

United States Senate

WASHINGTON, DC 20510

November 2, 2021

The Honorable Michael S. Regan
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Regan:

On October 6, 2021, the US Environmental Protection Agency (EPA) announced a new electric school bus rebates program using funding provided by H.R. 1319, the *American Rescue Plan Act* (ARP) (P.L. 117-2).¹ After reviewing the application announcement for this \$7 million program, we have determined EPA has excluded countless low-income populations from eligibility by deciding to abandon the existing parameters of the successful, bipartisan *Diesel Emissions Reduction Act* (DERA) program.

Under Section 6002 of the *American Rescue Plan Act* (ARP), Congress provided funding to “identify and address disproportionate environmental or public health harms and risks in minority populations or low-income populations” through specific existing statutory authority, including sections 791 through 797 of the *Energy Policy Act of 2005*, commonly known as DERA. EPA’s new rebates program imposes eligibility criteria for applicants and bus replacement type that are unnecessarily restrictive and conflict with DERA.² EPA is not implementing a technology-agnostic program and is therefore not following congressional direction provided in the ARP.

The new program excludes reduced-emissions diesel, gasoline, propane, and compressed natural gas buses that should all be eligible under implementation of DERA. The limitation to electric buses is a new requirement that was not authorized by Congress. When Congress wants to limit eligibility to a particular type of technology used by school buses, it does so explicitly, and it did not within the ARP.³ Restricting rebates to significantly more expensive electric school buses will result in fewer buses being replaced and could severely limit the overall emissions-reduction

¹ EPA, News Release, *Rebates Totaling \$17 Million Now Available to Fund School Buses that Reduce Diesel Emissions and Protect Children’s Health* (Oct. 6, 2021), <https://www.epa.gov/newsreleases/rebates-totaling-17-million-now-available-fund-school-buses-reduce-diesel-emissions>

² EPA, *2021 American Rescue Plan (ARP) Electric School Bus Rebates*, <https://www.epa.gov/dera/2021-american-rescue-plan-arp-electric-school-bus-rebates>.

³ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (as passed by Senate, Aug. 10, 2021) (setting aside funding for “zero-emission school buses”).

impact of the program. It also disadvantages rural states where electric school buses may not provide the necessary range to cover long distances and more difficult terrain, leaving these states to continue operating older and more emissive buses. Under EPA's newly announced program, a school district would be eligible to claim up to \$1.2 million for its electric school bus purchases.⁴ One district could therefore claim almost one-fifth of the total program funds—even though that substantial rebate would purchase only approximately *four* electric school buses.

The new program EPA has announced also establishes unjustified, overly restrictive criteria for applicants by reserving funds for a defined list of “underserved school districts, tribal schools, and private fleets serving those schools.”⁵ This list of eligible applicants excludes school districts in many low-income, rural states that should be eligible for this funding. For example, EPA has determined that West Virginia only has three eligible school districts. Under the list, 22 states and territories have fewer than five eligible school districts. And of those 22 states and territories, 14 have only a single eligible school district.

Congress did not authorize this severe restriction in the application and impact of DERA funding in the ARP. Misguided restriction ultimately harms the public by disqualifying non-electric buses that would reduce emissions for a fraction of the cost and benefit the health of many more children across the country.

In order to understand how and why EPA has proposed this school bus rebate program, we request you provide responses to the following requests no later than November 16, 2021:

- A detailed explanation of why EPA announced its intent to limit the program only to electric vehicles and whether EPA has ever used DERA in the past to restrict funds only to electric vehicles.
- A detailed explanation of the process EPA utilized to determine metrics for school district eligibility, including any relevant definitions of “underserved community” that resulted in the determination of EPA’s restrictive list of eligible school districts.
- A detailed explanation of how this program can be administered as a lottery program with the additional selection criteria detailed on EPA’s website.

In the meantime, EPA must suspend implementation of this program under these new criteria immediately. Thank you and we look forward to your reply.

⁴ EPA, *2021 American Rescue Plan (ARP) Electric School Bus Rebates*, *supra* note 2.

⁵ *Id.*

Sincerely,



Shelley Moore Capito
United States Senator



Mike Braun
United States Senator



Bill Cassidy, M.D.
United States Senator




Susan M. Collins
United States Senator



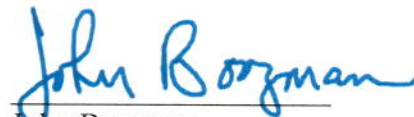
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