickets for this forum are available.**

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Federal Budget

Virginia Senate Preserves State Estate Tax

In an April 3 victory both for proponents of preservation of a fair estate tax and for the cash-strapped state of Virginia, itself, the Virginia Senate fell 2 votes short of the 27 it needed to override Gov. Mark Warner's (D) veto of repeal of the state's estate tax. The state is currently facing a deficit of at least $1.1 billion for FY 2004, which starts on July 1, 2003. According to reports by the Center on Budget and Policy Priorities, in response, Virginia -- and many other states facing a similar crisis -- has made plans to cut funding for correctional facilities, laid off state employees, and raised tuition at state-funded universities.

In 2002, Virginia's state estate tax brought in approximately $133 million for the state. In the midst of the worst budget crisis the state has experienced since World War II, the State's General Assembly voted in February to eliminate the tax and this revenue entirely. Warner's veto came with a plea to not further exacerbate the state's financial duress. State Senator Leslie L. Byrne (D), quoted in the Washington Post, went further explaining that, "There are 7 million people in Virginia … and we're out trying to protect 1,800 from a tax…. When we cut this money out of the budget, that's money that could have gone to school construction … to a prescription drug benefit … to staffing for nursing homes."

Congress and the White House should heed the words of Byrne and follow the example of the Virginia Senate. Instead, however, the President and congressional Republicans continue to push for the permanent repeal of the estate tax, in the face of growing needs at home and abroad.

For more on the effort to prevent permanent repeal of the estate tax, go to www.fairestatetax.org.

Dynamic Disappointment

The Congressional Budget Office (CBO) released the final version of its March 7 report, entitled "An Analysis of the President's Budgetary Proposals for Fiscal Year 2004." The revised version of this report was eagerly awaited for its special section on the "Potential Macroeconomic Effects of the President's Budgetary Proposals." A macroeconomic – or "dynamic" – evaluation has never been offered by CBO, and both proponents and critics of the controversial scoring method were anxious to learn what the CBO report would reveal. For many, it seems that the long-awaited results were disappointing in their ambiguity.

In words that are somewhat disconcerting in their lack of certainty, the CBO report notes that, "the overall macroeconomic effect of the proposals in the President's budget is not obvious." While pointing out that, "taking account of the budget's potential effects on the economy could change the estimated budgetary cost of the President's proposals," the report also warns that, "as with the macroeconomic effects, the direction of this influence could be positive or negative and is unlikely to be dramatic." According to CBO's estimates, the "supply-side economic effects" of the Bush proposals could cost an additional 10 percent, or save 15 percent, in the first 5 years. Over the course of the full 10 years, the Bush budget plan could cost an additional 15 percent, or save 17 percent. (CBO explains that "supply-side" effects are those that "determine the quantity of goods and services that the economy is capable of supplying," such as the quantity and quality of the work force and the amount of productive equipment. On the other side of the economic equation is demand, which can increase with budget policies that increase consumption. CBO warns that estimating demand-side effects is very difficult, and become especially unreliable over long forecasting periods.)

The CBO report explains the many reasons behind its uncertain projections, including:

- The key, but unknown, factor of "people's expectations of what taxes and other government policies they might face in the future;"
- The difficulty of timing government policies to "lead (and not follow) the [economic] recovery;" and
- The degree to which the increase in interest rates, which is likely to accompany a successful stimulus' effect on GDP, will affect the economy.

DID YOU KNOW?

According to a recent report in Business Week, in 1940, companies and individuals each paid about half the federal income tax collected; now companies pay 13.7% and individuals 86.3%.

This report pays close attention to the President's proposals to eliminate the corporate dividend tax and expand tax-free savings accounts. (The former serves as the key-stone of the President's $726 billion "growth package," and comprises nearly half of its costs; the latter has been all but abandoned until later this fall after even House Republican leaders questioned its timing and impact on the budget.) CBO concedes that, in theory, elimination of the dividend tax should lower the cost to businesses of securing funds because they wouldn't be spending so much to provide the same after-tax return to investors; but, again, there exist two conflicting theories of what will actually happen in the context of the interplay of other taxes, and CBO decides to split the difference in estimating the effects. Likewise, though an increase in the value of investors' shares is expected, the size of this increase is uncertain, and CBO again splits the difference.

According to CBO, an elimination of the dividend tax would "eventually shelter some 90 percent of dividends and 40 percent of capital gains on corporate shares, although some of that sheltering would be redundant because only half of dividends … are now taxed."

These numbers and their overall lack of certainty, not surprisingly, don't sit well with the White House or its Treasury Department, which questions the assumptions made by CBO. Many tax cut supporters thought that since the new CBO Director, Douglas Holtz-Eakin, came from the President's Council of Economic Advisors, this new CBO report would be more supportive of supply-side economics. According to the White House and defenders of the President's tax cut, the problems highlighted by the CBO report are a result of spending increases – not of the $726 billion in tax cuts that comprise the "growth plan." In fact, the White House has actually said that it is inappropriate for CBO to incorporate the overall budget plan presented by the President, and that it should look only at the President's "growth package" itself in estimating the effects of the tax cut package on the economy. Apparently, the White House prefers these estimates be made only in a vacuum. Treasury has said it will release its own estimates of the economic effects, which are expected to show that the President's tax cuts will actually generate such a stimulus to the economy that they will cover between 30 percent and 40 percent of their total costs.

This is very troubling, both for what it portends for the fate of programs that address the many vital needs this country faces, as well as for the soundness of the accounting methods used by the White House. Tax cuts are only one type of spending (though in this administration, they are a very large part), and their effects, good and bad, must be analyzed in the real world in which they will be enacted. This real world includes an ongoing, costly war with Iraq, the unknown costs of restoring peace and rebuilding Iraq after the war, as well as our own very pressing needs here at home: millions of uninsured children and adults, rising health care costs, state fiscal crises that threaten students from elementary school through college, the impending retirement of the Baby Boomers, high levels of unemployment, increased emergency response needs highlighted by the September 11 terrorist attacks, and many others.

Status of FY 2004 Budget Resolution -- Still Time to Stop Huge Tax Cuts, Spending Cuts

As discussed in newspapers across the country, support for preserving the President's costly $726 billion tax cut package (misnamed the "Growth Package") is weakening. On March 25, the Senate voted to shrink the $726 billion package down to $350 billion. (In an earlier vote, the House passed the full $726 billion tax cut - and more than $260 billion in cuts to veterans' assistance, Medicaid, Medicare, food stamps and other programs - in a very close vote, 215-212.)

House and Senate Republican leaders are meeting to try to settle on a size for the tax cut. There is no word yet on what the final amount will be, so now is the time to call, email, or fax your senators and representative to tell them to oppose the tax cuts and spending cuts. A vote on the nation's budget is a vote for or against the nation's priorities. Remind your Members of Congress that:

- Tax cuts would be unwise under any circumstances, but in a time of war, they are reckless and unconscionable.
- We can't afford massive, unending and costly tax breaks at the expense of funding for vital programs such as Medicaid, Medicare, Food Stamps, child care, and those serving the country's veterans and low- and moderate-income families.
- If enacted now, these tax cuts will tie the country's hands to prevent it from making the long-term investments necessary to ensure the health, safety and overall well-being of ourselves and our families for decades to come.

Two Republican Senators – Olympia Snowe (ME) and George Voinovich (OH) – made clear to the White House that they would not accept a tax cut above $350 billion. However, some House Republicans have

said they are not willing to support any tax cut less than $500 billion. The result of this high-stakes showdown might be the inability to pass any budget resolution.

OMB Watch does not believe any additional tax cuts are warranted at this time. The size of the proposed tax cuts is not large enough to stimulate the economy or have much impact. Yet they are big enough to have a huge impact on spending initiatives – resulting in massive program cuts. The priority remains ensuring resources necessary for building and maintaining the infrastructure vital to the health and well-being of the country.

To contact your Members directly, go to OMB Watch's Take Action Alert Page.

For more information and to sign a petition opposing these tax cuts, go to the Fair Taxes for All website.

Nonprofit Issues

CARE Act Gets Agreement for Senate Floor Action This Week

After Sen. Rick Santorum (R-PA) agreed to drop the "equal treatment" portion of the Charity Aid Recovery and Empowerment (CARE) Act aimed at making it easier for religious organizations to get government grants, the path was cleared for the remainder of the bill (S. 476) to proceed to the Senate floor. S. 476 deals primarily with tax incentives for charitable giving and nonprofit accountability issues and was approved by the Finance Committee in February. However, controversy over the faith-based version sponsored by Santorum and Sen. Joe Lieberman (D-CT) was holding up the bill.

After Santorum's announcement, work began on a "unanimous consent" agreement, which will govern the number and type of amendments offered and set terms of the floor debate. One issue that could have blocked progress was raised by Sen. Jack Reed (D-RI), who sought assurance that the controversial faith-based provisions would not be put back into the bill in a conference with the House. Reed received this assurance from Senate Majority Leader Bill Frist (R-TN) before the unanimous consent rule was voted on.

One issue that could block progress on the bill remains -- the fate of the Compassion Capital Fund (CCF), which was not included in the Senate Finance Committee's version of the bill. Reed questioned whether the CCF, a non-tax related provision, is appropriate for the Finance Committee to add to its "manager's amendment." Reed expressed hope that Santorum would agree to leave the CCF out of the bill, saying he had not had the opportunity to review it and would reserve his right to object to the unanimous consent if he finds problems. The CCF provision remains in the manager's amendment, and it is unknown whether Reed will object when the floor debate begins.

The unanimous consent agreement limits debate on the bill to four hours, with another 30 minutes of debate on two amendments: the Finance Committee's manager's amendment and a proposal from Sen. Don Nickles (R-OK) relating to capital gains tax relief. The debate is expected to take place on Tuesday, with a vote following on Wednesday.

S. 476 contains tax incentives for charitable giving, including

- The nonitemizer charitable deduction for amounts over $250 for individuals ($500 for couples), but not exceeding $500 ($1,000 for couples). It is only effective tax years 2003 through 2005. The Secretary of the Treasury is required to conduct a study to determine if it increases giving and to compare taxpayer compliance between itemizer and nonitemizers. The report must be submitted to Congress by the end of 2004;

- Tax-free contributions made from rollover of Individual Retirement Accounts by taxpayers age 70 ½ and over, or by taxpayers age 59 ½ for contributions to split-interest entities (i.e. a charitable remainder trust);
- Improved oversight of charitable organizations;
- Simplification of the rules for charity lobbying;
- Restoration of funds for Title XX of the Social Services Block Grant; and
- Creation of a savings program for low income households.

The cost of the tax incentives is paid for through elimination of corporate tax shelters. The most costly incentive, the nonitemizer deduction, will only be available for two years, and the Treasury Department will be required to conduct a study of its effectiveness before it is re-considered.

The agreement to proceed with the CARE Act does not mean the faith-based issues will not be considered by Congress. Santorum said he intends to re-introduce his “equal treatment” provisions in reauthorization of the welfare reform law later this year, and similar provisions are already appearing in reauthorization and appropriations bills in the House. See related story.

Even passage of the CARE Act by the Senate does not insure that the provisions will become law. The House must agree to the Senate language. While House Republican leaders have agreed to drop the faith-based provisions, House Ways and Means Committee Chair Bill Thomas (R-CA) is believed to be somewhat lukewarm to the charitable tax provisions. Some have even speculated that Thomas is waiting for the White House to indicate that the charitable giving provisions are a high priority. This would allow for some horse-trading, giving Thomas some leverage to secure items he considers high-priority.

It is less than clear, however, whether the White House will tell Thomas the provisions are a high priority. Some White House advisors feel the charitable tax provisions are very important; others feel that dropping the faith-based provisions has lessened the importance of the bill – the faith-based provisions catered to an important political audience of the White House.

Last year OMB Watch opposed a long-term nonitemizer deduction because of its cost. Studies by the Congressional Budget Office and Congressional Research Service found it would be unlikely to increase giving by more than 4%, limiting its benefits. An OMB Watch letter to the Senate supporting passage of the modified CARE Act was sent last week, stating "We remain concerned about this tax break [nonitemizer], but given the provision is limited to two years and a study of its costs and impacts is required before it can be renewed, we believe the overall bill should move forward. We will continue to closely watch implementation of the non-itemizer deduction and look forward to reviewing the results of the required study to see if its benefits outweigh its costs."

Faith-Based Grant Rules Debate Shifts to House

Now that the Senate has agreed to proceed with the CARE Act without the "equal treatment" provisions addressing government grant rules for faith-based charities, the House of Representatives is currently taking up the issue in bills addressing national service and job training. Both houses are expected to consider these issues in depth when welfare reform programs are reauthorized later this year.

The House Education and Workforce Committee completed markup of H.R. 1261, reauthorization of the Workforce Investment and Adult Education Act in late March. The bill contains language repealing a prohibition on religious discrimination in hiring by nonprofits with grants to provide job training services. An amendment offered by Rep. Chris Van Hollen (D-MD) that would have barred religious discrimination in hiring was defeated 18-22 in a party-line vote. Van Hollen’s statement observed, “It’s a strange irony that job training providers that are supposed to help all people find jobs could deny a job to an individual based on religion.” Floor action on this bill could be scheduled at any time.

The House Education and Workforce Committee's Subcommittee on Select Education is considering reauthorization of the Corporation for National and Community Service, which has been targeted for budget cuts. Subcommittee Chair Pete Hoekstra (R-MI) said details of the bill's language are still being worked on with the Senate. But at a hearing held on April 1 it was clear that the subcommittee is considering removing the hiring anti-discrimination language from the current law. The hearing, entitled "Performance, Accountability, and Reforms at the Corporation for National Service," featured witnesses on both sides of the issue, but the Subcommittee's press release summarizing the hearing gave prominence to the testimony of Prof. Carl Esbeck, a supporter of religious hiring discrimination. He said a religious organization's right to hire based on religion in its privately funded activity "ought not to be lost when an organization becomes a recipient of federal assistance." On the other side of the issue, Richard Foltin of the American Jewish Committee testified that "there is something inherently problematic, as a matter of public policy if not as a matter of constitutional law, in the government funding what it itself cannot do, namely subject employment positions to a religious test."

Anti Nonprofit Advocacy Provisions Dropped from Bill

On April 2, 2003, the House Subcommittee on Education Reform adopted a substitute for H.R. 1350, the Improving Education Results for Children with Disabilities Act of 2003. Chairman Michael Castle (R-DE), the bill's sponsor, dropped provisions that would have severely limited the ability of nonprofit parent centers that receive grants under the bill to communicate with the federal government.

The action follows a quick and strongly negative reaction from the nonprofit sector, led by a coalition of nonprofit groups, including the Alliance for Justice, Charity Lobbying in the Public Interest, the National Association of State Directors of Special Education (NASDSE), OMB Watch and others. In roughly a 48-hour period, over 3,400 messages alone were sent to Committee members through the OMB Watch online alert system. A letter sponsored by NASDSE, bearing the signatures of 83 nonprofit leaders from around the country, was sent to the Subcommittee on March 31, 2003.

We remain uncertain as to the original author of the provision, and remain concerned that similar proposals may pop up again in future bills. Please alert us if you see or hear of anything similar by sending a message to OMB Watch's Kay Guinane at guinanek@ombwatch.org.

Thanks to all who helped get these provisions dropped! For background see the special section of our website on Nonprofit Advocacy Restrictions.

Supreme Court Upholds Funding Source for Low Income Legal Services

On March 26, in a 5-4 ruling, the Supreme Court upheld the legality of funding legal services for the needy by using "Interest on Lawyer Trust Accounts" (IOLTA), the short-term interest earned on escrow accounts that are used by lawyers to pool clients' funds for real estate transactions.

In *Brown v Legal Foundation of Washington* , the conservative public interest law firm Legal Foundation of Washington brought a legal challenge to this practice, saying that it constitutes an illegal "taking" of property for public use without compensation under the Fifth Amendment. In order for a state to engage in a "taking" of private property it must be for a "public use" and the owner must be given "just compensation."

The narrowly divided Court did not share this view, stating that the clients' funds would not earn interest if they were not pooled into a larger escrow account, and therefore individual clients are not losing anything and do not need to be compensated. The court also cited the compelling public interest in providing legal

services to the poor, as a justification for this "taking."

Although this case focused on Washington State, it has national implications because every state uses a similar system to raise legal services money. IOLTA funds pay for a large share of legal services, since appropriations for the Legal Services Corporation (LSC) have been significantly reduced over the years.

LSC, a congressionally created nonprofit organization that provides support for legal assistance to needy clients, has been under attack on several fronts over a period of years. In 1996, Congress passed "program integrity" requirements that force legal services programs to create physically separate organizations for advocacy with their private dollars, or deny low-income clients access to this type of advocacy. The restrictions are renewed annually through the appropriations process, and are currently the subject of a lawsuit challenging their constitutionality. See our article on the Dobbins case for more information.

Regulatory Matters

EPA: Friend to Seniors?

Publicly, the Environmental Protection Agency (EPA) has expressed great interest in protecting the elderly, recently launching an "Aging Initiative" to examine their particular vulnerability to environmental health hazards. Yet behind the scenes, the agency is employing analytical methods that systematically devalue the lives of seniors in setting environmental standards, making strong protections much less likely.

EPA announced its Aging Initiative in October of 2002, and has since launched a web site, as well as a series of public listening sessions geared toward seniors. Unfortunately, the agency's approach to cost-benefit analysis -- which has emerged as the heart of the administration's regulatory decision-making -- presents a huge barrier to turning this listening into action (as discussed in greater detail previously by OMB Watch and here by the Natural Resources Defense Council).

Specifically:

- In monetizing human life (a requirement of cost-benefit analysis), EPA is assigning less value to the lives of those over age 70, scoring them at 63 percent of those under age 70. This happened in a recent analysis for EPA's much-touted Clear Skies Initiative, as well as in a major rule on snowmobile emissions finalized this past September, which not surprisingly, was much weaker than current technology would have allowed.
- At the urging of the White House Office of Management and Budget (OMB), EPA is estimating benefits in terms of life years saved (in addition to number of lives, the more common method of measurement over the years). This approach, which is advised by OMB in new proposed guidelines for cost-benefit analysis, naturally skews decision-making against protections for the elderly, who have fewer life years remaining.
- OMB is also insisting that EPA "discount" the value of lives saved in the future, which has the effect of discouraging action against cancer or other diseases of old age, which have long latency periods. The further in the future a "statistical life" is saved as a result of regulatory action today, the more it will be discounted from its "present value," and the less likely the action will pass a cost-benefit test -- this can be understood as a form of "interest in reverse." The practice of discounting human life is not new, but there has been a significant change in emphasis. The current administration sees monetized cost-benefit analysis as the best way to determine proper regulation. It is no longer just one tool, among many, to inform decision-making. It is *the* tool, which makes discounting much more consequential.

EPA's public listening sessions, which will take place in six cities over the course of this month, are being held to gather public input for the development of a "national agenda" that will "examine and prioritize environmental health threats to older persons," who represent an increasing proportion of the population. "By 2030, the number of older persons aged 65 and older is expected to double to 70 million, one out of every five Americans," according to EPA.

EPA will be accepting public comments on these issues through May 16. More information, including registration details, on the public listening sessions being held in Florida, Texas, Iowa, Pennsylvania, California and Maryland, is available on EPA's website.

NHTSA Issues Weak Fuel Efficiency Rule

The National Highway and Transportation Safety Administration (NHTSA) recently issued new fuel efficiency standards that require only minimal increases for light-duty trucks and sport utility vehicles.

The new rule, announced April 1, will increase fuel economy for such vehicles by a mere 1.5 miles per gallon (mpg), from 20.7 mpg today to 22.2 mpg by 2007 -- well below what is technologically feasible. NHTSA stuck with the targets from its December 2002 proposal, despite receiving thousands of public comments supporting tougher measures.

"The numbers apparently were fixed by the auto industry last year," according to a statement by Joan Claybrook, president of Public Citizen. "E-mails sent between agency officials and corporate officials from Ford and General Motors, obtained recently by Public Citizen through a Freedom of Information Act request, confirm that NHTSA used the manufacturer's numbers as the basis for its calculations, rather than setting the standards at the 'maximum feasible' level as required by law."

The new standards are much less stringent than those for passenger cars -- currently 27.5 mpg -- and will result in only minimal environmental benefits, according to NHTSA's own draft environmental assessment.

The rule takes effect May 7. NHTSA will accept petitions for reconsideration of this rule through May 22.

Court Orders OSHA to Take Action on Dangerous Lung Carcinogen

A U.S. appeals court recently ordered the Occupational Safety and Health Administration (OSHA) to issue a new standard for workplace exposure to hexavalent chromium, a dangerous lung carcinogen used in chrome plating, stainless steel welding, and the production of chromate pigments and dyes.

OSHA estimates that each year more than one million workers are exposed to hexavalent chromium, with hundreds dying prematurely. Yet the agency has been dragging its feet on the matter, repeatedly postponing regulatory action to update the existing hexavalent chromium standard.

The court ruling stems from a lawsuit filed last year by Public Citizen and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE), who sought a safer exposure limit for the dangerous chemical.

The court found that OSHA's failure to issue an updated standard violated the law, and ordered a three-year rulemaking schedule, calling for a proposed rule by October 4, 2004, and a final rule no later than January 18, 2006. "We would have liked the agency to move even faster," said Dr. Peter Lurie, deputy director of Public Citizen's Health Research Group. "But the important point is that the agency has now

been told that it has to act, and that the leisurely schedule it wanted won't adequately protect workers' health."

Right-to-Know

Stealthy Officials Raid Libraries of Emergency Plans

It's now a lot harder for people in Ohio to know whether their communities are prepared for chemical emergencies, thanks to local officials who unilaterally removed documents from libraries without the librarians' prior knowledge or public comment.

Last month Ohio library officials were surprised when officials removed from two libraries public documents that describe local plans for responding to hazardous materials spills and other chemical emergencies. In one instance the officials posed as patrons and told librarians of their intent to remove the documents only after the reference librarian retrieved the materials and handed the material over. At a second library, the officials showed up without prior warning and flashed badges when requesting the materials. In both instances, officials replaced the documents with a one-page letter indicating the documents are available through the county's Homeland Security Office to anyone showing proper identification. These documents have circulated in the public domain for years.

Perhaps more disturbing is the little media attention these raids -- and other efforts to limit or monitor library materials -- have attracted. The American Library Association reported on the events, but there was little media attention given to the action.

These government actions to restrict viewing of public documents can be intimidating to individuals and discourage members of the public from seeking public information. Library collections should not be swept clean of information; ignorance only allows the problems to fester and leaves communities no better for efforts of scientists, neighbors, reporters, and local officials to work together to make them safer. As the late Daniel Patrick Moynihan once wrote, "analysis, far more than secrecy, is the key to security."

Senator Graham Speaks Out Against Secrecy

During a recent statement in memory of former senator Daniel Patrick Moynihan, Sen. Bob Graham (D-FL) spoke out against government actions around secrecy during a floor statement. Moynihan had been a strong opponent of government secrecy through out his 24 years as a U.S. Senator from New York. Graham proposed that a fitting tribute to Moynihan would be a "heightened recognition of the damage that excessive secrecy exacts on our government's credibility, and to recommit ourselves to a government which trusts its people to know the truth." Recently signed Executive Order 12,958 was singled out during the comments as an example of the current administration's abuse of secrecy. The order allows for delays in the release of classified documents that were over 25 years old and would have been automatically declassified on April 17. Graham made note the irony of the Executive Order, which was signed on the eve of Moynihan's death.

Graham made reference to a number of Moynihan's writings on the topic of secrecy including his belief that "excessive secrecy will undermine the public confidence in our government and its essential institutions." Graham also noted his own work as co-chair of the joint House-Senate inquiry of September 11. One of the recommendations that came out of the Joint Inquiry was that Executive Orders that govern national security classification should be targeted to expand access to information that is critical to fight terrorism. The current administration has done quite the opposite since September 11, establishing

blanket policies of secrecy and information restrictions. Graham is one of few who have openly criticized the administration for its restrictive policies.

Chemical Security Re-Emerges in Senate

During the last session of Congress, Sen. Jon Corzine (D-NJ) made a tremendous effort to move a Chemical Security Bill that would require chemical plants to assess their vulnerabilities and take steps to reduce the risk they pose to surrounding communities. Unfortunately, due largely to efforts by the chemical industry to oppose the bill, Corzine's bill was blocked from ever being considered by the full Senate.

Considering the continuing threat of terrorism, ignoring the risks posed by chemical plants seemed an obvious omission in the efforts to develop a Homeland Security plan. The Environmental Protection Agency estimates that 123 chemical plants are close enough to major urban centers to put more than a million people at risk in each area; yet last year the Senate completely passed over the issue.

The issue, however, seems to have new life in the Senate, which now seems certain to address the matter sooner rather than later. Last week Corzine offered his Chemical Security legislation as an amendment to an appropriations bill. The amendment was stopped by Sen. John Edwards' (D-NC) invoking Rule 16, which prohibits legislating on an appropriations bill. The move still drew a great deal of attention to the fact that the risks chemical plants pose remain unaddressed.

Now it seems that the administration is planning to introduce its own version of a Chemical Security bill, but likely with some significant differences from Corzine's legislation. During previous negotiations between Corzine and Sen. James Inhofe (R-OK), the lead Senate republican on this matter, Republicans seemed resistant to the idea of requiring facilities to consider "inherently safer technologies" and "hazard reduction." These concepts, keystones in Corzine's proposal, would require facilities to consider the possibilities of reducing the risk by switching to safer chemicals, different technologies, and smaller storage quantities of dangerous chemicals. However, instead of investing in reducing the risks the chemical plants pose to communities, the Administration and Senate Republicans seemed satisfied with merely implementing stiffer security measures such as taller fences, more guards and thicker barriers.

The details of the administration's alternative Chemical Security bill are not yet available, however rumors indicate that they are rushing to finish a bill and plan to introduce as early as next week.

Government Accidentally Does Its Job

An alert from the new Department of Homeland Security warned that Chinese hackers were planning to attack U.S. and U.K. websites in an effort to protest the war in Iraq. The alert warned that the main plan was to render Web sites and networks unusable by flooding them with massive amounts of traffic. According to the alert, the hackers also planned to deface selected Web sites. The Department of Homeland Security sent the alert to government and industry officials to allow them to make preparations. The alert was also posted on the homepage of the National Infrastructure Protection Center (NIPC), to allow the public to also prepare for possible loss of service or data that might result from a cyber attack. However, the public warning was unintentional and the alert was pulled shortly after being posted.

While a Homeland Security Department spokesman acknowledged that the information was not classified, they claimed it was "sensitive" and that it was not supposed to be released to the public. Apparently, the Homeland Security Department got the information by monitoring an online meeting that the hackers held to coordinate the attacks. The concern was that groups may be able to use the information contained in the alert to avoid being monitored in the future. However, no explanation was

given for why some redacted public warning was not posted. While there are benefits to open communication between industry and government, it is not clear why the Department of Homeland Security planned to use government-derived information to help industry but not the public.

Virginia Governor Signs Bills Increasing Secrecy Measures

On recommendation of the Secure Virginia Panel, Virginia Governor Mark R. Warner (D) recently signed several bills into law that are part of a state effort to strengthen security measures and prevent domestic terrorism. Two of the bills, the Sensitive Records Protection Act and its companion bill, the Freedom of Information Act Critical Infrastructure and Vulnerability Assessments, are aimed at facilitating communication between the private sector and state agencies in order to prevent threats to critical assets. Under the guise of increasing communication about vulnerabilities, these bills actually promote secrecy and inhibit information sharing, preventing the public from accessing information which could protect them.

Under the Sensitive Records Protection Act, similar to information restriction provisions in the federal Homeland Security Act of 2002, state agencies must withhold from the public voluntarily submitted information from public and private sources. The only reasons state agencies may disclose these "sensitive records" is if the information would assist in a criminal prosecution, the agency has been served a judicial order, or the submitter has given written consent. The law specifically blocks access to the information under the Freedom of Information Act. The overly broad exemption does not define what information would fall under the category of relating to "critical infrastructure sectors and components." This could lead to abuses by companies using the new law to simply withhold information. The Act also contains no provisions for the state to act on the information submitted to ensure that the critical infrastructure is well-protected, leaving the charge of the bill unfulfilled.

The Freedom of Information Act (FOIA): Critical Infrastructure and Vulnerability Assessments bill also restricts the amount of information the public can access. It expands the record exemptions under FOIA to include engineering and architectural drawings, and any other records relating to critical infrastructure components. Both bills are alarming because they infringe upon the rights of citizens to gain access to unclassified information. The Virginia bills are some of the first state versions the federal Homeland Security Act of 2002 that have been signed into law. Since the Critical Infrastructure Information provisions in the federal Homeland Security Act preempt all state and local disclosure laws, these state-level laws are useless unless they place even greater restrictions on information then the federal law does.

Montana Drops Terrorism Security Bill

Montana Governor Judy Martz (R) and leading state lawmakers recently abandoned a state bill which would have given the government authority to withhold any information from the pubic that it deemed "sensitive." State Senator Walt McNutt (R-Sidney) stated that Senate Bill 142, which was crafted in order to protect public works from terrorist attacks, is being dropped because the legislation would have created an atmosphere of too much secrecy. The Senator explained that the legislation would have made it possible for agencies to abuse their privilege and withhold a great deal of information.

Unfortunately the administration's reason for dropping the bill did not appear to arise from a commitment to the public's right-to-know. The Governor's office explained that she believes "government can work with the news media to ensure that information posing a threat…is not disclosed." The administration claims one of the factors in dropping the bill is that the Montana news media is demonstrating responsible new methods of determining what information to release to the public, and therefore additional measures are unnecessary. It is vital to the public's right-to-know that this bill, and numerous others like it around

the country, do not see fruition. It is even more important that lawmakers and government officials recognize the importance of open government and make a commitment to protect public access to information, a realization which Martz seems to have fallen short of at this point.