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Taxing Capital Income Increases Revenue, Reduces Inequality

In September, President Obama released a deficit reduction package for consideration by the congressional Super Committee that included a new tax reform recommendation regarding millionaires. Dubbed the "Buffett Rule," the proposal states, “No household making over $1 million annually should pay a smaller share of its income in taxes than middle-class families pay,” and it would address a long-standing disparity between the taxation of labor income and investment income. Indeed, going beyond the Buffett Rule and taxing capital income on par with labor income would not only bring in much needed revenue, it would help to reduce income inequality, a source of economic inefficiency.

Capital gains are the increase in the value of capital assets, which most generally include real estate, stocks, and bonds. When the capital gains tax was established by Congress in 1913, the capital gains tax rate was equal to the income tax rate, but in 1922, Congress lowered the capital gains tax rate, and – except for a few brief periods since – it has continued to enjoy preferential treatment. Today, capital gains benefit from the lowest tax rate in modern history at 15 percent, down from 20 percent during the Clinton administration.

Most of the benefits of this preferential tax treatment accrue to the wealthiest Americans. A recent Congressional Research Service (CRS) report on the economic effects of capital gains taxation found that wealthier households "are substantially more likely to own assets that can generate taxable gains than lower income households." Indeed, "Well over half of the assets that can generate taxable capital gains are owned by the richest 5 [percent] of households," with the richest 20 percent owning 83 percent of all stocks and mutual funds, 93 percent of bonds, and 79 percent of farm and business real estate. Home ownership, which is more spread out through the income spectrum, accounts for the vast majority of the lower 80 percent of households' relationship with capital gains.

For several decades, Republicans have advocated for further reductions in the capital gains tax. Supporters argue that lower capital gains taxes increase tax revenues because they release investors to sell stocks and bonds they held onto longer than they otherwise would have because of the "prohibitive" tax on their return. Known as the "lock-in" effect, the capital gains tax is said to discourage "capital gains realizations" and persuade investors "to hold on to appreciated assets they would otherwise sell."

Some economists have argued that the capital gains tax slows economic growth because investors may be discouraged from taking advantage of investment opportunities that would result in higher tax bills. Former Federal Reserve Chair Alan Greenspan gave voice to this theory during the 1990s when he notably told Congress that the "major impact" of the capital gains tax, "as best I can judge, is to impede entrepreneurial activity and capital formulation." He added that the appropriate capital gains tax rate was zero.

Yet, according to CRS, reductions in the capital gains tax rate are not likely to negatively impact saving, as an increased return on investment due to a lower tax rate actually encourages households to save less in order to maintain their target wealth level. Thus, the report concludes, capital gains taxes do not significantly impede entrepreneurial activity or capital formulation and rate reductions are unlikely to affect economic growth over the long term. Moreover, "the bulk of the evidence" surveyed by CRS "suggests that reducing the capital gains tax rate reduces tax revenues" overall, especially in the long run.

Capital gains tax cut supporters also argue that such a cut would be an effective economic stimulus measure. CRS observes, however, that government spending would be a more effective economic boost. Because the wealthiest households hold the vast majority of capital gains assets, neither a temporary or permanent reduction of the capital gains tax rate would provide much economic stimulus, as these households are more likely to save additional income, rather than putting it back into the economy through purchasing goods and services.

Further reductions of the capital gains tax rate may even be harmful to economic growth. A new study by economists at the International Monetary Fund (IMF) found that increases in income inequality could hurt a nation's potential for growth. The study turns conventional economic wisdom on its head by questioning the choice between efficiency and equality, concluding instead that "improving equality may also improve efficiency, understood as more sustainable

long-run growth." In fact, "equality appears to be an important ingredient in promoting and sustaining growth."

The wealthiest households have always realized the most income from capital gains, but over the past 25 years, the benefits from capital gains have become even more concentrated, contributing to the overall concentration of wealth within the top tier of the income distribution. Both the reductions in the capital gains tax rate and the reduction in income tax rates for the very wealthy have fueled the redistribution of wealth upward.

Economists at the IMF found that inequality mattered more to whether a country continued to enjoy economic growth relative to other factors, such as the openness of political institutions, trade openness, exchange rate competitiveness, and even external debt. Inequality was correlated with slower growth over the past 25 years.

The authors of the IMF report note that "better-targeted subsidies, better access to education for the poor that improves equality of economic opportunity, and active labor market measures that promote employment" could promote more equality and more growth. Cuts in the capital gains tax rate are unlikely to spur growth through private investments, but increases in the rate could provide public revenue for the social investments needed to spur growth – and more equitable growth at that.

Repatriation Tax Holiday Is Not a Jobs Plan

Congressional Republicans consistently push tax cuts for corporations and the wealthy as a means to create jobs. One measure that is receiving increased attention is a tax break for corporations that park profits overseas to avoid paying taxes. Despite Republicans' insistence that a tax holiday would bring these profits back to the U.S. and that corporations would then invest in jobs here, the evidence tells a different story.

A recent report by the Federal Reserve noted that private companies remain cautious about making new investments because of concerns about a "weaker and more uncertain economic outlook" over the coming months, but the decision to refrain from investing is not the result of a lack of funds.

In fact, many large corporations are flush with cash. According to the *Wall Street Journal*, "Corporations have a higher share of cash on their balance sheets than at any time in nearly half a century, as businesses build up buffers rather than invest in new plants or hiring." Businesses are holding more than $2 trillion in cash and other assets. These companies could hire, but they are choosing not to because consumer demand for their products is weak. Another tax cut would increase corporations' cash reserves but provide no incentive to hire.

Tax cuts generally do not stimulate the economy as much as government spending. An analysis of the spending in the American Recovery and Reinvestment Act (Recovery Act) conducted by the independent Congressional Budget Office (CBO) found that the tax cuts contained in the

Recovery Act had little stimulative effect on the economy (returning about 50 cents on the dollar), with corporate tax cuts having the least impact.

Similarly, the Congressional Research Service (CRS), Congress' independent research arm, found that "GDP growth, median real household income growth, weekly hours worked, the employment-population ratio, personal saving, and business investment growth were all lower in the period after the [Bush] tax cuts were enacted" than before those cuts took effect.

Despite this evidence, Republicans and some Democrats are calling for another "stimulative" tax break, proposing a so-called repatriation tax holiday, which would temporarily but significantly lower taxes on foreign income from 35 percent to 5 percent. This, supporters say, would encourage corporations to bring profits currently stashed offshore back home, generating more income that could be used for hiring. A similar holiday was established in 2004, and the results were dismal.

A CRS report noted that "while empirical evidence is clear that this provision [the tax holiday] resulted in a significant increase in repatriated earnings, empirical evidence is unable to show a corresponding increase in domestic investment or employment." In other words, while the tax cut worked to bring money to the U.S., it did little to actually help the economy. In fact, a Senate report on the 2004 tax holiday found that it may have done more harm than good, noting "the 15 companies that benefited the most … cut more than 20,000 net jobs and decreased the pace of their research spending."

The push for another tax holiday as a "job creation plan" flies in the face of all evidence. Such tax breaks will only increase the deficit and add to the pressure on lawmakers to further reduce spending. In fact, the CBO report on the Recovery Act and a wealth of other studies show that direct government spending on infrastructure projects has the largest multiplier effects on the economy, grows jobs, and significantly expands GDP. A serious push to move forward with such projects would do far more to spur significant economic growth than any tax holiday.

Senate Passes Bill to Improve Pipeline Safety and Increase Public Access to Information

On Oct. 17, the U.S. Senate unanimously passed a bill to strengthen safety standards and increase public availability of inspection results and enforcement actions related to the nation's 2.3 million miles of pipelines. The legislation was sparked by a series of deadly explosions in 2010 and 2011 that drew scrutiny to the safety of gas and oil pipelines.

Current pipeline safety standards have failed to adequately protect public safety and the environment. In 2010, there were a total of 585 reported pipeline leaks and/or explosions, resulting in 25 deaths, 111 injuries, and almost $1 billion in property damage. Weak oversight by federal and state regulators contributed to many of those pipeline accidents, including a September 2010 natural gas pipeline explosion beneath a residential subdivision in San Bruno, CA, that killed eight people, injured more than 50, and destroyed about 38 homes. The San Bruno accident inspired the pipeline safety bill.

The pipeline accident numbers are not much better for 2011 so far, with 420 incidents already, leading to 14 deaths, 39 injuries, and close to $200 million in property damage. For instance, in February, a gas explosion, which claimed five lives (including a four-year-old boy, in Allentown, PA), occurred as a pipeline erupted beneath a working-class neighborhood at night. The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) oversees and publicly reports on pipeline safety, including data incidents.

The Pipeline Transportation Safety Improvement Act of 2011

The Pipeline Transportation Safety Improvement Act of 2011 (S. 275) would require several new safety procedures, including automatic or remote-controlled shut-off valves on new pipelines to halt oil spills and natural gas fires, more federal safety inspectors, higher penalties for safety violations, and faster notification to the government of accidents and leaks. The bill would also increase public availability of information on the pipelines – such as monthly inspection reports with all enforcement actions taken – and require that this information be made available online via PHMSA's website.

More specifically, the bill would significantly increase the enforcement of safety standards, authorizing the hiring of 39 new PHMSA staff over the next four years to assist with pipeline inspection and enforcement support. The bill would also more than double the penalties the agency is permitted to levy to a maximum of $250,000 a day for each violation, with a cap of $2.5 million for a series of violations. Currently, inspectors can only fine companies a maximum of $100,000 a day with a $1 million cap.

Moreover, within one year, the staff would have to provide monthly updates of all completed and final natural gas and hazardous liquid pipeline inspections conducted by or reported to the PHMSA and ensure that information is publicly available on the agency's website. This information would include the types of inspections performed, and the inspection results, including whether any violations occurred or corrective actions were taken. Greater inspection transparency will increase the level of accountability for both the inspectors and pipeline operators to identify safety problems and promptly resolve them.

The bill also calls for the agency to maintain and annually update a map of all designated "high consequence areas"; in these dense population areas, the pipelines are required to meet integrity management safety regulations. The mapping should increase participation in pipeline safety and emergency planning, especially in communities where many people are unaware that there are gas or oil pipelines running underneath them.

The bill cleared the Senate only after Sen. Rand Paul (R-KY) dropped his opposition, in return for getting approval of an amendment to the bill. Surprisingly, given that Paul is one of Congress' most fierce opponents of government regulation, his amendment added a change first proposed in January by Sens. Dianne Feinstein (D-CA) and Barbara Boxer (D-CA) that demands that older pipelines, like the one involved in the San Bruno explosion, be pressure-tested as newer pipelines are. More than 60 percent of the nation's pipelines are exempt under current regulations from pressure testing and other safety procedures.

Business Support for the Pipeline Safety bill

Sponsored by Sen. Frank Lautenberg (D-NJ), the pipeline safety bill has received widespread support from both the industry's major trade associations, like the Interstate Natural Gas Association of America, the American Gas Association, and the Association of Oil Pipelines, as well as public interest groups in this area, such as the Pipeline Safety Trust, a safety advocacy group.

Public interest advocates also voiced support for the intent of the bill, saying it would "increase the public's trust in government to make pipelines safe and make clear inadequacies that need to be addressed," but called for several improvements to the legislation. For instance, Carl Weimer of the Pipeline Safety Trust expressed disappointment that Lautenberg withdrew language requiring pipeline emergency response plans to be made publicly available.

These demands mirror recommendations detailed in *An Agenda to Strengthen Our Right to Know*, a document produced by OMB Watch and endorsed by more than 100 public interest organizations, that called for a public right to access emergency response plans related to oil and natural gas pipelines.

Following the Senate's passage of the bill, the American Gas Association announced its support in a press statement and expressed hope that Congress would send a final bill on pipeline safety to President Obama by the end of the year. It appears that PHMSA has already begun working on new safety rules, and gas companies are afraid that the agency will issue stricter regulations than those in the bill.

Pipeline Safety amidst Production Growth

The pipeline safety bill comes amid substantial investments in U.S. natural gas and oil production. For instance, in a $20.7 billion deal, Kinder Morgan Inc. announced its plans during the week of Oct. 17 to buy El Paso Corp; the merged company would become America's largest natural gas pipeline operator, responsible for the safety of an 80,000-mile network of pipeline.

At this moment, the Obama administration is considering whether to approve the controversial $7 billion Keystone XL pipeline project, which would transport tar sands, which are more corrosive than crude oil, from Alberta, Canada, through America's heartland to Texas. Thousands of communities face the prospect of having a major new, potentially explosive pipeline flowing under their homes and businesses. The TransCanada oil pipeline project is opposed by many public interest organizations but is supported by industry groups and many lawmakers. In a provision that may be directed at the proposed Keystone XL pipeline, the Senate bill calls for the Secretary of Transportation to complete a study of the transportation of tar sands crude oil. In particular, the bill requires that the secretary prepare a comprehensive review of hazardous liquid pipeline regulations to determine whether they are "sufficient to regulate pipelines used for the transportation of tar sands crude oil."

Next Steps

Two House committees – Energy and Commerce and Transportation and Infrastructure – have already passed separate pipeline safety bills, both of which are similar to the Senate version. The House plans to combine the two versions into a single bill to bring to a House vote by the end of the year.

Update of Key Transparency Law Would Better Protect Americans' Privacy

A critical but neglected transparency law could be updated for the 21st century if a new congressional proposal succeeds. The Privacy Act Modernization for the Information Age Act (S. 1732), introduced by Sen. Daniel Akaka (D-HI) on Oct. 18, would update the Privacy Act of 1974 (5 U.S.C. 552a). The Privacy Act governs what actions federal agencies must take when collecting personal information on American citizens and how agencies use and share it.

In addition to protecting personal privacy, the current act gives Americans the right to know what information the government has about them, to know how the government has used the information, and to correct inaccuracies in the information. This makes it a key transparency law. Akaka's bill would make the law a more robust tool for holding government accountable and for empowering Americans to protect their personal information. Akaka, who is retiring at the end of 2012, hopes to pass the bill before this session of Congress adjourns.

Bill Expands Scope of Protected Personal Information

The modernization bill extends privacy requirements "to all Federal collection and use of personal information" and updates the law's wording to better apply to electronic information. This would enable Americans to more easily access and correct any personal information about them held by agencies, including data purchased or licensed from commercial sources. Examples of commercial information that government agencies may access include credit report information, telecommunication records, online purchase data, and passenger flight information.

Requirements that Individuals Be Informed When Personal Information is Collected

Under the Privacy Act, when collecting personal information, agencies must inform individuals of the authorization and purpose for doing so, as well as any likely effects should the individual not provide the requested information. These notices are an important way to make the public more aware that such information is being gathered and to make agencies more accountable for how they use personal information.

The proposed legislation would improve these notices by mandating that public agencies add information on how to access and correct a person's personal information and how to learn

more about the reasons and uses for which such information is being collected. These changes would better inform Americans of their privacy rights, empowering them to engage agencies and make better decisions about providing their personal information. In 2008, a coalition led by OMB Watch demanded better notification of the public of their rights under transparency laws. The Akaka bill would implement that recommendation.

Information on Government Records Systems Collected on One Website

The Privacy Act requires agencies to publish a description in the *Federal Register* of the information they intend to use when establishing new systems for gathering personal information; moreover, they must solicit public comments on the proposed system before establishing or amending it. The modernization bill would update these provisions by requiring that these descriptions or notices be published both on agency websites and on a centralized, government-wide website. Since most people are not regular readers of the *Federal Register*, increased online notification should result in more people learning about these proposals and commenting on them.

The government-wide website would, in effect, generate an inventory of all such systems, updated annually. As Akaka commented, "We need more transparency so the average person has a place to go to learn about what information the government is keeping and how they can access that information."

The bill would also require agencies to publish replies to comments received and to notify the public when the system has been implemented. Establishing such a back-and-forth dialogue should strengthen public participation in setting agencies' privacy policies.

Better, More Unified Notification in the Case of Security Breaches

Moreover, the proposed legislation would require the Office of Management and Budget (OMB) to establish procedures for notifying the public of breaches of their personal information. Prompt breach notifications allow the public to protect against identity theft or other problems. Requiring notification also prevents agencies from hiding embarrassing security failures, providing a valuable incentive to prevent such breaches from occurring. A 2006 report of the House Oversight and Government Reform Committee found that every Cabinet department had reported "at least one loss of personally identifiable information" in the period from 2003 to 2006.

Most states have breach notification laws that apply equally to the private sector and to government agencies. However, no comprehensive law exists at the federal level. Instead, a patchwork of policies has developed over the years to address privacy breaches in the federal government or particular agencies:

- In response to high-profile losses of data by the Department of Veterans Affairs (VA), a 2006 law requires the department to notify affected individuals of data breaches.

- OMB issued memoranda in 2006 and 2007 that discussed breach notification procedures for agencies to undertake.
- The Health Information Technology for Economic and Clinical Health Act (HITECH Act), enacted as part of the American Recovery and Reinvestment Act of 2009, requires breach notification by entities that handle medical records, including federal agencies.

There are other pending legislative proposals that would also extend breach notification requirements across the federal government. Both the Data Breach Notification Act (S. 1408), introduced by Sen. Dianne Feinstein (D-CA) in July, and the Personal Data Privacy and Security Act (S. 1151), introduced by Sen. Patrick Leahy (D-VT) in June, would establish comprehensive breach notification for both government agencies and private entities. Both bills have been referred to the Senate Judiciary Committee. In May, the White House published a legislative proposal on breach notification that would apply to the private sector but not federal agencies.

Centralized Compliance Oversight at OMB

To oversee agency compliance with the Privacy Act and related requirements, the Akaka bill would create a Federal Chief Privacy Officer housed at OMB. This new office would seek to create more consistent implementation of the Privacy Act across the federal government. Increased oversight should prevent the sweeping exemptions from the act that some agencies have claimed.

The bill would also establish chief privacy officers in each agency that does not currently have one. The bill would give these officers the authority to investigate agency compliance with privacy laws, which currently only the Department of Homeland Security's officer has. The bill also would establish a government-wide Chief Privacy Officers Council to coordinate policy across agencies.

Recommendations

While the proposed legislation would strengthen the transparency and accountability of federal privacy practices, it could be improved in several important ways:

- *More information on the central website:* The government-wide website on agencies' personal information collection practices should explain the Privacy Act, agency procedures and obligations under it, and easy-to-understand instructions on how a citizen can access and correct his or her own personal information.
- *Strengthen the breach notification requirements:* The proposed law gives OMB the authority to determine breach notification standards. Congress should establish this standard, as nearly every state legislature has done.
- *Improve public participation requirements in the law:* The provisions in the bill that expand notification requirements and online information about records systems that collect personal information seem geared to improve participation by better informing the public. However, these fall short of best practices for effective participation. The bill should: require agencies to publish plain-language descriptions of information collection

plans that would include personal information; to publish the comments they receive; and to publish responses to such comments before the establishment of new or amended information gathering systems.

Agency Heads Fight Back, Defend Their Missions

Rhetorical and legislative attacks on the agencies that protect the public from health, safety, and environmental hazards occur almost daily, coming from corporate interests and their political allies on Capitol Hill. Now, some agency heads appear to be publicly fighting back by openly defending the work their agencies do to protect the American people.

The traditional way that agency heads defend their agencies is in oversight hearings conducted by the House and Senate. Obama administration officials have testified often throughout 2011, especially before many Republican-controlled House committees and subcommittees. For example, on Oct. 5, Dr. David Michaels, Assistant Secretary, Occupational Safety and Health Administration (OSHA), testified before the House Subcommittee on Workforce Protections, the third time Michaels has testified before the House this year.

Michaels highlighted the benefits of the Occupational Safety and Health Act, passed in 1971, to both workers and businesses. "It is difficult to believe that only 40 years ago most American workers did not enjoy the basic human right to work in a safe workplace. Instead, they were told they had a choice: They could continue to work under dangerous conditions, risking their lives, or they could move on to another job," he noted in his written testimony.

He cited the decline in deaths and injuries per day (from an estimated 38 deaths per day on the job in 1971 to 12 today; illnesses and injuries have declined "from 10.9 per 100 workers per year in 1972 to less than 4 per 100 workers in 2009"), which is the result of enforcement of critical OSHA rules that regulate grain and cotton dust, limit exposure to toxics like asbestos and benzene, and protect health care workers from blood-borne pathogens through a reduction in needle sticks.

Michaels noted that deaths and injuries take their toll on businesses as well the workers and their families who suffer from lost wages. Michaels cited a 2010 report showing that "the most disabling injuries (those involving six or more days away from work) cost American employers more than $53 billion a year – over $1 billion a week – in workers' compensation costs alone."

Since she was appointed, U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson, also a regular at congressional hearings, has taken a more public stance defending her agency than many other agency heads. In an Oct. 12 guest piece in *Time* magazine, Jackson fought back against congressional broadsides on the agency and important environmental laws, calling the nonstop attacks "misleading information." She noted the significant benefits of strong environmental standards, including fewer asthma attacks, fewer deaths, innovations in business processes, and jobs created. She concluded, "The challenges we face as a nation deserve a fact-based discussion, not scare tactics. We shouldn't let a lot of hot air in Washington lead to

dirty air in your hometown. Yet that's the direction we're headed if we continue to put politics ahead of our health and environmental protection."

Jackson also joined with Kathleen Sebelius, Secretary of the Department of Health and Human Services (HHS), to write an op-ed in the Oct. 16 edition of *USA Today*. They discussed the costs of pollution to the health of families and children, especially in minority and at-risk neighborhoods. "In total, our children's exposure to air pollution and toxic chemicals costs America more than $75 billion every year. When our nation is working to pay the bills, we shouldn't be spending $75 billion a year to pay for illnesses we could have prevented."

Sebelius and Jackson noted how their two agencies are working together to improve Americans' health and quality of life. For example, HHS and EPA have combined data "to give local policymakers access to detailed information on environmental factors and health disparities. A local health official can now look at data on air quality and asthma hospitalization at the same time, and use it to identify at-risk communities and improve prevention efforts."

Robert Adler, one of the commissioners of the Consumer Product Safety Commission (CPSC), which regulates approximately 15,000 consumer products ranging from children's toys and cribs to swimming pools and all-terrain vehicles, also went on the offensive in an op-ed in the *New York Times* on Oct. 16.

"What many of our critics really want to do is to stop government from regulating, period. They are invoking cost-benefit analysis as their weapon of choice…health and safety agencies rarely impose new costs on society when we issue safety regulations. We simply re-allocate who pays the costs," Adler wrote.

CPSC estimates that about 31,000 people die and another 34 million are injured by unsafe consumer products. These deaths and injuries cost society about $200 billion annually. Adler argues that "[a]nyone who insists that regulations necessarily impose new costs on society shouldn't be taken seriously. The costs are already there, in the form of deaths and injuries – and are often as much of a drag on our economy as any safety rule. So the real issue is who should bear the costs." Regulatory critics, he claims, are not interested in rationality and better rules but only in the costs to businesses. "[B]enefits to consumers somehow never make it to the table," he concludes.

Agency heads like Michaels, Jackson, Sebelius, and Adler have the responsibility to make people's health and safety their top priorities. It is encouraging to see them stepping up to defend the benefits our system of standards and safeguards delivers. Educating the public about what they do should be a critical part of their work – especially now when there is an orchestrated attack on our regulatory system. We hope they'll continue to make their case to the public.

Farm Dust Frenzy: A Misleading and Distracting Regulatory Myth

For the past several months, members of Congress and agriculture associations have decried a supposedly imminent regulatory threat by the U.S. Environmental Protection Agency (EPA) – new standards for a type of air pollution referred to as "farm dust." Despite assurances from EPA Administrator Lisa Jackson that the agency will not issue new Clean Air Act regulations for coarse particulate matter (PM10), which would include farm dust, the mere notion of new air pollution standards has sent legislators and some agriculture groups into a frenzy to block future agency actions.

After giving several indications that EPA would not promulgate new National Ambient Air Quality Standards (NAAQS) impacting farm dust, Jackson confirmed the agency's position Oct. 14. In a letter to Senate Agriculture Committee Chair Debbie Stabenow (D-MI), Jackson wrote that the agency did not intend to revise the current standards for coarse particulate matter. *Politico* reported that, on the same day, Jackson said she intends to clear up the myths surrounding EPA regulation and "talk about what's really happening inside the four walls of the EPA."

The Clean Air Act requires EPA to reconsider the NAAQS standards, which cover pollutants such as airborne particulate matter, every five years. EPA must review and revise the standards as necessary to ensure they are at a level "requisite to protect public health" within "an adequate margin of safety." EPA has not only the authority but the *obligation* to review and tighten those standards if necessary to protect public health. The agency has concluded after such review that it is unnecessary to revise the standards for coarse PM at this time.

The statutory mandate to review air quality standards seems to be lost on those who inaccurately frame EPA's actions as “attacks on farmers.” It has been reported that EPA is "cracking down on farm dust"; some articles even imply that Jackson lied to or misled those inquiring about the rule. The panic over farm dust is not the first time an unsubstantiated regulatory myth has resulted in opposition to an agency. Experts in agricultural policy argue that these "urban legends" distract from the substantial policy issues facing agency leaders.

Still Fighting Nonexistent Regulations

While it might seem that EPA's pronouncement that there will not be new NAAQS regulations for coarse PM would assuage concerns, Rep. Kristi Noem (R-SD) is pushing ahead with the Farm Dust Regulation Prevention Act of 2011, H.R. 1633. The bill would prohibit the EPA from issuing a new standard for coarse particulate matter and exempt some coarse PM from federal regulations by excluding "nuisance dust" from the definition of particulate matter under the Clean Air Act. Noem’s stance on the legislation was not affected by Jackson's assurance that the standard would not be revised.

"EPA's announcement does nothing to change the fact that they are still able to regulate farm dust. If the EPA has no intention of regulating farm dust then they should support my

legislation, which excludes farm dust managed at the state or local level from federal regulatory standards," Noem said.

Others note that Noem's legislation is unnecessary and fundamentally flawed. John Walke, Director of the Natural Resources Defense Council's (NRDC) Clean Air Program, wrote that the bill would "[shut] down the scientific process of reviewing medical evidence to identify levels of coarse particle pollution levels that are harmful to human health." Walke further criticized H.R. 1633 for casting the bill "as salvation for 'farm dust'" when, in fact, it prevents EPA from issuing health standards for pollution that comes predominantly from industry, not farmers. Walke also warned that these bills are championed by people with an anti-regulatory agenda.

On Oct. 25, the House Subcommittee on Energy and Power of the Energy and Commerce Committee held a hearing on the legislation. Noem defended her bill alongside panelists including supporters from the American Farm Bureau Federation and other agriculture trade associations. Walke, who also testified, charged that the "bill is sweepingly over-inclusive, creates unintended consequences, and increases harmful air pollution and health hazards for the American people."