

**OVERSIGHT OF AND POLICY CONSIDERATIONS
FOR THE NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION**

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, AND INSURANCE

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 16, 2014

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ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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**OVERSIGHT OF AND POLICY
CONSIDERATIONS FOR THE NATIONAL
HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

TUESDAY, SEPTEMBER 16, 2014

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY, AND INSURANCE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:54 p.m. in room SR-253, Russell Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

**OPENING STATEMENT OF HON. CLAIRE McCASKILL,
U.S. SENATOR FROM MISSOURI**

Senator McCASKILL. We were trying to wait for Senator Heller. He is en route and will be here momentarily, but I'm conscious of the fact that we had votes, which has delayed the start of this hearing, and I want to accommodate my colleagues who are trying to work in a number of commitments they have this afternoon. So we're going to go ahead and begin the hearing.

The recall by General Motors earlier this year of 2.6 million vehicles for a defective ignition switch that went largely ignored by the company and Federal auto safety regulators for more than a decade has, once again, opened the eyes of the American public and policy-makers to the challenges we face in keeping our vehicles and highways safe for the driving public.

Over the past 2 years, this subcommittee has held three previous hearings on automotive safety issues, including one last summer on rental car safety and two this year, examining the issues surrounding the GM recall.

Today's hearing is not about General Motors. But what we have learned so far from the GM recall has shown us we still have serious deficiencies in how both auto makers and auto safety regulators tackle the task of ensuring the vehicles on the road are as safe as they can be.

This is not unfamiliar territory. In the aftermath of the Toyota unintended acceleration case in 2010, Congress adopted a number of auto and highway safety reforms. Even as the National Highway Traffic Safety Administration, that we commonly refer to as NHTSA, continues to implement those reforms, it is clear the measures enacted in 2012 have not been a comprehensive cure for

the problems of regulating automobile safety, especially when it comes to manufacturing defects.

This hearing will examine NHTSA's implementation of the safety provisions of those reforms, the MAP-21 reforms, assess the efficacy and needs of NHTSA's highway safety and motor vehicle safety programs, and consider other policy issues related to NHTSA's authority and resources.

Just yesterday, a lengthy article in the *New York Times* identified troubling trends in NHTSA's ability to identify and respond to safety defects.

Before the GM recall earlier this year, that article laid out that NHTSA had received 2,000 consumer complaints about unexpected stalling in the models GM ultimately recalled. But even a month before the recall, NHTSA was telling consumers there was, quote, insufficient evidence to warrant opening a safety defect investigation, end of quote.

Just as troubling, the article cites example of NHTSA's failing to use its broad subpoena authority to compel information from automakers when investigating safety defects and even failing to compel answers to crucial questions about the cause of accidents related to potential defects.

This morning, the House Energy and Commerce Committee released a report detailing their findings of NHTSA's failures in identifying and addressing the ignition switch defect in GM Cobalts and other models. Much like the institutional problems at GM that this subcommittee has explored, it appears that NHTSA itself operated in a siloed environment, where one division is often unaware of what may be happening in another division.

In addition to vehicle safety, we will talk today about the highway safety programs NHTSA administers designed to decrease death and injuries by changing driving behavior, such as seat belt use, drunk driving, speeding, motorcycle safety, and the new modern threat of texting while driving.

In 2012, 31 percent of the 33,594 roadway fatalities in the United States were attributable to alcohol-impaired driving, and 52 percent were not wearing seat belts. Making sure drivers are responsible behind the wheel can save tens of thousands of lives every year.

The passenger vehicle of today looks vastly different from my first car, a Chevy Nova with a rusted out floorboard. Today's vehicles have airbags, crash avoidance technologies, and dozens of on-board computers helping to navigate the vehicle, keep the occupants safe, and reduce environmental impacts. While the auto industry has adapted relatively quickly as technology and consumer demand have evolved, I'm concerned that both Congress and NHTSA have failed to keep up.

We know the industry is already moving toward vehicle-to-vehicle technologies in which cars on the road will be talking to each other, and engineers are already working toward fully autonomous vehicles or a car that will drive itself. These technologies hold enormous potential to reduce both the human and economic toll roadway crashes have on our country.

Congress and NHTSA must ensure that the legal and regulatory framework is in place to ensure the driving public is able to realize

the benefits of those advancements in a way that is completely and totally safe.

Before I wrap up, I just want to say that, while I believe Mr. Friedman has done a good job of running the Agency on an interim basis since the last Senate-confirmed Administrator stepped down in January, I would urge the White House to make filling the vacancy for the nation's top auto and safety official a priority, especially as the Agency evaluates its personnel and financial resource needs and continues to work to modernize in order to keep pace with an auto industry far more technologically advanced than it.

NHTSA needs an Administrator and a Deputy Administrator, not one person doing both jobs. I am confident that Senator Heller and many of my Republican colleagues would work with us to ensure the speedy consideration and confirmation of a qualified nominee, especially as we face an environment that is colored with a crisis of manufacturing auto recalls that have been deadly on our roads.

I appreciate all of our witnesses being here today, and look forward to their testimony. Senator Heller?

**STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA**

Senator HELLER. Madam Chairman, thank you, and good afternoon. I appreciate you calling this hearing today. I appreciate our witnesses being here also and look forward to this important discussion on NHTSA and its progress of implementing various aspects under MAP-21.

NHTSA plays a vital role in ensuring the highest standards in motor vehicles and highway safety so that we are continually working toward preventing crashes, and of course, keeping motorists safe.

I think it goes without saying, both Chairman McCaskill and I are very interested in the processes at NHTSA, especially in light of the General Motors recall. As it relates to NHTSA, we have paid close attention to what information NHTSA was able to obtain from the car company, what it did with it, and what its role was in delay of getting these cars recalled.

After multiple hearings, I've come to the conclusion that General Motors bears the majority of the blame. NHTSA cannot be effective when auto manufacturers withhold information. General Motors has admitted that they did not fully understand how their vehicles were built, which led to a decade-long delay to understand the root cause of the airbag non-deployment, which was an ignition switch that slipped from run to accessory much too easily. However, NHTSA could have performed better.

Energy and Commerce Committee Republicans released a staff report this morning that finds, among other things, that NHTSA is struggling to keep pace with the industry it oversees. Of course, this is not a new problem.

As some of you may know, in 2009, NHTSA was forced to enlist the help of NASA to supplement its understanding of computer controlled electronic systems, electromagnetic interference, and software integrity as they related to unintended acceleration. I hope we can use today's hearing to identify areas for improvement

at NHTSA, including its internal process for identifying issues and connecting those dots.

I'm also concerned the President has not filled the vacancy for the position of Administrator at NHTSA. The task of addressing any shortcoming at the Agency and implementing any necessary improvements may be challenging for a Deputy Administrator without the endorsement of the President's nomination and the Senate's confirmation.

This is all very important to highway safety across America, but NHTSA is also becoming more important for the State of Nevada.

Madam Chairman, you may have heard Tesla has selected Nevada for its gigafactory. I was proud to help bring Tesla to Nevada. The jobs it will create, coupled with the economic boom it will cause in the state, are both welcome benefits of this massive investment.

Tesla's factory will bring over 6,500 direct, high-paying jobs and billions of dollars in economic impact. The project will increase the GDP in the region by more than 20 percent. The facility will be one of the largest in the world, with 5 million square feet of the factory devoted to battery manufacturing. This makes Nevada the epicenter of clean vehicle technology.

All of this means Nevada is growing. With that growth, we will need the necessary infrastructure to move people around safely and efficiently. That is why I'm also working on extending Interstate I-11 beyond Las Vegas to the northwest part of the state. It's also why I have such an interest in the programs that it administers.

Nevada is going to need flexibility to address specific needs, state needs, and challenges, and I look forward to hearing from our witnesses, in particular, from the Governor of the Highway Safety Association on how best to allocate Federal funds to maximize state flexibility without compromising national safety priorities.

Nevada was one of the leading states to develop a strategic highway safety plan even before it was required by law, because Nevada's highway safety goal is simple, zero fatalities.

Nevada has emphasized five critical areas for reduction of fatal serious injury crashes that center on one, lane departures; the majority of roadway fatalities in Nevada are from lane departures; two, pedestrians; third, impaired drivers; fourth, occupant protection; and fifth, intersections.

My point in explaining this is that other states may have critical areas, and that state may want to allocate funding differently than Nevada. As we work together towards a reauthorization of NHTSA, I want the record to note how different each state is. Therefore, we need a plan flexible enough so each state can come up with a strategic plan best suited for each individual state to achieve its goal of zero fatalities on the road.

And with that, thank you, Madam Chairwoman.

Senator MCCASKILL. Thank you. We have two witnesses today in the first panel, and our first witness is David Friedman who is the now—was the Acting Administrator and now is back to being the Deputy, correct, because you had served the maximum amount of time?

Mr. FRIEDMAN. Correct. I served the maximum statutory time, but I continue to have all the authority to run and all the support I need to run the Agency.

Senator MCCASKILL. And we will hear your testimony first, and then we will hear the testimony of Mr. Com , who is the Deputy Principal Assistant Inspector General for Auditing and Evaluation at the U.S. Department of Transportation. If you would begin, Mr. Friedman, thank you very much.

**STATEMENT OF DAVID J. FRIEDMAN, DEPUTY
ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. FRIEDMAN. Thank you, Chairman McCaskill, Ranking Member Heller, and all the members of the Committee. I appreciate the opportunity to testify before you today.

Over the past decade, NHTSA has had an impressive record of helping to reduce highway fatalities nearly 25 percent. Unfortunately, in 2012, fatalities increased. Much of that increase was from crashes involving drunk drivers, large trucks, motorcyclists, bicyclists, and pedestrians.

While I'm encouraged by preliminary estimates indicating a decrease in crash fatalities in 2013, we still have much work to do. Each year, crashes cause more than 30,000 lives lost, each one a tragedy, and nearly \$900 billion in economic and societal harm. This heavy toll was firmly in mind as we implemented MAP-21.

By consolidating grants and alleviating administrative burdens through MAP-21, Congress helped the states to better focus their resources on traffic safety. I'm particularly proud of now rapidly NHTSA implemented key MAP-21 programs and supported our stated grantees throughout the application process.

NHTSA has also taken several actions to enhance vehicle safety under MAP-21, a VIN lookup tool to help Americans check their vehicles for recalls, a final rule requiring seat belts on motorcoaches, a proposed rule to improve child seat safety in side impact crashes, and these are just a few of the examples of our accomplishments under MAP-21.

We also recently confronted the challenge of the General Motors ignition switch defect. As I noted in May when we announced unprecedented oversight of General Motors and a maximum allowed \$35 million fine, GM violated the law. They violated the law when they failed to act at a time when airbags were not working properly in millions of their products. Instead of fostering a culture of safety, GM encouraged one of denial and delay that cost lives and endangered the American public.

We have pushed GM to accelerate the pace of this recall, and we are ensuring that GM fundamentally alters the way it approaches safety defects. We are also looking at lessons learned to improve the Agency's processes, and I would be happy to discuss them further today.

As just one example, we are changing the way we communicate with the industry and within our own organization about the interaction between vehicle components and systems. As part of that effort, we obtained additional recalls from General Motors and two recalls from Chrysler based on our new understanding of the rela-

tionship between the ignition switch position and the airbag deployment. When we had the information, we acted.

We are also working to establish a new normal when it comes to industry responsiveness to recalls. I have personally met individually with 12 major auto manufactures with a very clear message. There is zero tolerance for a failure to quickly notify the Agency of a safety defect. This reinforces the message we have sent to the industry over the past 5 years through record fines totaling more than \$140 million for failing to live up to their responsibility under the law to find, fix, and report defects, and with the message we've sent through the nearly 13,000 recalls, we have forced auto makers to pursue over the last 10 years.

Moving forward, we can strengthen NHTSA's hand in our highway safety mission with the President's long-term reauthorization proposal, the GROW AMERICA Act. GROW AMERICA will increase civil penalty limits nearly tenfold to \$300 million. Additionally, GROW AMERICA will require rental car companies and used car dealers to fix recalled vehicles and equipment before making them available to the public.

To support our state partners, GROW AMERICA will increase NHTSA's highway safety grants nearly 20 percent and enhance state focus on pedestrian, bicycle, and older driver safety, and emergency medical services. It will also help states in their efforts to enact strong laws under graduated driver's licensing, distracted driving, and ignition interlock grants in MAP-21.

GROW AMERICA also supports the development of cutting edge vehicle technology, such as automated vehicles and the vehicle to vehicle communication systems that can warn drivers of possible collisions where NHTSA has led the research path forward. Innovations like these will help NHTSA not just to protect people in crashes, but to avoid them altogether.

In closing, to succeed in our lifesaving work, NHTSA is asking for additional resources in the GROW AMERICA Act and in the President's Fiscal Year 2015 budget. And when it comes to defects, I believe we need to go even further. We need the latest technology to identify defects and defect trends. We need to increase the public's awareness of the need to report potential defects and complaints to us. And we need the additional personnel to use these tools, analyze the data, and investigate the problems.

I look forward to working with the Congress to obtain these resources that are so critical for NHTSA to fulfill these and other parts of our vital traffic safety mission as part of the long-term surface transportation reauthorization our country needs. Thank you.

[The prepared statement of Mr. Friedman follows:]

PREPARED STATEMENT OF DAVID J. FRIEDMAN, DEPUTY ADMINISTRATOR, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Good afternoon, Chairman McCaskill, Ranking Member Heller, and Members of the Subcommittee. I appreciate this opportunity to testify before you today on the National Highway Traffic Safety Administration's programs.

I would like to first thank the members of the Subcommittee for your work on reauthorizing the Nation's surface transportation programs. All of you are aware of the challenges we face in ensuring roadway safety, and I appreciate your work toward a long-term transportation bill. I look forward to working with the Committee to strengthen highway and vehicle safety through a comprehensive reauthorization.

In 2012, highway fatalities totaled 33,561—1,082 more than during the previous year. In the same year, an estimated 2.36 million people were injured in motor vehicle traffic crashes, compared to 2.22 million in 2011. On average, nearly 4 lives were lost and nearly 270 people were injured on America's roadways every hour in 2012.

The majority of the increase in deaths, 72 percent, occurred in the first quarter of the year. Most of this increase was due to increased fatalities involving drunk drivers, large trucks, unhelmeted motorcyclists, bicyclists and pedestrians. While this marks the first increase in fatalities since 2005, highway deaths over the past five years remain at historic lows. Fatalities in 2011 were at the lowest level since 1949, and the fatality *rate* in 2011 was the lowest ever recorded, at 1.10 deaths per 100 million vehicle miles traveled. Even with the increase in 2012, fatalities remained at levels not seen since 1950. This steady progress is due in part to the safety standards implemented by NHTSA and the continuation of key behavioral and consumer information programs we conduct in conjunction with safety partners across the United States. Further, continued collaboration and coordination across the Department, with our partners in the Federal Highway Administration (FHWA), the Federal Motor Carrier Safety Administration (FMCSA) and the Federal Transit Administration (FTA), has allowed us to make additional inroads in improving highway safety. We are encouraged by preliminary estimates of crash fatalities for the first half of 2013, which indicate a 4.2 percent decrease in deaths compared to the same time-frame in 2012.

The not-so-good news is that some groups are overrepresented when it comes to deaths and injuries. For example—

- Fatalities among pedestrians and bicyclists increased by over 6 percent. Pedestrian fatalities increased for the third consecutive year to 4,743 lives lost (a 6.4 percent increase over 2011). Bicyclist fatalities increased for the second consecutive year and are the highest in 6 years with 726 lives lost (a 6.5 percent increase over 2011).
- Motorcycle rider fatalities increased for the third consecutive year (a 7.1 percent increase over 2011).
- Large-truck occupant fatalities increased for the third consecutive year (an 8.9 percent increase over 2011).
- Deaths in crashes involving drunk drivers increased 4.6 percent in 2012, taking 10,322 lives compared to 9,865 in 2011. The majority of those crashes involved drivers with a blood alcohol concentration (BAC) of 0.15 or higher—nearly double the legal limit.
- Nighttime seat belt use continues to be a challenge—in nighttime crashes in 2012, almost two-thirds of the people that died were unrestrained.

In addition to this terrible human toll, highway crashes result in economic costs of approximately \$277 billion annually, based on 2010 data. And when the human toll is factored in as well, the cost to our Nation rises to \$871 billion annually in economic loss and societal harm. Statistics like these indicate that we still have much work to do. I welcome the opportunity to talk about the GROW AMERICA Act, the President's proposal to reauthorize NHTSA's programs and address the safety challenges ahead. But first, I'd like to start with the agency's implementation of MAP-21.

MAP-21 Implementation

MAP-21 consolidated various safety grant programs, including impaired driving, occupant protection, and State data grants, into a new Section 405 National Priority Safety Program, and added new grants for distracted driving, graduated driver licensing (GDL), and ignition interlock laws. This unified grant program provided for a single, consolidated application and annual deadline, easing the administrative burden on states and allowing them to focus their resources on the life-saving mission of traffic safety.

MAP-21 has been a major priority for NHTSA and the Department. I am proud of how quickly NHTSA staff worked to implement key programs and get guidance out to the states. Less than two months after enactment, we issued a Notice of Funding Availability for the distracted driving grants, followed shortly thereafter by an interim final rule for the National Priority Safety Program grants. We conducted webinars with the State highway safety offices to walk them, step-by-step, through the new grant programs and the consolidated application process.

As you know, one of the most important things a person can do to reduce the risk of death or injury on the road is to wear a seat belt. The most dramatic increases in seat belt use have been in the southern States, rising to 87 percent in 2013—up from 80 percent in 2011. Seat belt use continues to be higher in states that have

primary belt laws, which permit law enforcement officers to issue citations solely for not wearing a seat belt without first requiring an officer to identify a separate traffic violation.

In spite of this progress, motor vehicle traffic crashes continue to be a leading cause of death in the nation, exacting a terrible toll on the country, especially younger age groups. That is why programs such as GDL are so important, and I am pleased that Congress authorized incentive grants in MAP-21 to encourage more states to adopt such an approach for younger, inexperienced drivers.

In establishing these programs to address graduated driver licensing, distracted driving, and ignition interlocks, Congress sought to incentivize states to pass and implement effective safety laws. The eligibility criteria for these grants are based on sound safety principles, but have proven challenging for many states to meet. In FY 2013, 8 states received distracted driving grants, no state received a GDL grant, and 2 states received alcohol ignition interlock grants. In FY 2014, 1 state qualified for the stricter distracted driving grants available that year, none for a GDL grant, and 4 for ignition interlock grants. We are eager to improve on this record, while ensuring that we preserve the important safety benefits these programs were intended to accomplish. GROW AMERICA contains provisions designed to do that.

On the vehicle safety side, NHTSA recently implemented a MAP-21 provision to make information about recalls available on the internet, searchable by a vehicle's identification number or VIN. Until last month, consumers could find general recall information on the NHTSA website by vehicle make and model year. Now consumers can find out whether their own vehicle has an open recall just by typing in their VIN. The VIN look-up tool's ease of use will help consumers track recalls and respond quickly to any recall involving their vehicle. Already the tool has been enormously popular, receiving about 10,000 "hits" per day.

Until MAP-21, the largest penalty NHTSA could assess for a single set of circumstances related to a defect or noncompliance was \$17.35 million. MAP-21 increased that amount to \$35 million, and NHTSA used that new maximum this year in assessing a \$35 million penalty against General Motors for its failure to report defects in ignition switches. Under the Obama administration, NHTSA has been aggressive in seeking civil penalties for timeliness issues, collecting more than \$140 million in penalties since 2010.

MAP-21 also included a number of provisions focused on vehicle safety. In addition to the VIN look-up tool mentioned earlier, we issued a final rule requiring seat belts on motorcoaches. The agency has proposed a rule requiring that child safety seats be upgraded to provide better protection in side impact crashes. Many other rulemaking and research activities required by MAP-21 are underway.

I'd like to turn now to a discussion of the GROW AMERICA Act, the President's reauthorization proposal.

Safety and the GROW AMERICA Act

Safety is at the forefront of everything the Department does, and the provisions in the GROW AMERICA Act will enhance NHTSA's ability to improve safety. As many of the statistics noted earlier highlight, we have made tremendous progress, but significant work remains to be done. Therefore, the GROW AMERICA Act proposes a more than \$7 billion investment over four years for safety programs across all surface transportation modes, including new infrastructure improvements that will advance safety.

Highway Safety Programs

States are crucial partners in improving safety on our Nation's roadways. The GROW AMERICA Act seeks to foster enhanced State safety progress through enactment of effective drunk driving, distracted driving, and other key safety laws. GROW AMERICA does this by giving states additional funding and flexibility in meeting grant requirements. It allows the Department to be more engaged in motorcycle helmet policy discussions in states where statutory and policy proposals are considered.

GROW AMERICA continues to support critical safety programs that have been the backbone of our success in highway safety, such as occupant protection and impaired driving, while providing needed adjustments to grant programs that originated in MAP-21—distracted driving, graduated driver licensing, and ignition interlock. It amends the criteria for these new grant programs to provide different pathways toward compliance, balancing the need to provide funds to the states to deploy important safety programs with the goal of fostering enactment of strong and effective safety laws. In addition, GROW AMERICA continues support for administering successful high visibility enforcement campaigns, such as "Click It or Ticket" and

“Drive Sober or Get Pulled Over” as well as new campaigns like “U Drive. U Text. U Pay”.

In addition to this focus on our core highway safety grant programs, one of our priorities is to enhance efforts in support of pedestrian and bicycle safety. Americans are increasingly embracing a new approach to work and school commutes that includes less time behind the wheel and more time walking or cycling. Increased use of public transportation also means an increase in walking and bicycling to reach bus stops and train stations. Sadly, as more Americans are leaving their cars at home, we are also seeing an increase in deaths among pedestrians and bicyclists. As I noted earlier, pedestrian fatalities are up 6.4 percent over 2011, the third year in a row with an increase, and bicyclist fatalities are the highest in six years, up 6.5 percent over 2011. These are troubling statistics.

We need to deploy new strategies to better protect Americans when they walk or ride bikes, and the GROW AMERICA Act does that. It requires states to spend NHTSA grant funds on bicycle and pedestrian safety if fatalities among these groups are elevated. DOT is putting the issue of pedestrian safety front and center, and this spring NHTSA awarded \$1.6 million in new pedestrian safety grants to states with cities that have the highest rates of pedestrian deaths. We have a “Roll Model” program that helps parents teach their young cyclists about safety and the rules of the road. We have joined with the Federal Highway Administration to launch “Everyone is a Pedestrian,” an education initiative and accompanying website with safety tips and resources for local leaders, city planners, and others involved in keeping pedestrians safe. Together with FHWA and FTA, we hosted a pilot biking and walking assessment in Ft. Worth Texas in preparation for the Secretary’s initiative to improve non-motorized safety through work with our field offices and our stakeholders. Looking forward, we will continue to work closely with the other modal administrations on this initiative and are working to issue a national Action Plan. NHTSA also plans to work with the states to implement education and enforcement components of the Pedestrian Safety Action Plans.

Older drivers are another ongoing area of focus for the agency. As the Baby Boomers age, research shows they are staying on the road longer than their predecessors and account for an increasingly large percentage of all drivers. While older drivers are safer drivers on average, they are often more frail than their younger counterparts, and more likely to suffer serious injury if involved in a crash. It is important that we continue to look for ways to mitigate the risks while maximizing the safe mobility of older citizens. The GROW AMERICA Act includes provisions for states to address older driver safety.

Over the course of the GROW AMERICA Act, the Administration proposes to increase NHTSA grant funding to states by nearly 20 percent. This additional funding is necessary to ensure that core highway safety issues, such as occupant protection and impaired driving, continue to be addressed, while also addressing growing issues such as pedestrian, bicyclist, and older driver safety.

Spending Federal resources efficiently and effectively is a priority for the entire Department, and NHTSA takes this responsibility seriously in implementing our highway safety grant programs. To that end, we have hired new financial specialists to provide the agency with additional expertise, and we are working diligently to modernize the electronic infrastructure that tracks and provides accounting for the highway safety grant programs. This modernization will create a turnkey solution for the states and for NHTSA, encompassing the life cycle of the grant programs from application to financial oversight and reporting. These changes, many of which were identified in coordination with the States, will reduce the burden and increase the efficiency of grant application and monitoring processes.

Motor Vehicle Safety

On the motor vehicle safety front, the GROW AMERICA Act will improve the safety of America’s roadways by expanding our authority to protect consumers from vehicles and equipment with safety defects. The Act amends the agency’s recall authority to require rental companies and used cars dealers to fix recalled vehicles and equipment before making them available to the public. There is no reason these entities should be allowed to pass along to consumers unremedied vehicles that have been recalled by the auto manufacturers. And in keeping with NHTSA’s aggressive approach to adherence to the laws and regulations governing recalls, the GROW AMERICA Act will further increase the limit for civil penalties, from MAP-21 level of \$35 million to \$300 million, to hold companies accountable for vehicle safety defects and noncompliance. The GROW AMERICA Act will give NHTSA imminent hazard authority to allow the agency to respond quickly to remove hazardous vehicles and equipment from the market. And, while recent advances in vehicle automation, including electronic steering, braking, and throttle systems provide great prom-

ise for improving safety, we must think ahead to protect these systems from tampering. The GROW AMERICA Act does this by ensuring the agency's ability to seek enforcement actions against persons who tamper remotely with electronic control systems. Together, these changes provide valuable enhancements to the tools in the agency's safety arsenal.

NHTSA's vehicle safety program has many facets, and reauthorization of those programs at the levels proposed in the GROW AMERICA Act will help us advance in many areas. As an upcoming study will demonstrate, vehicle technology improvements have led to dramatic improvements in vehicle safety from 1960 through 2012. Now, we see the potential to significantly reduce the number of crashes, deaths, and injuries on our Nation's highways through automated and vehicle-to-vehicle communication technology. Although realizing these benefits will take time, new technologies may shrink the death toll to a fraction of recent levels. We are pouring energy and resources into this area to ensure NHTSA plays a leading role in the emergence of these promising new technologies.

We recently issued an Advance Notice of Proposed Rulemaking that may lead to implementation of vehicle-to-vehicle (V2V) communications in the Nation's light vehicle fleet, based in part on the data collected as part of the Intelligent Transportation Systems (ITS) Connected Vehicle Safety Pilot in Ann Arbor, MI. V2V provides the potential to address a large majority of vehicle crashes by giving drivers pre-crash warnings of possible collisions. V2V will also enable vehicle-to-infrastructure (V2I) applications, which may provide additional safety and mobility benefits and vehicle-to-pedestrian (V2P) applications, which will provide added warnings for vehicles and pedestrians. Additional data collected as part of the Safety Pilot along with other research efforts will be used to make an agency decision in coming months as to pathways to advance market penetration of V2V technology in heavy vehicles.

Our research on crash avoidance technologies (including self-driving vehicles) continues in collaboration with our State and industry partners, and we will soon make a decision as to pathways to advance market penetration of one of those technologies, automatic emergency braking, into the fleet. We are also in the midst of a significant upgrade to our crash data collection systems and the underlying IT system. Also, working with EPA, we will issue a proposed rule to enhance the fuel efficiency/greenhouse gas reduction standards applicable to medium and heavy vehicles.

The GROW AMERICA Act supports all of these activities, which will save lives, enhance mobility, and improve the environment.

Recalls

I would like to take a moment to address an issue that I am sure is of interest to this Committee, and that is a matter of great importance to the agency—the status of the General Motors ignition switch recall. We have approached the recall from three perspectives: ensuring that the recall is completed expeditiously to protect the motoring public; holding GM accountable for its failure to give timely notice of the problem and ensuring that GM improves this process for current and new safety issues they encounter; and looking for lessons learned that the agency can apply to its defects investigation program.

We have been closely monitoring GM to ensure that the recalled vehicles are remedied as quickly as possible and that the public is given correct information. I would like to thank Senator Boxer's staff for bringing to light an issue with the GM recall website that resulted in consumers erroneously being told their vehicle was not under recall if the parts necessary to remedy the vehicle were not yet available. We demanded that GM correct that issue immediately. We will continue our efforts and vigilance to ensure that this recall is completed in an efficient and timely fashion.

GM clearly had information available that should have prompted the company to announce the recall much sooner than it did. We collected the maximum civil penalty of \$35 million from GM for its failure to meet its timeliness obligations. The company also had a fundamentally flawed process and culture, requiring wide-ranging internal changes to improve its ability to address potential safety-related defects. So, we also entered into a consent order with the company that provides for our very close oversight of its defects investigation and recall process for some time. We are exercising that oversight vigorously and will continue to work to ensure that the changes the company has made this year and those they continue to make are effective and lasting.

We have also looked very closely at the events leading up to and following the GM recall to determine how we might improve the agency's process and increase automaker compliance with the law. For example, based on our new understanding of the relationship between ignition switch position and airbag deployment, dialogue

and new investigations have led to additional recalls at GM and other car companies.

Further, we are now working to enhance communication with manufacturers and suppliers, and within our own organization, on the potential for unforeseen consequences of interrelationships between vehicle systems and on other factors that can delay or obstruct quick action on safety defects. We are also now requiring similar oversight of manufacturers who fail to meet their timeliness obligations.

The safety recall system established by Congress works most effectively when manufacturers make safety their top priority, root out safety problems at the earliest possible opportunity, and timely inform the agency. Further, while every company has the right to challenge our conclusions about defects, when NHTSA raises serious safety issues with automakers, it is critical for them to work with us to quickly ensure the safety of their customers. In recent weeks, I have communicated these expectations directly to senior representatives of all major vehicle manufacturers as the agency works to establish a new normal when it comes to how all automakers deal with safety recalls.

To ensure that NHTSA and its Office of Defects Investigation (ODI) can continue to monitor this vast industry effectively, we have asked for additional resources, such as more personnel. In the President's Fiscal Year (FY) 2015 Budget, NHTSA requested six additional FTEs for ODI. Clearly, investigating defects is important to all highway users, as is evident from the recent recalls of Toyota and General Motors vehicles. To increase the effectiveness of ODI's work, we believe that the following steps are necessary: enhance ODI's ability to use the latest technology to help identify possible safety defects; increase the public's awareness of reporting safety problems to NHTSA; and provide ODI with the personnel resources to address potential safety risks.

With over 250 million registered vehicles in the U.S., the data collection and analysis burden will only continue to grow and we look forward to working with Congress to ensure that NHTSA has additional resources to fulfill its safety responsibilities and respond effectively to emerging safety issues through these activities.

Conclusion

We at the National Highway Traffic Safety Administration are dedicated to our mission of safety. We will work with this Committee to strengthen these efforts in a comprehensive reauthorization plan.

Thank you again for inviting me to testify, and I am happy to take any questions that you may have.

Senator McCASKILL. Thank you, Mr. Friedman. Mr. Comé?

STATEMENT OF JOSEPH W. COMÉ, DEPUTY PRINCIPAL ASSISTANT INSPECTOR GENERAL FOR AUDITING AND EVALUATION, U.S. DEPARTMENT OF TRANSPORTATION

Mr. COMÉ. Chairman McCaskill, Ranking Member Heller, and members of the Subcommittee, thank you for inviting me to testify on our recent and ongoing work on NHTSA's oversight of vehicle safety defects and highway safety grants. My testimony today will focus on NHTSA's efforts to identify and secure an effective vehicle safety workforce and enhance its grant oversight.

We testified before the Subcommittee last April on actions we recommended NHTSA take in 2011 to improve its processes for identifying safety defects. NHTSA has addressed nine of our ten prior recommendations, including establishing a process for documenting consumer complaint reviews. However, NHTSA has not fully addressed a critical recommendation to conduct a workforce assessment. This assessment would help the Agency identify and secure a vehicle safety workforce which has the right mix of skills for addressing technology advancements in the automotive industry.

Although NHTSA has developed a new workforce training plan and obtained a draft workforce assessment, NHTSA officials say a final workforce assessment will not be available until November. In

addition, new concerns have prompted our office to launch another audit of the Agency's oversight of vehicle safety defects.

In March, Secretary Foxx asked us to undertake a review of NHTSA's safety functions and processes as it related to the recent GM recalls. Expanding on our prior work, we are focusing on NHTSA's pre-investigation process, which involves the screening of consumer complaints, external manufacturer communications, and other information related to alleged safety defects.

As part of our ongoing audit, we are also determining if information on ignition switch issues or non-deploying airbags was available to NHTSA but not used in the GM defect analysis. We plan to issue our final report next spring.

In addition to identifying vehicle safety defects, NHTSA promotes vehicle safety through highway safety grant programs, such as those that target alcohol-impaired driving. Last month, we reported that NHTSA's grantees we reviewed generally met key Federal requirements when spending highway safety grants. Specifically, our review of one of NHTSA's regional offices determined that grantees used grant funds for appropriate purposes and supported transactions with sufficient documentation.

However, NHTSA lacks sufficient strategies for addressing delayed expenditures of grant funds. We identified approximately \$539 million in unexpended funds across all regional offices between Fiscal Years 2006 and 2012. These unused funds represent potential loss through delayed opportunities to fund programs that reduce fatalities, injuries, and property damage.

NHTSA also needs to improve tracking mechanisms to follow up on grantee deficiencies. The regional office we reviewed conducted management reviews of all its state highway safety grant programs and identified deficiencies ranging from improper use of funds to lack of monitoring plans. However, the office closed some findings and recommendations without sufficient documentation of corrective actions or management approval.

Overall, NHTSA lacks a standardized mechanism for tracking deficiencies across all regional offices, although they have committed to developing a new database for doing that in 2015.

Finally, we will continue to monitor NHTSA's efforts to provide effective oversight of auto manufacturers and highway safety grants to better ensure timely recalls of vehicles with defects and the most efficient use of safety grants.

In our ongoing work on the GM recalls, we will carry out the commitment made to you in April by the Inspector General to determine what NHTSA knew of this safety defect, when it knew it, and what actions NHTSA took to address it. In addition, we will also identify any needed recommendations for improvement.

Chairman McCaskill, this concludes my prepared statement. I'll be happy to answer any questions you or other members of the Subcommittee may have.

[The prepared statement of Mr. Comé follows:]

PREPARED STATEMENT OF JOSEPH W. COMÉ, DEPUTY PRINCIPAL ASSISTANT
INSPECTOR GENERAL FOR AUDITING AND EVALUATION, U.S. DEPARTMENT OF
TRANSPORTATION

Chairman McCaskill, Ranking Member Heller, and Members of the Subcommittee:

Thank you for inviting me to testify on our recent and ongoing work on the National Highway Traffic Safety Administration's (NHTSA) oversight of vehicle safety defects and highway safety grants. NHTSA administers highway safety and consumer programs intended to save lives, prevent injuries, and reduce economic costs resulting from motor vehicle crashes. In 2012, motor vehicle fatalities in the United States totaled 33,561. To carry out its broad safety mission, NHTSA has a wide variety of responsibilities—ranging from overseeing the automobile industry's efforts to manufacture cars that are free of defects to providing and overseeing grants to states and localities that fund initiatives to mitigate safety risks on the Nation's highways.

My testimony today will focus on NHTSA's efforts to identify and secure an effective defects workforce to oversee automobile safety and enhance its oversight of highway safety grants.

In Summary

- NHTSA's Office of Defects Investigation (ODI) has made progress in strengthening its investigative processes but has not completed a workforce assessment.
- Ongoing vehicle safety concerns—particularly those related to General Motors' (GM) recalls—prompt further assessment of NHTSA's vehicle safety defect processes.
- Enhanced monitoring tools are needed to improve NHTSA's oversight of highway safety grants.

Background

The National Traffic and Motor Vehicle Safety Act authorizes NHTSA to issue vehicle safety standards and to require manufacturers to recall vehicles and equipment that have safety-related defects or that do not meet Federal safety standards. ODI conducts tests, inspections, and investigations to identify safety defects in motor vehicles and equipment. Based on its findings, NHTSA can require manufacturer recalls notifying the public and correcting the defects. When conducting investigations, ODI can request that manufacturers provide data on complaints, injuries, warranty claims, modifications, parts sales, and other items.

In 2011, we reported weaknesses in NHTSA's vehicle defect identification processes. Specifically, ODI needed to improve its processes for (1) recommending investigations of potential defects, (2) determining when to use third-party assistance, (3) documenting investigation information, and (4) ensuring an adequate and well-trained workforce. In response to our recommendations, NHTSA has implemented more robust defect investigation processes such as developing a framework for obtaining third-party testing and preparing a checklist to enhance documentation of investigative evidence.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) authorized about \$1.3 billion to fund highway safety formula and incentive grants for Fiscal Years 2013 and 2014. States distribute these grants to a wide network of sub-grantees nationwide. NHTSA's regional offices monitor States' and sub-grantees' use of grant funds, such as conducting triennial management reviews and ongoing oversight.

ODI Has Made Progress In Strengthening Its Investigative Processes But Has Not Completed A Workforce Assessment

As we reported in 2011 and testified before this committee in April 2014, ODI lacked the processes needed to ensure that manufacturers recall vehicles and equipment with safety-related defects in a timely manner.¹ Notably, ODI's central database for safety defect information did not track the disposition of consumer complaints. These complaints are ODI's primary means for determining whether an investigation is warranted. We identified similar weakness in ODI's processes for determining when to use third-party assistance, documenting investigation information, and assessing workforce needs.

¹*Process Improvements Are Needed for Identifying and Addressing Vehicle Safety Defects* (OIG Report Number MH-2012-001), Oct. 6, 2011. OIG reports are available on our website at <http://www.oig.dot.gov>.

ODI has addressed 9 of our 10 recommendations for enhancing these processes (see attachment). However, it has not completed a systematic workforce assessment, as called for in the Department of Transportation’s (DOT) “Workforce Planning Guide.”² As we reported, conducting a comprehensive workforce assessment would enable ODI to determine the number of staff and specialized skills needed to ensure manufacturers recall vehicles and equipment with safety-related defects in a timely manner.

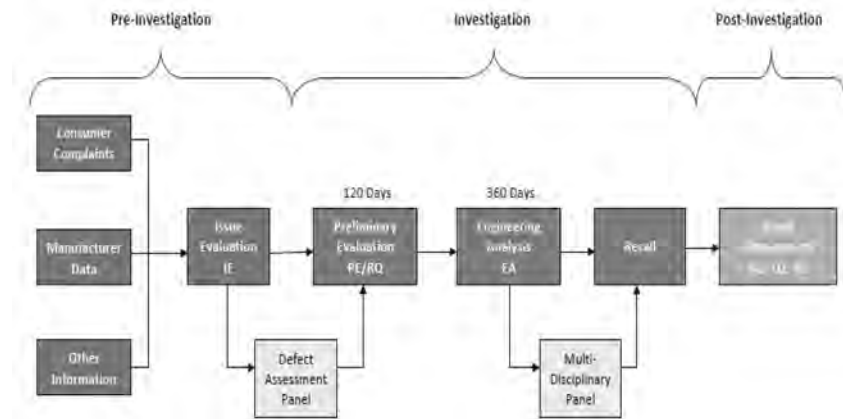
Since 2011, ODI has taken some action to analyze its workforce needs including preparing a statement of work, identifying a contractor, and obtaining a draft assessment. However, ODI staff recently told us that the final workforce assessment will not be available until November 14, 2014.

Ongoing Vehicle Safety Concerns Prompt Further AssessmentS of ODI’s Processes

Despite NHTSA’s progress in improving its processes for identifying vehicle safety defects, concerns remain—particularly in light of the recent GM recalls. Since February 2014, GM has recalled 8.6 million vehicles sold in the United States related to a possible defective ignition switch that can cause the engine to shut down and disable power steering, power brakes, and airbags. Initially, GM’s recall was limited to about 600,000 vehicles manufactured between 2005 and 2007, but eventually expanded to a total of four separate recalls impacting vehicles manufactured between 1997 and 2014.

In March 2014, the Secretary of Transportation asked us to undertake a review of NHTSA’s safety functions and processes related to the GM recalls. Expanding on our prior work, we are drilling down on NHTSA’s pre-investigation process. During the pre-investigation phase, ODI’s Defect Assessment Division screens consumer complaints, external manufacturer communications, and other information related to alleged safety defects (see figure). The information helps ODI determine whether to take actions, such as opening investigations or evaluating the adequacy of safety recalls.

Figure. ODI’s Pre-Investigation, Investigation, and Post-Investigation Processes



Source: OIG analysis of ODI processes

A critical part of the pre-investigation phase involves manufacturers’ early warning reporting to alert the Defect Assessment Division of potential risks or issues. As the Inspector General testified in April 2014, NHTSA cannot do its job effectively if auto manufacturers withhold critical safety information—as we found to be the case with the Toyota Motor Company.³ Upon showing that a manufacturer withheld

² DOT’s “Workforce Planning Guide” provides information on assessing staffing needs for DOT Operating Administrations that can facilitate more efficient and accurate alignment of the workforce to meet organizational goals, commitments, and priorities.

³ Toyota admitted that it concealed and made deceptive statements about safety issues affecting its vehicles, misleading U.S. consumers and NHTSA. Toyota was charged with wire fraud for providing the misleading information and forfeited \$1.2 billion.

such information, NHTSA, the Department, and in appropriate circumstances, our law enforcement and Federal prosecutorial partners can seek sanctions against these companies for withholding such information. In May 2014, NHTSA assessed a \$35 million civil penalty—the statutory limit—against GM for failing to report the defective ignition switch in a timely manner.

As part of our ongoing audit, we are determining if information on ignition switch issues or non-deploying airbags was available to NHTSA but not used in the GM defect analysis.⁴ We plan to issue our final report next spring.

Enhanced Monitoring Tools Are Needed to Improve Nhtsa's Oversight of Highway Safety Grants

In addition to identifying and addressing vehicle safety defects, NHTSA promotes vehicle safety through administration and oversight of highway safety grants to states and sub-recipients. In August 2014, we reported that NHTSA grantees generally met key Federal grant requirements, but NHTSA lacks strategies for addressing delayed expenditures of grant funds, tracking mechanisms for following up on grantee deficiencies, or tools to identify and mitigate systemic nationwide issues.⁵

We focused on NHTSA's Region 5 office,⁶ which we randomly selected from NHTSA's 10 regional offices. Where appropriate, we identified vulnerabilities that applied across the Agency, including a lack of guidance and monitoring mechanisms.

NHTSA grantees we reviewed generally met key Federal grant requirements. Our sample review of 66 grant expenditures (totaling \$5.7 million) by Region 5 states and their sub-grantees for Fiscal Years 2011 to 2012 did not identify significant lapses in the Region's oversight. Our review of Region 5 grantees determined that each transaction (1) met funding parameters of the grant programs, (2) were charged to appropriate grant funding codes, and (3) were supported by sufficient documentation. For example, we verified two Fiscal Year 2012 expenditures by Indiana University's Automotive Safety Program for \$130,996 and \$98,950. These two expenditures were made under an \$850,000 occupant protection program grant agreement, which provided funds for child passenger safety programs. We also confirmed that states met Federal grant administrative requirements. For example, we verified that grantees complied with requirements for indirect costs, such as rent and motor pools, which were charged to Federal grants.

However, NHTSA lacks an overall strategy for addressing persistent delays in grantees' use of grant funds—a shortcoming that affects all regional offices. For Fiscal Years 2006 through 2012, we identified approximately \$539 million in unexpended funds across all regional offices. For Region 5 alone, the amount of unexpended funds was nearly \$67 million (or about 12 percent of the national total). Unused safety grant funds represent potential lost or delayed opportunities to fund programs that reduce fatalities, injuries, and property damage. Although Region 5 has taken some action to encourage states to liquidate these balances, NHTSA has not developed sufficient strategies to better ensure that states use grant funds in a timely manner—such as developing individual funding liquidation plans for each State with specific targets and mitigation strategies.

In addition, NHTSA does not sufficiently track grantee deficiencies identified in its triennial management reviews of grantees. From Fiscal Years 2010 through 2012, NHTSA's Region 5 officials conducted congressionally mandated triennial management reviews of all six of its State grant programs. These reviews identified deficiencies, such as improper use of funds and a lack of monitoring plans. However, some findings and recommendations were closed without sufficient documentation. Weaknesses ranged from NHTSA not maintaining documentation to states not providing sufficient documentation to support closing a recommendation. For example, Region 5 officials closed 7 of 9 findings and 16 of 25 non-binding recommendations made in the triennial management reviews but could not provide sufficient documentation of States' actions to justify closing three of the findings and recommendations. Region 5 also lacked documentation of management's approval for closing recommendations. NHTSA's guidance and procedures, which apply to all regional offices, do not require documentation and management approval for key actions related to the disposition of grantee deficiencies. In our view, improved documentation would provide greater assurance that states are fixing identified issues.

Finally, NHTSA lacks a standardized mechanism for tracking the disposition of grantee deficiencies across all regional offices, which would allow the Agency to

⁴As part of our review, we are also determining whether NHTSA has effectively implemented its enhanced processes for identifying and addressing vehicle safety defects.

⁵*Enhanced Monitoring Tools Are Needed To Improve NHTSA's Oversight of Highway Safety Grants* (OIG Report Number MH-2014-088), Aug. 21, 2014.

⁶Region 5 includes Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin.

identify and mitigate systemic issues on a national level. In 2008, we recommended that NHTSA implement an electronic tracking system for monitoring the disposition of oversight recommendations to states in order to efficiently share findings, follow up on unresolved recommendations, and enhance quality control.⁷ In response to our recommendation, NHTSA agreed to implement a spreadsheet tool to track the deficiencies agencywide. However, during our recently completed audit, we identified weaknesses in NHTSA's implementation of the spreadsheet. Notably, the spreadsheet is not directly linked to regional offices for real-time updates, and it lacks features to uniformly identify, classify, compare, track, mitigate, and report on systemic or recurrent grantee deficiencies. NHTSA committed to addressing these weaknesses by developing a database in 2015 that will allow users to track NHTSA's findings until resolution; conduct queries and analyses to determine State, regional, and national trends; and produce management reports.

NHTSA generally concurred with the four recommendations in our August 2014 report to improve its stewardship and oversight of Federal grant funds. We will continue to monitor NHTSA's implementation of our recommendations as needed to ensure that NHTSA improves its grant guidance and monitoring tools for greater assurance that states and sub-grantees are using Federal resources in a timely and appropriate manner.

Overall, NHTSA has made progress in strengthening its defect investigation processes and ensuring that its grantees meet key Federal grant requirements. However, successfully implementing its enhanced processes, completing the workforce assessment, identifying and securing an adequate workforce, and enhancing grant oversight are key for NHTSA to carry out its broad safety mission.

Chairman McCaskill, this concludes my prepared statement. I will be happy to answer any questions you or other members of the Subcommittee may have.

⁷*Best Practices For Improving Oversight of State Highway Safety Programs* (OIG Report Number MH-2008-046), Mar. 25, 2008.

ATTACHMENT

Status of 2011 OIG Recommendations for NHTSA's Vehicle Defect Investigation Processes

Recommendation	Status	Actions Taken
1. Revise the pre-investigation processes to ensure that the review of each complaint is recorded and that complaints are tracked to associated investigations in Artemis.	<i>Closed</i> June 19, 2012	ODI provided documentation demonstrating that: <ul style="list-style-type: none"> • Artemis tracks complaint reviews (who and when), • all relevant complaint numbers are included in the resume for each phase of an investigation, and • investigation process documents have been updated to reflect these policy changes.
2. Establish pre-investigation processes for retaining and storing pre-investigation records, such as investigation proposals and insurance company data.	<i>Closed</i> Dec. 5, 2012	ODI provided documentation demonstrating that a process for using a case management system had been established to maintain pre-investigation data.
3. Require that decisions made and actions taken by ODI Defect Assessment Panels are recorded, including justifications for not proceeding to investigations.	<i>Closed</i> Dec. 5, 2012	ODI provided documentation demonstrating that: <ul style="list-style-type: none"> • Defects Assessment Panel minutes are added to a standardized form and uploaded to the repository for the relevant issue evaluation (IE), • IEs that do not proceed to investigation are marked with one of two codes: "minimal hazard indicated" or "no actionable trend indicated," and • specifics concerning panel dates and IE dispositions are recorded in Artemis annotations for the appropriate IEs. These data can be analyzed and presented in report form.
4. Establish systematic processes for determining when a third party or the Vehicle Research Test Center should be used to verify manufacturer information or assist in identifying a potential defect.	<i>Closed</i> Mar. 27, 2012	ODI provided revised office procedures including a framework for obtaining third-party resources.
5. Revise the ODI investigation process to require justifications for continuing or closing investigations that exceed timeliness goals for preliminary evaluations and engineering analyses.	<i>Closed</i> Mar. 27, 2012	ODI established processes for justifying and documenting investigations that exceed timeliness goals.
6. Revise the ODI investigation process to establish criteria for documenting evidence, such as associated complaints, meetings with manufacturers and other stakeholders, and third-party analysis or testing conducted.	<i>Closed</i> Mar. 1, 2013	ODI provided documentation that it developed an "Investigation Documentation Checklist." This checklist is a process for documenting evidence collected by the ODI investigators—including consumer complaints, meetings with manufacturers and third parties, and testing.
7. Strengthen ODI's redaction policy and process to better protect consumers' personal information from public availability, such as by using automated redaction software.	<i>Closed</i> Oct. 13, 2011	ODI issued a revised redaction policy in August 2011.
8. Conduct a workforce assessment to determine the number of staff required to ensure that ODI meets its objectives and determines the most effective mix of staff.	<i>Open</i>	ODI estimates that it will complete its workforce assessment by November 14, 2014.
9. Develop a formal training program to assist ODI staff in acquiring knowledge and staying abreast of ODI processes and current and new automobile technologies.	<i>Closed</i> May 29, 2013	ODI provided a copy of its new training plan. According to NHTSA officials, this plan will assist ODI in the development of its current and future workforce; ensure the continuity of institutional knowledge; and ensure that investigators and other ODI staff become proficient in new automotive, investigative, and vehicle safety technologies.
10. Develop and implement a strategy for increasing coordination with foreign countries to enhance ODI's ability to identify safety defects and to exchange information on foreign recalls.	<i>Closed</i> Oct. 13, 2011	ODI stated that it planned to form an informal working group to discuss issues of mutual interest to the international enforcement community. NHTSA would chair the group, and the group would meet twice a year—with the first meeting taking place on November 17, 2011.

Source: OIG analysis of NHTSA documentation

Senator MCCASKILL. Thank you. Mr. Friedman, let's start with what I was most—there were a lot of things I was concerned about as I prepared for this hearing, but one of the things that was most concerning to me was the issue of a question being asked of the manufacturers, what caused this accident when there had been a death and the notion that this was an optional answer.

Now, I know you've only been there a year and a half—a little less than a year and a half—and you've only been in charge since January, but can you briefly give us some reassurance as how in the world the regulators in charge of investigating deadly defects would say the cause of an accident is an optional question.

Mr. FRIEDMAN. My understanding of the history of this issue is that in 2006, under the Bush Administration, that question was made optional in an attempt to encourage auto makers to volunteer more information that wouldn't necessarily be subject to confidential business information.

Once I found out about this issue, and discussed with my staff the history of it, and discussed with them the fact that it hasn't seemed to have helped elucidate more information from the auto makers, I've had that practice stopped. So going forward with the next batch of requests from the industry, that will no longer be an optional question. I agree with you that it should not be optional.

Senator MCCASKILL. Well, you understand that that reflects on a culture that is frightening, frankly.

You know, I—it's not a secret I come from a background of being a prosecutor, and when you want to get to the truth and you want to find out what happened, if you make the answers to questions optional, that's a journey that is never going to be successful.

So let me ask you this question. How—and I think you have evaded answering this a number of times, and I need a very straight—I don't want to hear how many times you've requested information. I don't want to hear how many times you've asked for information and gotten it. I want to know how many times—since the last time you were here you were not aware of your subpoena power—I want to know how many times NHTSA has exercised its subpoena power in the last decade.

Mr. FRIEDMAN. Well, Senator, some of the confusion from the last time we discussed this was that NHTSA is exercising our power to compel answers from car companies all the time, in every single one of the—

Senator MCCASKILL. I know that. I want to know how many times you've issued a subpoena. You have the power to issue a subpoena. I want to know how many times you issued a subpoena, not how many times you've compelled information or used another method to get information.

I want to know how many times that you've reached a dead end and not gotten the information that you need to know in order to figure out a safety defect. How many times has a legally binding subpoena been issued by NHTSA?

Mr. FRIEDMAN. Senator, it's my understanding that each time we compel them to answer these questions that it is a legally binding subpoena.

Senator MCCASKILL. OK. So you are not—do you have a lawyer here?

Mr. FRIEDMAN. Yes.

Senator McCASKILL. OK. And is the lawyer saying that when you say we want you to give us this information and we will compel it that that's a subpoena, but you've never gotten to a subpoena? Because, you know, a subpoena is a discreet legal document. It is not something that—kind of like a subpoena or maybe it's a subpoena.

I can assure you that when a corporation gets a subpoena from a Federal regulator, it is treated differently than a request for information. That's what I'm trying to get at.

So your lawyers are telling you that there's no difference between your request for information and a legally binding subpoena?

Mr. FRIEDMAN. My understanding is that those questions, when we issue them, are enforceable in court. We can go after the companies for fines if they fail to answer, that we have the full authority to force them to answer all of those questions if they fail to—

Senator McCASKILL. How many times have you been to court for someone to answer a question?

Mr. FRIEDMAN. I don't know that we've done that in the last—certainly 20 or 30 years, because we haven't had to, and I think that's the power of what we do. We put the companies in a position where they understand, if they fail to answer those questions, there will be consequences, and so they provide us with the answers.

I consider that a very important tool that we're able to get those answers, rather than have to be tied up in court before they will give them to us.

Senator McCASKILL. I understand the point you're making. It rings slightly hollow when the most important question was considered optional by your agency. That reflects, obviously, on an agency that is perhaps more interested in singing kumbaya with the manufacturers than being a cop on the beat.

Mr. FRIEDMAN. Well, as I noted, I don't agree with that practice. I've had that practice changed. My understanding of the cultural decision and the concept behind that decision was that it was an attempt to provide manufacturers with a way to provide us information that wouldn't be so protected by confidential—or was easier to protect confidential business information so that it would come into our hands.

Every time, our goal is to get all the information from the industry and—so that we can find and get these problems fixed. In that case, the decision was made or the assumption was made that we could get more information by making it optional. That assumption turned out to be wrong, and I've changed it upon finding out about that.

Senator McCASKILL. OK. So let me ask you this quickly, can you quickly—and we'll have another round, so I'll have a chance to ask other questions after all my colleagues have questioned, but can you quickly synthesize how 2,000 consumer complaints for the same defect could come into your agency and that the answer, in every instance, is there is not enough information to open an investigation?

Mr. FRIEDMAN. Senator, the information in that article is very misleading. First of all, those 2,000 complaints tended to be associ-

ated with stalling. They were not necessarily associated with this specific defect.

Senator McCASKILL. But this defect caused stalling.

Mr. FRIEDMAN. The *New York Times* looked through this data, and they came up with that number, but that number was not—

Senator McCASKILL. What number have you come up with?

Mr. FRIEDMAN. We have come up with a lower number.

Senator McCASKILL. What is it?

Mr. FRIEDMAN. In the three to four hundred range across a variety of different items. But even in that case, what you're talking about is an incident rate that is a few thousandths of a percent. It was not a very large signal in comparison to the stalls that we were seeing in other cases.

And we have aggressively pursued stalling cases with 31 recalls on stalling over the last decade, 42 investigations. When we find the data that indicates that there is a defect or a defect trend, we have followed it.

In this case, we had critical information that was missing that indicated how hazardous this was. GM never provided that information to us.

Senator McCASKILL. I understand, and I agree with my colleague that GM is primarily at fault here, but I'll follow up on some of that in my next round.

Senator Heller.

Senator HELLER. Thank you, Madam Chairwoman. Mr. Friedman, I want to talk about traffic safety grants for just a minute.

As I mentioned, Nevada's goal is zero fatalities on the road, and I'm assuming that Missouri has similar goals. And yet, I'm guessing that there are two—these are two states that have a lot in common, but they may have critical areas that they differ in that need attention.

I was looking at your overall budget of \$981 million. \$643 million of NHTSA's overall budget went to the highway traffic safety funding, is that accurate?

Mr. FRIEDMAN. Yes. That's a combination of our budget and transfer monies from the Federal Highway Administration.

Senator HELLER. OK. Do you agree that the funding needs to be as flexible as possible to address different states specific needs?

Mr. FRIEDMAN. Ranking Member, I agree that flexibility is incredibly important, and the way Congress has designed these grant programs is, there is a pot of two different grants. One set of grants is very flexible, and we work very closely with the states on their highway safety plans that help guide how they spend that money. Then Congress has also set aside a separate group of grants that are very specifically designed to try to encourage states to set a high bar and put strong laws in place that we know can protect consumers from serious traffic safety problems.

Senator HELLER. Here's my concern, and I appreciate the answer to that question, if these grants are too prescriptive, my concern is that for Nevada—it will lead to Nevada opting out for applying to some of these grants. Is that a reasonable concern that I should have?

Mr. FRIEDMAN. Well, Senator, in the GROW AMERICA Act, one of the things that we've proposed for several of these grants is to

maintain what I would call kind of the platinum level grant, the level of grant and the level of requirements that will ensure that states implement programs that will save the most lives possible.

But we've also proposed the system where there would grants with somewhat fewer requirements that could help encourage states to incrementally move toward that platinum level of safety that I think we all agree that we need.

Senator HELLER. OK. Mr. Comé, you wrote that NHTSA cannot do its job effectively if auto manufacturers withhold critical safety information, and I agree with that. In this case, GM withheld safety information, but it was because they were incompetent, not because they were nefarious.

Recently, as I mentioned in my opening statement, House Republicans have issued a report this morning stating that NHTSA did not hold itself to the same standard in which they hold companies that they regulate. Will your audit address this?

Mr. COMÉ. Our audit will address—excuse me—our audit will address the full range of activities NHTSA is undertaking to manage and analyze the data they receive. So yes, it will address the question of whether they're adequately establishing standards for analyzing that information and policies, whether they're following those policies, whether they're enforcing non-compliance on the part of manufacturers with responding to that information, and whether they're accurately—you know, getting accurate and complete information.

Senator HELLER. OK.

Mr. FRIEDMAN. Ranking Member, if I may?

Senator HELLER. Yes, please.

Mr. FRIEDMAN. I just want to be clear that NHTSA holds itself to an extremely high standard. There was a clear difference in what happened between NHTSA and General Motors in this situation. NHTSA was actively trying to find the ball. NHTSA—sorry, General Motors was actively trying to hide the ball. It wasn't simply incompetence on their part.

They had policies in place to not mention the word defect in order to shield information from NHTSA. They were actively trying to hide the ball. NHTSA was working hard to find the ball and was missing critical information.

Senator HELLER. OK. Thank you.

Mr. FRIEDMAN. Thank you.

Senator HELLER. Your report, Mr. Comé—also in your report, it stated that NHTSA is having trouble keeping pace with technology advancements in the auto industry. Will your audit also address this?

Mr. COMÉ. Our prior audit was focused on this issue—in part on—of NHTSA's workforce, and our audit will address the degree to which they've carried out our recommendation in the prior audit, which was that they complete a workforce assessment which will identify the skills they need, the number of people they need, and the force mix.

So in this current audit, assuming we get the final workforce assessment that has been promised to us this November, we'll look at the adequacy of that workforce assessment using the criteria the Department has established for these kinds of assessments.

Senator HELLER. OK. Now, your report is supposed to be out next spring, is that correct?

Mr. COMÉ. That's correct.

Senator HELLER. That's still your timeline?

Mr. COMÉ. Yes.

Senator HELLER. Thank you. Madam Chairman, thank you.

Senator MCCASKILL. Thank you. Senator Nelson is not here. I believe my list here shows Senator Ayotte.

**STATEMENT OF HON. KELLY AYOTTE,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator AYOTTE. I want to thank the Chair and Ranking Member, thank both of you for being here.

When GM's counsel—legal counsel—the head of their legal department, Mr. Millikin, came before this committee, I had asked him about particular examples that were given of three situations, three fatal crashes involving the ignition switch, in which, in fact, NHTSA inquired about with GM, because you had received some form of notification or a complaint about them.

And this is actually outlined in an article that was done—if you want to look at these—in July in the *New York Times*. One of them involved a fatality to the man named Gene Erickson.

But here's my—here's the issue that I brought up with the legal counsel to GM that I would like an answer from both of you on, which is what GM said, apparently, to the agency on those three fatal crashes were a combination of—in answer to your inquiries, in other words, simple questions from regulators about what led to the crash, the answer that you got in three different fatal crashes and questions was, in one instance, from GM that they had not assessed the cause of the crash. In other instances, you got a response of attorney/client privilege prevents us from answering that question. In another one—even more troublesome—GM said, we opt not to respond to your inquiries.

And so here's my question. Why, when you get that answer from a company like GM, does the agency accept that answer? If you were making, as a regulator, an inquiry from a company like GM with regard to a fatal crash, and, you know, we know, obviously, we had discussed the pattern that was here, why would you accept that answer from a company like GM?

Now, I have already taken Mr. Milliken to task for GM answering in that way, and I, in no way, diminish their failures here. But it seems to me, if I got that answer, I would make me even more adamant about getting a full answer from those that we were regulating.

Can you help me with this?

Mr. FRIEDMAN. Yes, Senator. Thank you for the question.

I have held meetings with 12 major manufacturers in the United States and around the world. And one of the things I've said to them very clearly, you should never hide critical safety information under the cloak of attorney/client privilege. Period.

One of the fundamental problems with the General Motors structure is, it's not simply that they had silos, they had firewalls. They had firewalls which literally blocked information from the lawyers from coming to other people in the organization and to us.

I've made it clear to automakers that that is not acceptable. With GM in particular, we have engaged with them throughout some of this process and pushed back on them that they cannot hide documents based on attorney/client privilege. And going forward, we will certainly make sure, when they try to do that, we will push them, and we will reach out, in some of these cases to plaintiffs' attorneys to get their information.

Senator AYOTTE. So one thing that worries me about this is I want to see NHTSA not accept that answer ever from a company, because your question was a fair question, what do you know about what caused this fatal crash?

So a company in that setting could raise attorney/client privilege anytime that's asked if there's a risk of litigation, which there probably always is when there's going to be a fatal crash. So what would prevent them from actually not asserting this in every case?

And I would also say, I would hope you wouldn't accept the answer that the company opts not to respond, that we haven't even assessed the cause of that crash. It seems to me that they had a responsibility to do that.

So what I'd like to hear is a commitment that, when you receive that, you just won't accept it, that there will be a follow through from NHTSA from a company when that is the response you get to a fair question.

And Mr. Comé, as you do this review of the process, I hope that you'll look at this issue in terms of how those types of responses are dealt with by the Agency.

Mr. COMÉ. We will. We haven't previously looked at the death inquiry issue. It's part of the early warning reporting. But as part of our work, we'll be asking, you know, what is their policy, what are the stated reasons for that policy. We'll attempt to get data that will support those reasons. And in addition to policy, we'll be expecting the Agency to establish guidance, training, and appropriate workforce that can deal with those types of issues as well.

Senator AYOTTE. I appreciate it. Thank you.

Senator MCCASKILL. Senator Nelson?

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Mr. Chairman, I'd like to ask you, doesn't it defy common sense that a vehicle can have a five star safety rating and still have a safety concern? Isn't it an agency such as yours, that it does a huge disservice to consumers by allowing a car to have a defect, to still have the five star ranking?

So can we get cars with serious safety concerns, as we've seen all too many in the last year or so, can we get those safety defects so that the star system is changed?

Mr. FRIEDMAN. Senator, those two programs are very different programs. One program is designed to inform consumers how that vehicle protects them in a crash. If that vehicle has a defect, we work to inform consumers of that defect and to get that defect fixed.

Senator NELSON. OK. Now——

Mr. FRIEDMAN. Once it's fixed, it makes sense that it's five star.

Senator NELSON. Mr. Chairman, let me stop you right there, because if you're a consumer, you do not understand the nuances that you were explaining. You see five stars, you think that is the *Good Housekeeping* seal of approval. And the consumer is misled, and I think you all ought to rethink your advertising when there becomes a safety defect that is found in the vehicle.

Mr. FRIEDMAN. Senator, one of the things we have talked about internally is making sure that, when there is an open defect on a vehicle, that that can be more clearly noted within the five star rankings. But I do want to make sure that consumers continue to get this critical information, because it is—it has pushed automakers to make their vehicles safer in crashes.

So it's a critical tool, but I agree that we need to make sure that consumers are very clear, when they're looking at those star ratings, that there could be recalls associated with that vehicle that they need to consider.

That said, when a consumer is buying a new car, those recalls must, must be fixed. So it is a five-star vehicle, because that vehicle is fixed.

I would like authority, and we've requested authority, to make sure when a used car is sold, before it can be sold, that those problems are fixed. So again, when they're buying it, it will be a five-star vehicle, because the safety risk will be addressed.

Senator NELSON. You know, when I am responsible to the citizens of my state to have the Federal Government look out for their interest and their safety interest, and there is something that, as obvious as this, that is confusing to them, it would seem to me that your response would be, there is confusion, we're going to straighten it out.

Let me move onto something else. I want to show you a picture of a Chinese automobile.

Now, this automobile, if it gets all of the safety and emission upgrades and all of that, they're going to try to sell it in this country.

Now, I want you to know that this Committee has dealt all too much with defective Chinese toys, toxic drywall, which is still an ongoing, huge litigation. And the Chinese government that owns a lot of these companies says, get lost. And there are no assets, other than the distributors, for example, of the Chinese drywall.

OK. Now, you've got an immediate problem arising when a Chinese company manufactures cars that are going to end up with defects, and you try to go after them, and if they respond like they did with Chinese drywall and Chinese toys, they're going to tell you to get lost. That's not helping protect the American consumer. What do you say about that?

Mr. FRIEDMAN. We're very concerned about any product that comes into this country that has quality problems. We faced some of the exact same issues you're talking about, in some cases with smaller companies, and we have partnered with Customs and Border Protection to go after these companies, to stop these products from coming into the country, and to ensure that, when these products do come in, that we're putting them through our certification tests.

Senator NELSON. You better look at the Chinese.

Mr. FRIEDMAN. We are, Senator.

Senator NELSON. Because of the history of dealing with them. Now, you do something like regional recalls, well, in an automobile, I want you to be aware of a state like Florida. You might say that a vehicle is—as a matter of fact, you even had a vehicle—defects that may be caused by salt erosion, and so you don't bother it up in the north, and then you say heat-related defects to vehicles registered in southern states.

You know how mobile the citizenry of the United States are. You know how we, in Florida, have a lot of snowbirds that come. So I would suggest that you should reevaluate your regional criteria on regional recalls. Any comments?

Mr. FRIEDMAN. Senator, I've had multiple discussions with my staff on this issue. We generally do not grant a regional recall, unless the automaker can provide us with sufficient information to indicate that there is a data base reason for that decision.

But I agree that one of the things that we need to do, and in fact, we require them to do, is to continue looking back at the data to see if vehicles are moving out of region and need to be addressed by these. But I agree that this is an issue that we need to watch very closely, because when a vehicle has a safety defect, it needs to be fixed. And certainly, people are mobile, so this is an area we're continuing to look at to ensure that people are safe.

Senator MCCASKILL. Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you, Madam Chairman. Mr. Friedman, when you appeared before the committee in April, I told you the story of the woman—young, young woman—from Albert Lee, Minnesota, Natasha Weigel, who had been killed on a Wisconsin road when the car's electrical power suddenly went out. The car barreled ahead at 71 miles per hour, hit a tree. She was a passenger. She died, another died.

The report on GM found that—the big report that was done by Mr. Valukas—found that Wisconsin state trooper, Keith Young, conducted an investigation on his own that clearly made the link between the defective ignition switch and the failure of the airbag to deploy in that case. Trooper Young's report cracked the code that seemed to evade GM and NHTSA for years.

He wrote this, "The two front seat airbags did not deploy. It appears the ignition switch had somehow been turned from the run position to accessory prior to the collision with the trees." But although his—the trooper's report was submitted to NHTSA, no follow-up action was taken.

Is it true that, in 2007, NHTSA sent GM a death inquiry related to the crash involving Natasha Weigel?

Mr. FRIEDMAN. Yes.

Senator KLOBUCHAR. And did GM respond to the inquiry?

Mr. FRIEDMAN. Yes.

Senator KLOBUCHAR. OK. And what did they say? What documents did they submit to NHTSA in response, and was Trooper Young's report one of them?

Mr. FRIEDMAN. They provided a variety of documents, including police accident reports, which would include some of this information. Yes.

Senator KLOBUCHAR. OK. So nothing—there was no follow up. And are there any changes to the process now when you have a state trooper that actually saw—and I remember us talking about this last time, the issue of the deployment of airbags and how it was confused as the reason and wasn't hooked up with the idea of the ignition switch, but you have a guy, like one state trooper in Wisconsin that figured it out. And I just—I don't understand why there wasn't any follow up after that, that it didn't make a bell go off in someone's head.

Mr. FRIEDMAN. Senator, I understand your concerns. Two issues. First of all, we had extensive understanding of the way these advanced airbags worked, and in the circumstances of this crash, the most plausible explanation was that it was the nature of the crash, off road, yielding objects, that caused the airbags to not deploy.

Obviously, we now know that there was another piece of information that this officer was pointing to, that we did not have a confirmed understanding from General Motors that that was the case. Going forward—and we discussed this a little bit last time—we need to make sure that we have a process in place, and we have put a process in place to make sure we follow up on remote defect possibilities.

It's always an issue that we have to be very careful about. Earlier, we talked about the NASA study. In that case, NHTSA pursued a remote defect possibility of potential electronic glitches. NHTSA found there was no issue there, and then NHTSA, on top of that, went to the National Academy of Sciences and NASA who simply confirmed that NHTSA understood what they were talking about.

So there's always a balance here, but I think, no matter what, when there is a remote defect possibility, we need to challenge ourselves—

Senator KLOBUCHAR. So then you change—right, because you also—at that time, NHTSA commissioned Indiana to do—Indiana University to look at the crash. That report also raised these questions. So it wasn't just one trooper.

I mean, they said, "Inadvertent contact with the ignition switch in the 2005 Chevy Cobalt can, in fact, result in engine shutdown and loss of power. It is not known what role this may have played."

So it seems this report was on your website. So what I want to know is, given you have a report—you've got the Wisconsin trooper report—what has changed now? If you got that information on another car, on a different manufacturer, what would be done differently?

Mr. FRIEDMAN. Two things that have changed now. One, even if, like this situation, the preponderance of evidence pointed to a different cause, we would still make sure to follow up on that remote possibility in a couple of ways. One, reaching out more aggressively to the manufacturer. Two, one of the things I discussed with those 12 automakers is, they need to come into NHTSA. We need to sit down with them with our researchers, our rulemakers, and our defects investigators in a room, and make sure they are giving us all

the information they can about the systems interactions in these vehicles.

Vehicles are getting more and more complicated, and we're determined to stay ahead of that curve, but that requires us reaching out to automakers and automakers reaching out to us to make sure we have all the information on how these complex systems can interact.

Senator KLOBUCHAR. So what's the single biggest thing Congress can do, as we hope we go into the next year and do more things? What is the thing we could do to ensure that NHTSA is in a state so that what happened with GM doesn't happen again? Do you need more authority? Do you—what do you need?

Mr. FRIEDMAN. Well, Senator, I would say that this goes beyond even the GM situation, because our goal is to ensure that we are picking up the balls that the industry is dropping, even though it's their responsibility to find them.

One, I think we need more authority to fine the car companies so that they understand the heavy price that they're going to pay if they fail to report these things. That's a force multiplier. They have more information, more people, more resources than us. They need to be finding these problems before we even have to start searching for them.

Second, we want—we could use additional resources, more people, more money for more—for better technology so that we can better sift through the information and the data that's out here. In previous—President Obama's 2013, 2014, and the 2015 budget request, we have asked for additional resources, especially staff, so that we could do this, and I would ask Congress to support the President and the Secretary's efforts to get more resources, not only on defects, but on all of the issues that cause the more than 30,000 fatalities on our highways each year.

Senator KLOBUCHAR. OK. Thank you. We'll follow up on that, and then Madam Chairman will put some questions on the record about distracted driving. Senator Hoeven and I have a good bill to make sure that some of the money that's been aside will actually go out to the state so they can start working on this important issue.

We just had a woman who was 89 years old get killed by a girl that was doing Facebooking while she was driving 65 miles an hour down a highway. So thank you.

Senator MCCASKILL. Thank you, Senator Klobuchar. Senator Markey?

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Madam Chair. Earlier today, General Motors and I reached a substantial agreement on a modified version of the legislation I introduced with Senator Blumenthal that will ensure the public disclosure of information about fatal accidents that might have caused—been caused by safety defects. One reason why the bill is needed is because I simply do not have the confidence that NHTSA will take more aggressive action in the future.

Whether it is NHTSA or the NFL, there must be accountability for any organization that turns a blind eye when it knows a harm is being done.

Mr. Friedman, you have repeatedly said that it was GM that stood in the way of safety, that GM failed to tell NHTSA everything it knew about the defective ignition switches, and that if it had, the Government would have acted differently.

It goes without saying that GM made and sold the vehicles in which so many innocent victims were killed or injured, but I am gravely disappointed in the Transportation Department's failure to accept even a shred of responsibility. For an entire decade, NHTSA had meetings, reports, secret documents submitted by GM to the early warning reporting system that all described fatal accidents involving ignition switches that caused cars to stall all by themselves, but NHTSA did nothing.

And while GM's leaders have described the GM nod, which was said to occur when everyone in a meeting all nodded their heads but then did nothing to solve safety problems, what I see at NHTSA is the NHTSA shrug. NHTSA shrugged when it agreed with GM that cars stalling on their own did not pose a safety problem. NHTSA shrugged when it read its own contractor's reports linking the ignition switch defect in—to fatal accidents in which airbags didn't deploy. NHTSA shrugged when it obtained secret documents from GM that spelled out exactly what was causing these crashes.

NHTSA has not acknowledged its own failures to take action. It has not apologized to the families who have lost children, siblings, spouses, and parents. And it has not yet announced strong measures to ensure that it does not fail the American public this way in the future.

So my first question to you is, are you prepared to apologize for NHTSA to those families that were harmed by the defects in these vehicles?

Mr. FRIEDMAN. Senator, in my first hearing, I expressed my deepest sympathies and my sadness at the loss of life from each and every one of these tragedies. But I want to be clear, NHTSA did not shrug.

NHTSA, over the last few years, forcing Chrysler to recall vehicles that they refused to agree were defective, is not a shrug. NHTSA forcing Graco to recall vehicles is not a shrug. NHTSA diving into the data on this issue, having special crash investigators on the job on this issue, looking at the data, following the data, is not a shrug.

NHTSA aggressively pursues these issues, and continues to do so—

Senator MARKEY. And I disagree with you, Mr. Friedman. When you agreed with GM that cars stalling on their own did not pose a safety problem, that is wrong.

Mr. FRIEDMAN. Senator, when cars—

Senator MARKEY. When you did not, in fact, read your own contractors' reports linking the ignition switch defect to fatal accidents in which airbags did not deploy, that is on NHTSA. You just can't say it was an airbag problem. There was a fundamental problem

with the car just stopping. It was an ignition problem. So it's not an airbag problem. So NHTSA is wrong there as well.

And when you did obtain the secret documents from GM that spelled out exactly what was causing these crashes, that should have been made public immediately. We should have understood as a nation what these problems were.

So I just disagree with you, Mr. Friedman. OK? I just disagree with you. I think that there was a higher duty which you owed.

According to Mr. Valukas' report in 2004, GM and NHTSA had a secret meeting in which the attendees inexplicably agreed that cars stalled all by themselves, but that this was not necessarily a safety problem.

Earlier this summer, GM CEO, Mary Barra, and others agreed with me that the public would probably have rejected the conclusion that cars stalling all by themselves was not a safety problem if they had known about it. Do you also agree that they—with Mary Barra—that the public would have rejected that conclusion that the cars stalling on their own was, in fact, a safety measure—a safety problem—if the public had known?

Mr. FRIEDMAN. Senator, we have aggressively pursued stalling issues over the years, with 42 investigations, 31 recalls, over the last 10 years. When we see a stalling incident that creates an unreasonable risk to safety, we act, and there's no doubt about that.

One of the things that is incredibly important to us is we do have to—

Senator MARKEY. But do you agree? Will you say that NHTSA got it wrong when it found that cars stalling on their own was not a safety problem? Will you agree that was a mistake that NHTSA made?

Mr. FRIEDMAN. Senator, in this GM case, the ignition switch and the stall was linked to airbags not deploying, and that is clearly a safety issue.

Senator MARKEY. Again, but it's—the safety bags not deploying is a safety issue, but a car's ignition not working and shutting off the car automatically is a separate safety issue. So even if you had no airbags and you were driving in the car, I don't think the American public would feel safe if the car automatically was turning off, because there's an ignition problem.

And again, I keep waiting for you to close this gap so that you admit that there were two safety issues here. One was airbags, but the other was the ignition shutting off and the car just stalling out, perhaps on the highway. You do agree that's a separate issue and that that was something that the public should have been warned about, do you not?

Mr. FRIEDMAN. There's no doubt that stalling can be a serious safety issue.

Senator MARKEY. OK.

Mr. FRIEDMAN. No doubt.

Senator MARKEY. And do you agree that NHTSA should have made that clear to the American public? That's what I'm waiting for in terms of the apology, the statement to the public that there should have been a warning coming from the Government once that information was in the hands of NHTSA.

Mr. FRIEDMAN. Senator, we get many, many thousands of complaints about stalling. And in this case, when we look at the data, these vehicles didn't stand out.

If a consumer can safely pull their vehicle over to the side of the road and restart that vehicle, then that's a situation where the consumer can be safe, but obviously, the car company does need to address any stalling issue that represents a safety risk.

Senator MARKEY. Well, in 2007, NHTSA asked for and received a secret document from GM related to the death of two Wisconsin teenagers. That document was first made public by me at our May 7 hearing, and it is referenced repeatedly in Mr. Valukas' report.

It included a report by the Wisconsin State Patrol Academy that said that the ignition switch defect prevented the airbags from deploying. It also found other examples of the same problems happening in other cars and identified a 2005 GM warning to dealers about the issue. In short, it correctly identified the safety defect.

Do you agree with me that GM CEO, Mary Barra, and others that said that if the public had been able to read the secret document and warned about its conclusions at the time, it is possible that some of the deaths and injuries caused by this defect could have been avoided?

Mr. FRIEDMAN. Well, Senator, the special crash investigation report that included these same assertions was a public document, and no one brought that issue to our attention.

Senator MARKEY. No. The document that I'm talking about is not a public document.

Mr. FRIEDMAN. I understand, but that information was in the—

Senator MARKEY. Well, let's talk about the—let's talk about this non-public document. What if this non-public document had been made public? Do you agree that if it had been made public that it could have avoided unnecessary deaths having occurred?

Mr. FRIEDMAN. Senator, I agree that making this kind of information, with privacy protected, public can be a positive and helpful thing. What I don't agree with, though, is the—is putting the burden for making that information public with privacy protected should fall on NHTSA. I believe that burden should fall onto the industry that is causing these problems.

So, in conversation with your staff, in providing technical assistance, we suggested that we should support getting this information out there, but the car company should be the one responsible for the costs and the time and the effort to make that information publicly available, because they're creating the problems in the first place.

Senator MCCASKILL. Thank you, Senator.

Senator MARKEY. Well, when the document that's given to you in 2007 by GM—

Senator MCCASKILL. Thank you.

Senator MARKEY.—will be made public this year, there's a big problem. Thank you, Madam Chair.

Senator MCCASKILL. Thank you. Thank you. Senator Fischer?

**STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. Thank you, Madam Chairman, and thank you, gentlemen, for being here today. Mr. Friedman, I'd like to explore another area with you.

I read June 15 in the *New York Times* an article indicating that NHTSA wants to regulate mobile apps and devices. Is this a high priority for NHTSA, and is NHTSA spending a lot of time and resources here?

Mr. FRIEDMAN. Senator, there have been some, quite flatly, erroneous reports in the newspaper, so we have no intent and no plans to regulate mobile apps.

What we're doing is working to develop voluntary guidelines to help the developers of these systems ensure that they're developing them in ways that minimize distraction. In fact, companies like Google and Apple are actually moving forward with some of these exact same kinds of systems that we're suggesting.

So we have no intention to regulate, but we do think it's very important, because over 3,000 people die each year due to distracted driving, many of them because of the, you know, case we just saw about where people are looking at Facebook on their vehicle that we need to provide those guidelines for those developers, so they can innovate and ensure safety at the same time.

Senator FISCHER. So how do you plan to define motor vehicle equipment when it comes to an app? You know, we're looking at the FDA that is looking at mobile apps and trying to define them as a medical device and have regulatory authority over them. How are you going to go about defining a mobile app as motor vehicle equipment, where I believe you do have authority?

Mr. FRIEDMAN. Correct.

Senator FISCHER. And if you move into this new area, are you—how do you define it, and how do you gain that authority, which I think is questionable right now? Are you going to come to Congress and ask for that authority?

Mr. FRIEDMAN. Well, Senator, as you know, we do explicitly have authority over motor vehicles and motor vehicle equipment, so I think a map that has driving directions on it is very clearly motor vehicle equipment.

Senator FISCHER. Is a paper map motor vehicle equipment?

Mr. FRIEDMAN. To the best of my knowledge, paper maps, on their own, aren't causing a distraction issue. Certainly, if someone was holding that paper map up in front of them, that would be a serious distraction issue.

Senator FISCHER. On a mobile app, if it's voice controlled and if it is not in view of the driver, would there be distraction involved?

Mr. FRIEDMAN. We actually—it's an excellent question, and what we're doing is providing guidance in three different phases.

The first phase is for in-vehicle systems. The second phase is for systems where people would have to take their eyes off the road or hands off the wheel to access. The third phase is exactly this question of audible systems. We think those can be safer, but we do want to provide guidance to industry in how to make sure that they're safe.

Senator FISCHER. Do you believe you have the authority even with voice commands to regulate these apps, you would consider them mobile or motor vehicle equipment?

Mr. FRIEDMAN. Well, Senator, if it's providing something like driving directions or another driving service, it's motor vehicle equipment. But again, we have absolutely no intention of regulating these apps.

We think it makes a lot more sense to provide this guidance to consumers while at the same time pursuing aggressive efforts to improve behavior to stop distracted driving. That's why we just launched our new "You Drive, You Text, You Pay" campaign to help stop that dangerous behavior.

Senator FISCHER. Right. As you issue guidelines, so there's no authority—or there's no impact there on innovators as they move forward with mobile apps, they're just guidelines, they have no effect like a regulation?

Mr. FRIEDMAN. They are not enforceable at all. I hope that they have the effect of making it easier for them—

Senator FISCHER. Why would you issue guidelines that have no effect?

Mr. FRIEDMAN. Well, because I think that it can make it easier for them to develop systems that are safer. We're already seeing these impacts in the auto industry, where they're adjusting some of their designs to make them more safely. I think even the outlines of that first phase has been very helpful to developers like Google and Apple for how to design these systems.

So I think we're preserving safety in a way through these guidelines without having to use our regulatory authority. I think that's a win-win situation for the American public and for the innovators.

Senator FISCHER. I think it's very important that we do not hinder our innovators as they move forward, and I can appreciate your desire to have guidelines, but I question your authority being able to have these guidelines, and then when do we cross the line from a guideline to a regulation if you don't have cooperation, voluntary cooperation, from companies or individual innovators as we move forward?

Mr. FRIEDMAN. Well, thank you, Senator. I'm confident that they—that we all will move forward. I think the signs are already encouraging. And, you know, innovation is a top priority of Secretary Foxx, innovation in vehicle-to-vehicle technologies where we are literally, as an agency and as a department, leading the world in the research in—on that technology.

What we want to do is foster innovation and maintain safety at the same time, and I think these guidelines are that perfect balance. And we've engaged the industry very closely on this. We've invited them to have conversations about this. We've had public listening sessions on this. When we put out these guidelines, we'll provide people with an opportunity to comment. We'll take those comments into consideration before we do this.

So we're committed to working closely with the American public and innovators to make sure we can ensure innovation and ensure safety.

Senator FISCHER. Do you plan to engage Congress in this as you move forward with guidelines? Is there a role for Congress?

Mr. FRIEDMAN. Certainly, we would appreciate any support Congress can have for our efforts, whether it's through funding or, certainly, simply helping to get your constituents to provide comments to us.

Senator FISCHER. Well, I'm happy to hear you're working on voluntary guidelines with the industry instead of moving to regulation. Thank you.

Mr. FRIEDMAN. Thank you, Senator.

Senator McCASKILL. Senator Blumenthal?

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you, Madam Chairman, and thank you for having this hearing. Thank you for your leadership on this vitally important topic.

Normally, I agree with my colleague, Senator Markey—and by the way, I'm very pleased that we've reached agreement with GM on the legislation that we proposed—but I have to differ with him on the NHTSA shrug. I don't think it was a shrug. I don't think it was a nod. I think it was a NHTSA snooze. I think NHTSA has nodded off on safety.

And the *New York Times* article that we've all read, the investigative piece that appeared over the weekend, emphasizes how systemic and deep-seated NHTSA's failings have become, not just on GM, but on the unintended acceleration in Toyotas, the fires in the Jeep fuel tanks, the airbag ruptures in Hondas, and other problems that reached a crisis level before NHTSA reacted. It was not proactive. It reacted. And I know you're shaking your head.

Mr. FRIEDMAN. Sorry.

Senator BLUMENTHAL. But the fact of the matter is that your supposed watchdog agency had neither bark nor bite and, in fact, led consumers to have a false sense of security through your rating system.

I asked you in April, when you were before this subcommittee, whether General Motors had, quote, concealed material in significant information from NHTSA, and you replied, that is—quote, that is exactly the subject of an open investigation that we have into General Motors, and if we find that they did not violate their responsibilities to report information and act quickly, we will hold them accountable. Is your investigation done?

Mr. FRIEDMAN. Yes, Senator. It is done and—

Senator BLUMENTHAL. What have you found?

Mr. FRIEDMAN.—well, we found, very clearly, that General Motors had information that they failed to share us that hindered our investigation.

First of all, they had information that indicated when you move the ignition switch into the accessory position, the airbags were designed to turn off. Had we had that information, we could have pursued this in a very different manner. And once we had that information, we pushed GM to recall vehicles, and we pushed Chrysler to recall vehicles. In addition—

Senator BLUMENTHAL. And what will you do to hold them accountable?

Mr. FRIEDMAN.—to hold them accountable, we got them to pay the maximum possible fine of \$35 million and—

Senator BLUMENTHAL. But wouldn't you agree with me that that maximum fine is wholly inadequate as a measure of their failure?

Mr. FRIEDMAN. Absolutely. Which is for two reasons—

Senator BLUMENTHAL. But you would support the legislation that I proposed to remove that cap and others on this committee have supported it as well?

Mr. FRIEDMAN. Well, we absolutely support efforts to increase those fines. The President and Secretary Foxx put forward a bill to raise those fines—

Senator BLUMENTHAL. But what about removing the cap?

Mr. FRIEDMAN. I think removing that—the cap—could give us additional power to hold them accountable.

Senator BLUMENTHAL. So you do support that legislation. I'm delighted to hear that you will support it, if that's your testimony.

Mr. FRIEDMAN. Well, we will support all efforts to increase that cap. In addition, one of the things we've done to hold GM accountable is we have now put them in a position where, if they sneeze on a safety issue, they need to let us know about it. We've instituted unprecedented oversight over General Motors.

Hyundai was also found to be lacking when it came to following the law. We are not putting them under unprecedented oversight, and we're making clear to the industry, you step out of line, we will bring you back in line.

Senator BLUMENTHAL. Let me ask you about the current rating system. I see very little redeeming features in this rating system. Why not spend the resources that you currently devote to the rating systems to defect investigations and following up on consumer complaints?

Mr. FRIEDMAN. Senator, we have much more resources devoted to things like defects than we do have to this rating system. There were—there was an incredible number of inaccuracies in that *New York Times* article, and one of the things that was inaccurate is it didn't make clear that we have ten times the number of people focused on finding defects as we do have on this rating program. But this rating program—

Senator BLUMENTHAL. How do the expenditures of money, though, compare?

Mr. FRIEDMAN. The—when you combine peak staff, the money to support staff and the money that they use in their duties, our—excuse me, our defects work has about a 60 percent higher budget than the NCAP program. But I would be clear—

Senator BLUMENTHAL. Why not use the money that you now spend on ratings, which inherently mislead consumers, if history is any guide, and devote it, instead, to finding about things that are wrong with the cars and can help save lives?

Mr. FRIEDMAN. Senator, I disagree. The NCAP program has helped make vehicles safer. It has clearly saved lives by encouraging automakers to put more technology on board vehicles.

We're going to be releasing a study soon that shows NHTSA's role in—

Senator BLUMENTHAL. Well, let me just—I have to interrupt you, because I'm running out of time, and I know that the Chairman wants to move on—Chairwoman, I apologize—wants to move on.

Senator MCCASKILL. I go by either.

Senator BLUMENTHAL. Madam Chair.

You know, *Consumer Reports* bars the car companies from using its ratings and evaluations in their advertising. Why does NHTSA allow itself to be exploited by the industry in using these ratings in its ads?

Mr. FRIEDMAN. Because I wanted to set an incredibly high bar on safety. I want to challenge the industry to put more and more technology, more and more tools at play, to make vehicles much safer. That's what our regulations have done. That's what the NCAP problem has—

Senator BLUMENTHAL. Do you think NHTSA has achieved that objective through its rating system?

Mr. FRIEDMAN. Yes, absolutely. If you see—for example, one of the new tests we introduced was a side pole test, a test no one had had before. We rate those vehicles on that side pole test, and we saw automakers demonstrably change the design of their vehicles to improve the performance of those vehicles in that test. That is, without a doubt, a success that saves lives.

These are both critical programs. There's no doubt about it. I would love to work with you, Senator, and with the Committee and Congress on getting additional resources to NHTSA to ensure that we can continue to do an even better job, but what I don't want to have us do is be put in a position where we have to tradeoff making progress on things like drunk driving with making progress on defects.

Senator BLUMENTHAL. And no one wants you to abandon other real, genuine safety programs. But I think you have sensed from the reaction of this subcommittee on both sides of the aisle that there is a question here about the record. You can say about it what you will, but the record shows that these ratings have, in effect, misled consumers. And the lead paragraphs of that *New York Times* investigative piece demonstrate irrefutably along with other aspects of the record.

So I think the question in our minds is whether it's a culture of capture, a culture of corruptions, or just incompetence that needs to be corrected here, and that's going to be a tough task. We look forward to working with you, but I think that there has to be a more realistic attitude about what the real-life consequences are of the agency's performance.

Mr. FRIEDMAN. Senator, I would encourage all of you to ask the industry if they think we're captured. I hauled them in to talk to them about these issues. Some resisted at first. We had to make sure to push them to do this.

And on the Toyota case, the *New York Times* article is flat wrong. NHTSA found the floor mat defect. NHTSA was in the process of investigating and finding information on the other pedal entrapment defect. We brought that information to Toyota, and before we could even open our investigation, they recalled those vehicles. They recalled those vehicles because of us. And, and the Justice

Department found when fined Toyota \$1.2 billion, we found these problems even when they were hiding information from us.

We have—we found the Toyota case, and I completely disagree with that *New York Times* article. It completely mischaracterizes the work that NHTSA did to help save lives in the American public in that Toyota case.

It's a complete—same thing with Jeep. We forced—forced—Chrysler to recall a vehicle that they refused to admit initially that was a defect. We forced them to tell consumers, in their letter to consumers, that these vehicles were defective.

We have actively pushed these companies. Can we do more? Do we need to invest more? Do we need to improve our processes? Absolutely. But that *New York Times* article was a complete mischaracterization of our work.

Senator BLUMENTHAL. I have other questions, but my time is expired, and I thank the Chair for her patience with the amount of time that I've taken. Thank you.

Senator McCASKILL. I think we're frustrated with you, Mr. Friedman, at this point. And I understand you're here to defend NHTSA, and no one on this committee—subcommittee believes that there are not good, hard-working people at NHTSA that are trying to do the right thing.

But it is very hard to sit through this hearing and watch you rationalize and excuse a regulatory agency that, whether it was 300, or as the article specifically said, 2,000 complaints talking about stalling on the vehicles that were eventually recalled, when you had a lonely highway patrolman in Wisconsin figuring it out, when you had a study that your agency was part of in Indiana that figured it out, and you didn't figure it out.

And why you cannot take a measure of responsibility for that at this hearing has frankly got us all scratching our heads. You want to talk about resources, well, the crash-worthiness, there was a—it had \$10 million in programming money was the—\$10,372,214 to be exact in 2013. In 2014, they enacted that amount, and in 2015, you requested \$3.6 million more for the program in programming money, a significant increase for the crash-worthiness.

Compare and contrast that with the safety defects investigation, 2013—by the way, this number has been constant for a decade—the request was, in fact, \$10,611,000, which had been exactly what you'd got in 2014 and almost exactly what you'd spent in 2013, with no increase for programming money.

Now, I know what you're going to say, you have more FTEs in one place than the other and that you have requested—I think one year you requested two, one year you requested four, one year you may have requested six, and you didn't get the FTEs. But you're paying contractors to do work now out of programming money. You could have easily made a request for more programming money that could've allowed you to get more contractors. And you've got contractors now reviewing some of these complaints as they're coming in, correct?

Mr. FRIEDMAN. Yes. They are helping process the data, but a big part of what we need is to hire people on board who are experts, who can be trained up and be part of our staff—

Senator MCCASKILL. How about people that can look at these complaints coming in and figure out if there is any connecting the dots that needs to go on instead of, I'm sorry, we have insufficient information to conduct an investigation? Hundreds of them, whether it's your hundreds or whether it's the *New York Times* 2,000s, we need some admission here that this was not done right.

Mr. FRIEDMAN. Senator, we review each—

Senator MCCASKILL. Was it done right? Did you all do it right on the GM situation, when you had citizens who were sleuthing your database on your own? They were going into your database and figuring out that there was a pattern. They—one of them even went to their own expense and hired a lawyer to come to NHTSA and say, hey, we're looking at your data base, and you've got a problem.

Still, we have insufficient information to conduct an investigation. Now, maybe you can't see the forest for the trees, but I can assure you, on this side of the dais, it appears that you are digging yourself a hole of saying, "We did nothing wrong. We did it all right. There was not a problem. This is all GM's fault. Shame on GM."

Now, we've all said, "Shame on GM," and we've said it vociferously from this committee room. But you have got to take some responsibility that this is not being handled correctly for the American driving public within the Government regulatory agency.

Mr. FRIEDMAN. Well, Senator, if I'm leaving that impression, then I'm not being clear. There are clearly things that, looking back at the history of this, that we need to improve.

When there's a remote defect possibility that someone brings up, even if the preponderance of evidence points to a different direction, we need to have processes in place, and we are putting processes in place to address that. When there is data that doesn't get fully included in the discussions of these situations, we need to make sure that that information is fully included and we are moving forward with systems to try to make sure that we can gather all that data in one place and ensure that all that data is reviewed.

It—we did not have—we do not have, in all cases, special crash investigator previously in the room for these discussions. My team is now making sure that, in every case, a special crash investigator is involved in these cases. In addition, we have been discussing how we can more aggressively follow up on claimant cases where they claim to have a problem.

One of the challenges in here and one of the things that I wish had happened differently is that we had had information from the claimants where they found, basically, a smoking gun.

Senator MCCASKILL. Right.

Mr. FRIEDMAN. But it was within those documents that we need to keeping for, so it—

Senator MCCASKILL. That's fair. I think what—you would be much better served by saying, "We don't ever want this to happen again, and we're changing things, and this is the list of things that we're changing." But it appears, in question after question, that you want to obfuscate responsibility rather than take responsibility.

And there is some responsibility to be taken here, Mr. Friedman. Maybe not as much as General Motors, and I think none of us would argue about that, but there is some responsibility to be taken here.

Let me ask you about the workforce assessment. Of all the findings, and there were, I think, 11 of them—10 or 11. Mr. Com e, how many?

Mr. COM E. We had ten recommendations.

Senator MCCASKILL. Ten recommendations. And the one that's outstanding—and we were told back in April that it would be done in May—in your internal look at whether or not you've got the right resources. I'm worried that the programming money for this agency has been flatlined for a decade. In light of all the technological advances, that just doesn't compute with me.

So where is the workforce assessment that is so necessary for us to evaluate whether or not you are properly supported and whether we need to do a much better job to supporting you?

Mr. FRIEDMAN. We have had some delays in that effort, in part because the quality of some of the work from a contractor, where we were trying to make sure to use a contractor to help leverage our resources and use the dollars that we had, there were some fundamental problems with the product that was delivered from that, and as a result—

Senator MCCASKILL. How much did you pay for that?

Mr. FRIEDMAN. I don't know that number, but we can get it to you.

Senator MCCASKILL. Have we paid them a bonus yet?

Mr. FRIEDMAN. Better not have.

Senator MCCASKILL. Well, I say that, because I've got experience with this. I've done a lot of oversight on contracting. You would be amazed how many times contractors get their bonus payments when they don't do their job.

Mr. FRIEDMAN. That would be a serious problem in my book.

Senator MCCASKILL. OK. Well, you better check on it.

Mr. FRIEDMAN. Will do. And in addition, though, we have looked—you know, in looking at that effort and in looking at some of the different things that we are considering, we have looked at the importance of, you know, potentially, how would 20 additional staff affect our ability to do things? How would 20—\$20 million in additional resources help us do things?

But one of the things, frankly, that I want to be clear on is, at some level, we will always be understaffed and underfunded for our ability to do our job. There's—

Senator MCCASKILL. Well, I don't think that's a good answer.

Mr. FRIEDMAN. Well, but—

Senator MCCASKILL. And by the way, this recommendation has been out there since 2011, and it's really troubling to me that you are in charge of evaluating vehicle safety in this country, and you're saying that, since 2011, you've been told by the Inspector General that you need to do a workforce resource analysis, whether or not your workforce is adequate, and it is now 2014, and we still don't have a—I mean, you can't even get across the finish line an analysis of whether or not you got enough folks.

Mr. FRIEDMAN. It's definitely taken too long.

Senator MCCASKILL. When do we expect it?

Mr. FRIEDMAN. In November.

Senator MCCASKILL. OK. I have gone over my time, and we've got another panel, but I want to make sure that my colleagues that are still here have an opportunity.

Senator NELSON. Mr. Friedman, you've heard us, something is rotten in Denmark. And I want to say that my criticism is not just directed at you. My criticism is also directed at the White House.

This position that you are filling as acting has been vacant for 9 months, and that is inexcusable. So I hope this message will get to the White House and that we can move on. You've taken the brunt of it, because you're there, but the agency is not functioning like it should for the protection of the consumers.

Thank you, Madam Chairman.

Senator MCCASKILL. Thank you. Senator Blumenthal?

Senator BLUMENTHAL. Thanks, Madam Chair. I want to reiterate, I know there are a lot of hardworking, dedicated folks at NHTSA, and I know that you have been at NHTSA since just May 2013, so you are defending an agency that has failed. You are the face of that failure, but I would have thought, as the Chair has indicated, that you might be more forthcoming and more receptive to the kind of reform that we feel is necessary.

And just as an indication of the kinds of failures, systemic, far-reaching failures, another issue of concern to me regards the use of technical service bulletins, which are sometimes applied by auto-makers to avoid an expensive recall.

MAP-21 required NHTSA to make those bulletins available on its website searchable by the public by 2013. As of May, they're still not on the website. Can you tell me why, and can you commit to me when NHTSA will meet that deadline—it's already missed the deadline—when it will have them available?

Mr. FRIEDMAN. Senator, we make public—we provide online all technical service bulletins associated with a recall, in other words, all technical bulletins that are associated with a safety defect.

There are additional technical service bulletins that may be safety related. We make those available through our reading room. There's additional technical service bulletins that aren't related to defects or safety that we're prohibited by copyright law from making public.

That said, we are working toward making the ones that are related to safety more publicly available, and we're targeting—

Senator BLUMENTHAL. Well, can you commit to me when you will complete that task? You've missed the deadline. When will it be done?

Mr. FRIEDMAN. We're working to target, I believe, in the next 6 months to try to get that information up there, but I can get you a more solid date.

Senator BLUMENTHAL. Well, I would like a more solid date. I'd also appreciate any contention in detail that you have disputing the *New York Times* story. You said it was wrong in numerous respects, but I'd like something in writing from you that we can put in the record if you feel, in fact, it was in error in any way.

Mr. FRIEDMAN. I'd be happy to do so.

Senator BLUMENTHAL. I'd also like to ask you what you feel—taking up Senator Klobuchar's argument—what you feel can be done to expand the resources that you devote to investigation of defects.

Mr. FRIEDMAN. Well, Senator, those were some of the issues that I was discussing before. We do need additional people, is definitely a primary tool that we need here. This is one of those cases where simply throwing additional dollars at it is not the key to the solution. Can we use the additional dollars? Absolutely. Do I—do we want additional dollars? Absolutely. But we also need additional people.

We've seen double the number of complaints come in this year, which is fantastic. That's a critical tool that allows us to find these problems, and we've got our folks working long hours to try to make sure to go through each and every one of those complaints. We needed additional authority to help make sure that we can do this. We need additional cooperation from industry to make sure that we can do this. And we need to continue to improve the way NHTSA handles data and remote defect possibilities and other key aspects associated with the General Motors case and other issues that we've been facing recently.

Senator BLUMENTHAL. In the explanation given by the NHTSA official who was quoted in the *Times* story that there is no hard and fast protocol or a set of criteria regarding the type of instance that prompts further investigation, in this instance, in the case of GM, the phrase "insufficient evidence" was used. What does that mean?

Mr. FRIEDMAN. Well, in this case, because we didn't understand the level of hazard associated with this issue, because we didn't have the information linked to the airbag deployment, typically, insufficient evidence will mean either you don't have an indication of a specific defect or you don't have information—

Senator BLUMENTHAL. But why should it matter whether the airbag was not deployed if the car was stalling repeatedly?

Mr. FRIEDMAN. When stalling poses a safety risk—

Senator BLUMENTHAL. Doesn't it pose a safety risk whenever it occurs?

Mr. FRIEDMAN.—based on our past data, it hasn't always posed an unreasonable safety risk.

Senator BLUMENTHAL. Well, that's the kind of reaction, Mr. Friedman, if I may, I mean no disrespect, but for the ordinary consumer, a car stalling repeatedly on highways or anywhere is a problem. You may regard it as insufficient evidence of a need for investigation, but the ordinary consumer would feel that's your job.

I note that I'm out of time, so I have other questions which I'll submit for the record, but I want to thank you both for being here today.

Mr. FRIEDMAN. Thank you, Senator.

Senator McCASKILL. Senator—excuse me, Senator Markey?

Senator MARKEY. Thank you, Madam Chair. Again, if you're in a passing lane, and you're moving at 60 miles an hour, and you have a flat, you're panicking. You're saying, oh, my God, I'm blowing a tire here, and I'm four lanes over from the breakdown lane, and everybody is going 60 miles an hour. That's a problem.

Well, the same thing would be true if your car, your ignition just stops, and you're four lanes over from that breakdown lane. That's just the bottom line on it. You're at risk. And it could just be a 17-year-old, 18-year-old driving the car, you know, newly given a license to be able to drive.

And so just common sense says that the circumstances that could arise are such that it's a real danger. And whether the airbag deploys or not when you hit a car in the next lane or when you kind of go off the road and you're kind of not in a crash, but you're rolling over, because the ignition has gone off, and you're leaving the road at a high speed, well, that's a real danger.

So again, there's just a fundamental disconnect here. There's just a failure to understand how ordinary families would view that kind of a situation with their son or their daughter in that car and the likelihood that they would allow them to drive it, especially out on the highway, if they knew the car could turn itself off automatically.

And so this is a—again, this is a big problem, and, you know, we go all the way back to, you know, Ralph Nader with *Unsafe at Any Speed* back in the middle of the 1960s, through all the battles that we had in Congress over seat belts, and airbags, and making the dashboards more safe, all these things were battled by the industry. They were fought—fought bitterly—as an extra expense which they felt the American public was unwilling to pay.

You know what they learned, though? They learned that when people now get into every automobile across America, the first thing they do is put on their seat belt. They want to be safe, but especially their kids.

When they fought airbags and then they had to put one in, guess what the next response was? Why isn't there one in the passenger seat for my wife or for my husband or for my children? They wanted more safety. They wanted to know.

And so what we have here at NHTSA is a fundamental failure to deal with this essential issue of the priority that the American people put on safety in automobiles. And to the extent to which it may be their greatest fear, their kid out in a car driving somewhere at night at a high speed coming back from work, and that NHTSA doesn't believe that that's the issue, but it's actually the lack of deployment of an airbag, you're missing the point. You're missing how people view this issue.

And so all I can say to you, Mr. Friedman, is that people really want a cop on the beat. They want an agency which is looking at the industry that they're responsible for and making sure that they cannot harm the public.

And there was sufficient information in the hands of the Agency to be the early warning system, to tell the public, there's a danger here, cars are turning off automatically, and that you should know that as you're allowing one of your family members into that vehicle.

So from my perspective, it's still a very troubling set of responses that we're receiving. And I think, again, Madam Chair, it is absolutely imperative that we pass legislation that requires a disclosure of all of this information when it is in the hands of the Government, and that not only is the Agency responsible, but the company

is responsible so that it be transparent and the public knows that this vehicle could harm some person in my family.

And so I thank you for this hearing, Madam Chair. And I just think we've got a big responsibility to pass the laws that make it necessary for children to look to the history books to find if there ever was such a day when this was known by the Government and by companies and yet, it was still allowed to occur.

I yield back to balance my time.

Senator MCCASKILL. Thank you, Senator Markey. And now, we want to thank Mr. Comé and Mr. Friedman for your time here today. We will continue to communicate with you as we develop the record for this hearing and move forward with reforms that we think are absolutely essential.

And now I would ask the second panel to come forward. I want to thank all three of you for being here. Let me introduce the three witnesses in this panel.

First, we have Ms. Jacqueline S. Gillan, who is President at Advocates for Highway and Auto Safety here in Washington. Second, we have Mr. Kendell Poole, who's the Chairman of the Governors Highway Safety Association in Nashville, Tennessee. And third and finally, Mr. Robert Strassburger, who is the Vice President, Vehicle Safety and Harmonization, Alliance of Automobile Manufacturers in Washington, D.C.

Thank you all three. We look forward to your testimony. You can begin, Ms. Gillan.

**STATEMENT OF JACQUELINE S. GILLAN, PRESIDENT,
ADVOCATES FOR HIGHWAY AND AUTO SAFETY**

Ms. GILLAN. Thank you very much. Good afternoon Chairman McCaskill and Senator Blumenthal. I welcome this opportunity to appear before you today on behalf of Advocates for Highway and Auto Safety to urge enactment of a strong and comprehensive safety title in the reauthorization of MAP-21.

The Senate Commerce, Science, and Transportation Committee has a long history of passing bipartisan legislation directing agency action on numerous safety standards resulting in airbags, safer trucks and busses, child restraints, rollover prevention, consumer information, and rearview cameras. These laws have saved thousands of lives, prevented millions of injuries, and saved billions of dollars.

However, there is still an unfinished safety agenda. Each year, motor vehicle crashes kill about 33,000 people and injure 2 million more at a cost approaching \$1 trillion. There is no question that Congressional hearings on the GM cover-up of a deadly defect have put a bright spotlight on long-standing problems as well as overdue reforms.

Advocates strongly supports enactment of several Senate bills sponsored by members of this committee and others, including S. 2760, sponsored by Chairman McCaskill, S. 2559, sponsored by Committee Chairman Rockefeller, S. 2151, sponsored by Senators Markey and Blumenthal, and S. 2398, sponsored by Senators Blumenthal, Markey, and Nelson. These bills are critical.

My written testimony goes into greater detail about the importance of each bill. NHTSA needs to be given the financial and staff

resources necessary to effectively oversee the auto industry. However, the Agency cannot be permitted to continue practices that have obstructed public oversight of defect investigations and result in backroom deals with the auto industry.

Stronger penalties are long overdue and essential to deter auto-makers from knowingly installing defective parts and then hiding the problems from the Agency and the public.

Consumers also must be assured that, when they walk into a rental car company or a used car dealership, that they walk out with keys to a car that has been repaired if subject to a safety recall.

NHTSA's vehicle safety programs are grossly underfunded. Last year, the entire operations and research budget was only \$248 million. This equates to NHTSA spending a mere \$0.94 for each of the 266 million registered vehicles on the road. Accounting for inflation, NHTSA's operation and research budget is effectively 9 percent less than it was a decade ago, even though the number of vehicles on the road has grown by 23 percent. NHTSA's meager budget is also hindering the issuance of several safety rules and standards mandated by MAP-21.

Another critical safety issue is pedestrian safety. Pedestrian deaths and injuries are growing. S. 2284, sponsored by Senator Gillibrand and others, takes a comprehensive approach to implementing safety measures to protect pedestrians and bicyclists. The portion of the bill involving roadway improvements has already passed the Environment and Public Works Committee, and we urge the Commerce Committee to adopt the provisions directing NHTSA action on motor vehicle safety improvements to reduce the severity of injuries suffered when a pedestrian or bicyclist is hit by a car.

My written testimony also addresses other important issues worthy of Congressional action. These include upgrading seat belt protection for occupants in a rollover crash as well as the safety standard for seat back strength which was issued 45 years ago.

Additionally, NHTSA crash data collection needs to be modernized. The current budget limits the agency's ability to collect sufficient data, and this, in turn, limits their ability to identify safety problems and develop safety solutions.

Sadly, this summer, we were all made aware that tragic deaths of infants and small children left in hot cars continues to occur. Since 1998, more than 600 children have died from heat stroke, because they were left in a car.

Just as with the issue of rear visibility, education campaigns alone are not enough to stop these preventable deaths. We urge the Committee to direct NHTSA to aggressively pursue a technological solution to this deadly problem.

Finally, far too many states are still missing key traffic safety laws that can save lives and prevent injuries. We support continuing incentive grant programs to encourage state adoption of laws addressing teen, impaired, distracted driving and occupant protection with some changes to these programs.

In conclusion, many of the legislative proposals, sponsored by members of this committee and strongly supported by safety groups, were considered in the aftermath of the Ford Firestone tire

defect and then the Toyota acceleration defect. Now, we have the GM ignition defect.

Every day, there are more revelations about vehicle safety defects. Unless Congress enacts these essential reforms, like the legislation I have mentioned in my statement, it is almost certain that similar preventable tragedies will occur over, and over, and over again.

Thank you, and I'm happy to answer your questions.

[The prepared statement of Ms. Gillan follows:]

PREPARED STATEMENT OF JACQUELINE S. GILLAN, PRESIDENT,
ADVOCATES FOR HIGHWAY AND AUTO SAFETY

Introduction

Good afternoon Chairman McCaskill, Ranking Member Heller, and members of the Senate Subcommittee on Consumer Protection, Product Safety, and Insurance. I am Jacqueline Gillan, President of Advocates for Highway and Auto Safety (Advocates). Advocates is a coalition of public health, safety, and consumer organizations, insurers and insurance agents that promotes highway and auto safety through the adoption of safety policies and regulations, and the enactment of state and Federal traffic safety laws. Advocates is a unique coalition dedicated to improving traffic safety by addressing motor vehicle crashes as a public health issue.

According to the Federal Government, each year motor vehicle crashes claim more than 33,000 lives and millions more are injured. Each day, approximately 90 people die and more than 5,000 suffer injuries on America's highways. Every minute four people are injured and every 17 minutes a life is lost in a crash.¹ In the span of this hearing alone, seven people, more than the number of people on this witness panel, will have become victims of a fatal traffic collision and more than 450 will have been injured. The annual comprehensive cost of motor vehicle crashes is approaching one trillion dollars,² including productivity losses, property damage, medical costs, rehabilitation costs, congestion costs, legal and court costs emergency services such as medical, police, and fire services, insurance administration costs, costs to employers, and values for more intangible consequences such as physical pain and lost quality-of-life.

The Senate Committee on Commerce, Science, and Transportation, under the leadership of Democrats and Republicans, has been responsible for some of the most significant advances in highway and auto safety beginning with the drafting and passage of legislation in 1966, leading to the creation of what is now the National Highway Traffic Safety Administration (NHTSA). Over the last 20 years, this Committee has passed other lifesaving measures requiring airbags as standard equipment in the front seat of all passenger vehicles as well as directing agency action on numerous vehicle safety standards on tire safety, child restraints, rollover protection, anti-ejection prevention, electronic stability control, roof crush strength, side impact protection, and rearview cameras.

Additionally, the safety title of the Moving Ahead for Progress in the 21st Century Act,³ or MAP-21, was another important bill advancing safety. It included vehicle and traffic safety provisions directing agency actions on key lifesaving measures including occupant protection, teen driving, distracted driving, and impaired driving. In particular, this Committee held hearings and pushed passage of a comprehensive motorcoach safety bill based on numerous overdue and ignored recommendations, many of them decades old, issued by the National Transportation Safety Board (NTSB) to improve occupant protection and operational safety of intercity bus travel. Several safety accomplishments include a seat belt installation requirement which was issued in November 2013,⁴ as well as directing that final rules be issued on roof strength, anti-ejection glazing and rollover crash avoidance. I am attaching a list and a chart showing the status of key requirements enacted in MAP-21 to

¹Traffic Safety Facts 2012, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System (Traffic Safety Facts 2012), DOT HS 812 032, U.S. DOT, NHTSA (2014).

²The current figure is \$870.8 billion according to the Economic and Societal Impact of Motor Vehicle Crashes, 2010, U.S. DOT, NHTSA, DOT HS 812 013 (2014).

³Pub. L. 112-141 (July 6, 2012).

⁴Occupant Crash Protection; Final Rule, 78 *Federal Register* 70416 (Nov. 25, 2013).

my testimony. These issues languished for years until specific deadlines for agency action were included in the recent reauthorization bills.

Even now, deadlines for the issuance of a number of final rules and other actions required by MAP-21 are delayed and will not be completed on time, including final rules on several key motorcoach safety issues for roof strength, anti-ejection protection and rollover crash avoidance,⁵ as well as for improvement of child restraint systems also known as Lower Anchorages and Tethers for Children (LATCH), the criteria for increased civil penalties, and the study on the need for a vehicle electronics standard.

Despite these important safety gains, there is still an unfinished safety agenda. The reauthorization of MAP-21 provides an opportunity to address these safety concerns and take action to forge solutions. There is no question that hearings by this Subcommittee on the General Motors (GM) cover-up of a deadly defect in the ignition key switch have put a bright spotlight on outstanding problems and solutions that are needed. We cannot allow a lack of strong auto regulatory laws to combat industry failures, a lack of sufficient resources, a lack of accountability and a lack-luster performance by NHTSA to jeopardize the safety of the public.

I welcome this opportunity to appear before you today to strongly endorse several important bills that have been introduced to address these defects in the law and deficiencies by NHTSA including Chairman McCaskill's comprehensive six-year reauthorization bill, the *Motor Vehicle and Highway Safety Enhancement Act of 2014*, S. 2760. This bill contains needed safety provisions and funding authorization levels to continue improvement of highway safety and reduction of traffic fatalities. I will discuss the need for this legislation as well as other bills pending before the Committee including *The Early Warning Reporting System Improvement Act of 2014*, S. 2151, *The Motor Vehicle Safety Act of 2014*, S. 2559, *The Automaker Accountability Act of 2014*, S. 2398, and *The Pedestrian Safety Act of 2014*, S. 2284, as well as issues not yet introduced as legislation that are worthy of your support and leadership. We are very grateful to the Chairman and also Subcommittee Members Senators Richard Blumenthal (D-CT), Brian Schatz (D-HI) and Cory Booker (D-NJ), as well as Commerce Committee Members Senators Bill Nelson (D-FL) and Edward Markey (D-MA), and Senators Kirsten Gillibrand (D-NY) and Tammy Baldwin (D-WI) for cosponsoring these lifesaving pieces of legislation.

Lives Saved by Safety Systems and Programs

When Congress acts, NHTSA reacts and lives are saved. Laws passed by Congress, including those that originated with this Committee, and subsequent rules issued by NHTSA requiring vehicle safety standards and technologies have saved thousands of lives. NHTSA studies show that since 1975 motor vehicle safety technologies have saved nearly 418,000 lives.⁶ For example, frontal air bags, a safety technology that this Committee championed in 1991,⁷ saved 2,213 lives in 2012 and have saved nearly 37,000 people since 1991.⁸ Seat belts saved the lives of an estimated 12,174 people over the age of four in 2012, and nearly 305,000 lives since 1975.⁹ Child restraints saved the lives of 284 children age four and under in 2012 and more than 10,000 young children since 1975.¹⁰ These safety measures have the potential to save many additional lives and prevent costly injuries if they are used to protect everyone at risk who needs them. For example, in 2012 if all passenger vehicle occupants age five and over had worn seat belts, an additional 3,031 lives could have been saved, and a 100 percent motorcycle helmet use rate would have saved an additional 781 lives in motorcycle crashes.¹¹ In addition to laws requiring safety technologies, laws such as the 21-year-old minimum drinking age law saved 525 lives in 2012.¹² In 2012, electronic stability control (ESC) saved an estimated 1,144 lives among passenger vehicle occupants.¹³

⁵ Since the NHTSA did not issue a notice of proposed rulemaking (NPRM) on Bus Rollover Structural Integrity until August 6, 2014, 79 *Federal Register* 46090, and public comments are not due until October 6, 2014, it is evident that the agency will not meet the October 1, 2014 deadline for issuance of this final rule.

⁶ Traffic Safety Facts 2012.

⁷ Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Title II, Part B, § 2508, Pub. L. 102-240 (Dec. 18, 1991).

⁸ Traffic Safety Facts 2012.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Traffic Safety Facts: Research Note, Estimating Lives Saved By Electronic Stability Control 2008-2012, U.S. DOT, NHTSA, DOT HS 812 042 (June, 2014).

A comprehensive NHTSA reauthorization bill with sufficient agency funding and requiring additional commonsense and cost-effective safety improvements will allow NHTSA to fulfill its statutory mission to prevent death and injuries and economic losses from motor vehicle crashes.

Sufficient Resources for NHTSA is Essential

NHTSA's funding and staffing levels have suffered over the years. Today, 94 percent of transportation-related fatalities and 99 percent of transportation injuries¹⁴ occur on our streets and highways and yet, NHTSA receives only one percent of the overall U.S. Department of Transportation (DOT) budget.¹⁵ NHTSA is responsible for the safety of over 300 million Americans who drive or ride in or are around more than 265 million registered motor vehicles that use our Nation's highways.¹⁶ Even with the recent downturn in motor vehicle traffic fatalities, approximately 32,850 people were killed in 2013 on our highways¹⁷ and millions more were injured at an annual comprehensive cost of more than \$870 billion.¹⁸ Motor vehicle crashes are the leading cause of death for all Americans ages five to 24, and the second leading cause of death among children ages one to four and adults 25 to 44 years of age.¹⁹ In order to maintain safety gains and improve the agency's efforts in detecting and investigating safety threats, a justified and necessary increase in funding is essential.

The current agency budget for motor vehicle safety activities and research is a small portion of NHTSA's overall budget. Current funding for NHTSA's operations and research covering the Nation's entire vehicle safety program was only \$248 million for Fiscal Year (FY) 2013.²⁰ This total is grossly inadequate in the face of the agency's mission and safety responsibilities that affect every American and every registered motor vehicle on our roads. Moreover, this paltry sum has barely increased over the past decade.²¹ When accounting for inflation over that same time period, *NHTSA has effectively experienced a 9 percent decrease in funding for operations and research activities.* The agency's operations and research budget of \$248 million equates to NHTSA receiving less than a dollar for each of the 266 million registered vehicles on the road in the U.S.²² (94 cents to be exact). While NHTSA's safety budget has shrunk, the number of vehicles on the road the agency must regulate has increased by 23 percent, from 217 million vehicles in 2000 to 266 million in 2012.²³ NHTSA remains woefully under-resourced and the agency's ability to keep up with technology and crash and injury trends is imperiled by the lack of sufficient resources. There are hundreds of other Federal programs of far less significance with higher budgets than NHTSA's. This is unacceptable in light of the important lifesaving mission of this agency.

The agency budget for vehicle safety should reflect its important lifesaving mission. In order to provide a solid foundation for NHTSA to address the safety of current and future vehicles, I urge the Committee to assure this small agency is given the funds needed to do its job. Laws and programs administered by NHTSA are responsible for saving at least an estimated 418,000 lives since 1975.²⁴ NHTSA authorization for operations and research should be substantially increased in acknowledgement of the daunting task the agency faces and tremendous beneficial impact the agency's work has on the lives of so many Americans.

¹⁴ National Transportation Statistics 2013, U.S. DOT, RITA, BTS, Tables 2-2, and 2-4 (2014).

¹⁵ Budget Highlights Fiscal Year 2014, U.S. DOT.

¹⁶ Traffic Safety Facts 2012, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, U.S. DOT, NHTSA, DOT HS 812 032 (2014).

¹⁷ Traffic Safety Facts: Crash Stats, Early Estimates of Motor Vehicle Traffic Fatalities in 2013, U.S. DOT, NHTSA, DOT HS 812 024 (2014).

¹⁸ The Economic and Societal Impact of Motor Vehicle Crashes, 2010, U.S. DOT, NHTSA, DOT HS 812 013 (2014).

¹⁹ 10 Leading Causes of Death by Age Group, United States—2011, and 10 Leading Causes of Injury Deaths by Age Group Highlighting Unintentional Injury Deaths, United States—2011, CDC.

²⁰ National Highway Traffic Safety Administration Fiscal Year 2015 Budget Overview, Exhibit II-2, U.S. DOT, NHTSA (2014).

²¹ United States Department of Transportation Fiscal Year 2006 Budget in Brief, U.S. DOT, p.36.

²² *Id.*; see also Traffic Safety Facts 2012.

²³ Compare Traffic Safety Facts 2000, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, DOT HS 809 337, U.S. DOT, NHTSA (2001) with Traffic Safety Facts 2012, A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, DOT HS 812 032, U.S. DOT, NHTSA (2014).

²⁴ Traffic Safety Facts 2012.

Safety Bills Which Should be Included in the Safety Title

NHTSA is over 40 years old²⁵ and should be given authority and powers commensurate with the agency's experience and safety mandate. This responsibility should be coupled with powers that permit the agency to fully perform its duties and allow the agency to exercise its enforcement authority to ensure the safety of vehicles on our streets and highways. For this reason Advocates supports amending several Federal laws to provide NHTSA with enhanced authority to address existing safety challenges with 21st Century approaches that will allow the agency to leverage its resources to protect the American public. Advocates strongly supports the following legislation.

The Motor Vehicle and Highway Safety Enhancement Act of 2014, S. 2760

We commend Senate Commerce, Science and Transportation Subcommittee on Consumer Protection, Produce Safety, and Insurance Chairman Claire McCaskill (D-MO) for introducing the Motor Vehicle and Highway Safety Enhancement Act of 2014, S. 2760, and strongly support its enactment. This bill provides for a six-year reauthorization of highway and auto safety funding at NHTSA and doubles NHTSA's funding for vehicle safety over that time period. It provides the agency the enhanced resources and authorities necessary to keep Americans safe on our roads and holds accountable those who willfully ignore or violate safety laws and regulations.

Specifically, Advocates supports the increases to the highway safety grant funds and the addition of eligibility to use the funds to reduce injuries and deaths to older drivers, to improve emergency medical services response to crash sites, and to create countermeasures designed to decrease deaths and injuries to pedestrians and bicyclists traveling in the roadways. More pedestrians were killed in motor vehicle crashes in 2012 than in any of the previous four years. Pedestrian fatalities have increased by 15 percent and the number of pedestrians injured has increased by 29 percent since the recent low in 2009.²⁶ In 2012, the latest year of data available, there were 4,743 pedestrian deaths and 76,000 pedestrians injured. Vulnerable populations make up a significant share of pedestrian fatalities. More than one-fifth of children ages five to 15 who were killed in traffic crashes were pedestrians. Older pedestrians (age 65+) accounted for 20 percent (935) of all pedestrian fatalities in 2012. Moreover, the fatality rate for older pedestrians (age 65+) was 2.17 per 100,000 population—higher than the rate for all the other ages under 65. In 2010, pedestrian crashes resulted in \$67 billion in comprehensive costs.²⁷

Additionally, we support the revision of the criteria states must meet to receive grant funding for enacting ignition interlock device (IID) laws. Currently, the grant program as interpreted by NHTSA after enacted in MAP-21, is overly prescriptive and hence ineffective. While 24 states have all-offender IID laws or laws required for the first offense of an offender with a blood alcohol concentration (BAC) of .08 percent, only two states received grant funding in FY 2013 and four states received grant funding in FY 2014. The commonsense changes contained in S. 2760 will help encourage states to enact IID laws which are effective and reduce the number of repeat offenders by 64 percent.²⁸ Since 50 to 75 percent of convicted drunk drivers continue to drive on a suspended license, it is essential that all drivers convicted of impairment be required to use an IID in order to prevent them from driving drunk in the future.²⁹

In 2012, an average of one alcohol-impaired driving fatality occurred every 51 minutes in our country resulting in a total of 10,322 deaths or almost a third of all traffic fatalities for the year.³⁰ According to the Centers for Disease Control and Prevention (CDC), adults drank too much and got behind the wheel to drive about 112 million times in 2010—the equivalent of nearly 300,000 incidents of drinking and driving each day in America.³¹ Nationally, every two minutes, a person is in-

²⁵ NHTSA was formally established by the Highway Safety Act of 1970.

²⁶ Traffic Safety Facts 2012.

²⁷ The Economic and Societal Impact of Motor Vehicle Crashes, 2010, HS 812 013, U.S. DOT, NHTSA (2014), available at <http://www-nrd.nhtsa.dot.gov/Pubs/812013.pdf>.

²⁸ Ignition Interlocks –What You Need to Know, A Toolkit for Policymakers, Highway Safety Professionals, And Advocates, DOT HS 811 246, NHTSA (Nov., 2009).

²⁹ Peck, R.C., Wilson, R. J., and Sutton, "Driver license strategies for controlling the persistent DUI offender, *Strategies for Dealing with the intent Drinking Driver.*" Transportation Research Board, Transportation Research Circular No. 437 (1995).

³⁰ Traffic Safety Facts 2012 Data: Alcohol-Impaired Driving, DOT HS 811870, NHTSA (Dec., 2013), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811870.pdf>.

³¹ CDC Vital Signs, Drinking and Driving: A Threat to Everyone (Oct., 2011), available at <http://www.cdc.gov/vitalsigns/DrinkingAndDriving/index.html>.

jured in a drunk driving crash and, on average, one in three people will be involved in a drunk driving crash in their lifetime.³² Along with the unacceptable loss of life caused by drunk driving crashes, the financial costs are staggering. Nationally, drunk driving costs exceed \$206 billion annually.³³

Convincing and compelling studies show states that have adopted IID laws for all offenders are saving lives and reducing injuries. Arizona, Oregon, Louisiana and New Mexico have experienced dramatic decreases in drunk driving deaths of more than 30 percent after these states enacted an all-offender IID law.³⁴ In addition, when West Virginia adopted its IID program, recidivism was reduced by 77 percent among first-time offenders.³⁵

IIDs are proven technological vaccines that help to save lives and prevent the disease of drunk driving recidivism. Nearly eight in 10 Americans support requiring IIDs for all offenders convicted of driving while under the influence of alcohol (DUI), even if it is their first conviction.³⁶ Furthermore, 82 percent of offenders themselves believe the IID was effective in preventing them from driving after drinking.³⁷ We urge the Subcommittee to support this essential improvement to the current criteria.

The bill also addresses inadequacies in laws and regulations brought into the national spotlight by the GM ignition switch debacle. Current law covers manufacturers in bankruptcy reorganization proceedings but does not cover liquidation bankruptcies. This bill would close that loophole, ensuring further protections for consumers against auto safety defects. Moreover, the bill increases the per violation cap on civil penalties from \$5,000 to \$25,000 and eliminates the maximum total penalty cap, which is currently set at \$35 million. Further, the bill also expands civil penalties to cover not only those who violate auto safety laws or regulations, but also those who cause violations to occur as well. Critically important is the provision that gives Federal prosecutors greater discretion, where warranted, to bring criminal prosecutions for auto safety violations and increase the possible penalties, including up to life in prison for violations that result in death.

Additionally, Advocates supports the advancement of The Raechel and Jacqueline Houck Safe Rental Car Act of 2013, S. 921, of which a modified version is included in S.2760. This bill is sponsored by Senator Charles Schumer (D-NY) and cosponsored by a number of Senators from both sides of the aisle including Subcommittee Chairman Claire McCaskill (D-MO) and Subcommittee Members Senators Barbara Boxer (D-CA), Richard Blumenthal (D-CT), and Brian Schatz (D-HI). This legislation will ensure recalled rental vehicles are fixed before a consumer gets behind the wheel. The measure is named in memory of Raechel and Jacqueline Houck, daughters of Carol (Cally) Houck, who were killed in a recalled rental car due to a defect in a steering component that caused an under-hood fire and led to the loss of steering control. The car had been recalled but had not been repaired before it was rented to the public. Raechel and Jacqueline were ages 24 and 20. The intent of the bill is to prevent future tragedies and to allow consumers who rent or purchase rental cars, either new or used vehicles, to do so with confidence that the vehicles do not have latent safety defects that are subject to a safety recall. The following support this legislation: Carol (Cally) Houck, Consumers for Auto Reliability and Safety, Center for Auto Safety, Consumer Action, Consumers Union, Consumer Federation of America, National Association of Consumer Advocates, Trauma Foundation, Advocates for Highway and Auto Safety, and others (see attachment).

The Early Warning Reporting System Improvement Act of 2014, S. 2151, and The Motor Vehicle Safety Act of 2014, S. 2559

Revelations about the failure of GM to timely recall vehicles with ignition defects, which led to at least 13 deaths, brought a spotlight on inadequacies with NHTSA's recall process, consumer information, corporate and agency transparency, and penalties. Advocates commends Senators Edward Markey (D-MA) and Richard Blumenthal (D-CT) for introducing *The Early Warning Reporting System Improvement Act of 2014, S. 2151*, and Committee on Commerce, Science and Transportation Chairman Jay Rockefeller (D-WV) for introducing *The Motor Vehicle Safety*

³²The Economic and Societal Impact of Motor Vehicle Crashes, *op cit*.

³³*Id.*

³⁴Mothers Against Drunk Driving (MADD), Sober to Start, Available at <http://www.madd.org/drun-driving/ignition-interlocks/>.

³⁵Tippetts, A., Scott and Robert Voas, "The Effectiveness of the West Virginia Interlock Program." *Journal of Traffic Medicine* 26 (1-2) (1998): 19-24.

³⁶Caution Ahead: New Year's Ranks As Deadliest Day On U.S. Roads, Dec. 26, 2012, AAA article available at <http://newsroom.aaa.com/tag/ignition-interlock-devices/>.

³⁷Morse, B.J. and Elliott, D.S., Hamilton County Drinking and Driving Study: 30 Month Report. Boulder, Colorado: University of Colorado (1990).

Act of 2014, S. 2559. Both of these bills include numerous provisions which are needed to reform agency practice and allow adequate public access to important agency records, and they are long overdue.

Currently, NHTSA is not making documents and investigations readily available to the public. In recent years the agency has reduced the size of, and access to, its technical library, discarded thousands of documents and reports of historical importance, and prevented public access to information by overly classifying records as confidential or requiring the public to seek records through lengthy Freedom of Information Act (FOIA) proceedings.³⁸ By making documents readily available to the public, NHTSA will reduce costs and resource burdens by eliminating the necessity for the public to needlessly file FOIA requests to obtain basic information. These two bills address many of the problems and failures identified in the GM oversight hearings held by this Committee.

These bills include provisions which:

- *Require NHTSA to Post Publicly Available Documents on the Agency Website:* NHTSA information and interaction with the public over vehicle safety recalls will be vastly improved if more information about recalls and defects is available. NHTSA should be required to post on its website all agency records and documents in the agency's possession that are not confidential.
- *Revamp the NHTSA Website to Make it User-Friendly:* The NHTSA website is difficult to use and it is hard to find information on the site. Many consumers have trouble understanding whether their vehicle, or a used vehicle they wish to purchase, has been the subject of a safety recall. The search engine generally does not locate items, even if the document is identified by name.
- *Require Early Warning Reporting (EWR) to Include Fatal Incident Claims:* The intent of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act³⁹ was to ensure that the DOT Secretary receives all reports of fatal traffic incidents that are alleged or proven to have been caused by a possible motor vehicle defect. However, under current NHTSA regulation, manufacturers need only indicate that a fatal crash occurred and do not have to provide copies of the underlying claim, notice or articles that inform the manufacturer that a defect-related fatality involving one of its vehicles had taken place. The EWR law should be amended to require that for incidents involving a fatality, the vehicle manufacturer must submit to the DOT Secretary all claims or notice documents, and any amendments and supplements to those documents, other than medical bills, medical documents and information related solely to property damage, that notified the vehicle manufacturer of the incident.
- *Require that EWR Information be Posted Online in a Searchable Format:* The EWR information and data should be provided to the public in a searchable website that allows the public to pull together data by make and model from a series of EWR reporting periods.
- *Reverse Presumption Against Release of All Early Warning Information:* NHTSA would be required to amend its regulations to establish a presumption in favor of the public disclosure of all EWR data unless otherwise exempt from disclosure under Federal law. The TREAD Act requires automobile and auto equipment manufacturers to submit EWR reports on crashes, fatalities and injuries to NHTSA to allow for early identification of incident and defect patterns. The EWR data was intended to be made public but the agency decided to classify most EWR data as confidential business information. The agency classification created a presumption that provides a blanket exemption from disclosure without any requirement or need for the submitter to certify or file any justification that the EWR data actually contains confidential business information. Much of the EWR data is non-privileged factual information that has nothing to do with protected confidential business information. The agency classification mislabels EWR data as presumptively confidential in order to prevent it from being released to the public.
- *Require "Issue Evaluation" Files Be Made Public (Secret Investigations):* Formal defect investigations are required to be made public. NHTSA has created new nomenclature for its preliminary defect investigations in order to avoid having to disclose information to the public. "Issue Evaluation" and other agency investigation files should be considered part of the agency's formal defect investigation process and should be required to be made public.

³⁸Title 5 U.S.C. § 552.

³⁹Pub. L. 106-414 (Nov. 1, 2000).

In addition to these provisions, S. 2151 also includes provisions which:

- *Require NHTSA to Utilize EWR Data in Defect Proceedings:* NHTSA does not utilize EWR information in its investigations as a matter of course. The agency should be required to use EWR data as a source of information, when relevant, on any defect investigation.
- *Require Manufacturers Make Communications about Defects Public:* The bill amends current law to require that manufacturers, not DOT, make copies of internal manufacturer and dealer communications about defects and noncompliance publicly accessible on the Internet.

In addition to these provisions, S. 2559 also includes provisions which:

- *Authorize Judicial Review of Safety Defect Proceedings:* In light of the weak response of the agency to reported defect problems with sudden unintended acceleration, essential changes should be required in the manner in which the agency decides how and when to grant defect petitions and the basis for opening and closing preliminary investigations and engineering evaluations. These final agency decisions should be subject to judicial review as is the standard practice for any other final agency order or decision.
- *Limit Assertions of Confidentiality to Trade Secrets:* NHTSA approves overly broad requests for confidentiality from manufacturers regardless of whether the information is truly confidential. The agency should be required to grant confidentiality only for specific data and information that is genuinely a corporate trade secret.
- *Authorize NHTSA to Expedite Procedures when Imminent Hazard Posed:* NHTSA should be authorized to expedite procedures for requiring a recall when there is an imminent hazard.
- *Create Corporate Responsibility for NHTSA Reports:* The bill would amend current law to direct that a rule must be issued to require senior corporate safety officials to affirm that responses provided to NHTSA are true and correct. Current law leaves this decision to the discretion of the agency.
- *Require Reports to Congress:* The DOT Inspector General (IG) is required to file four biannual Congressional reports on utilization of EWR information. Additionally, the DOT Secretary must report to Congress on the operations of the Council for Vehicle Electronics, Vehicle Software and Emerging Technologies.
- *Restrict Covered Vehicle Safety Officials:* Except for providing testimony, former DOT and vehicle safety officials are prohibited, for a period of one year, from any communication regarding any matter involving vehicle safety that seeks official action by any current NHTSA officer or employee on behalf of a regulated manufacturer.
- *Create a Vehicle Safety User Fee:* Starting one year after enactment, the DOT Secretary is to assess a user fee for each vehicle certified as compliant by a manufacturer. User fees are to be set at \$3 per vehicle in the first year, \$6 in the second year, and \$9 in the third year and each subsequent year, adjusted for inflation. The implementing regulation is to be issued in nine months.
- *Create Authorization Levels:* To carry out the Motor Vehicle Safety Act of 2014, the bill authorizes \$200 million for FY 2015, \$240 million for FY 2016, and \$280 million for FY 2017. We believe that these levels should be substantially increased for effective implementation.
- *Prohibit Preemption of State Law:* The bill prohibits the DOT Secretary, when issuing safety standards, from addressing the issue of preemption of state law regarding damages for personal injury, death, or property damage unless expressly authorized by Congress. It also declares prior preemption statements issued during the years 2005 to 2008 shall not be considered in determining whether state law has been preempted.

The Automaker Accountability Act of 2014, S. 2398

Recent safety defect issues have once again raised concerns about the authority of NHTSA to deter safety defects, to insist companies disclose safety defects once they are known to the company, and to impose appropriate sanctions on persons and companies that perpetuate safety defects. NHTSA's current civil penalty authority allows imposition of a maximum civil fine of only \$35 million (adjusted for inflation). This is far too small a sum to deter major international vehicle manufacturers from violating the requirements of the Motor Vehicle Safety Act.

The cap on civil penalty authority should be removed, and the maximum civil penalty per vehicle should be raised to the average sale price of a particular vehicle

model, and criteria for imposition of at least a minimum level of civil fines should be required for violations based on annual worldwide motor vehicle sales and/or on the number of vehicles affected by a safety recall or voluntary safety campaign.

Advocates strongly supports The Automaker Accountability Act of 2014, S. 2398, introduced by Senators Richard Blumenthal (D-CT), Edward Markey (D-MA), and Bill Nelson (D-FL), which removes the cap and increases civil penalties for a series of violations of Federal motor vehicle safety requirements. Additionally, it subjects individuals who fail or refuse to perform an inspection, investigation, and record-keeping requirements pertaining to defective or noncompliant motor vehicles or motor vehicle equipment to fines of up to \$25,000 per violation. It should be noted that the Motor Vehicle and Highway Safety Enhancement Act of 2014, S. 2770, also removes the cap on civil penalties and increases the per violation penalty amount.

The Pedestrian Safety Act of 2014, S. 2284

On average, every two hours a pedestrian is killed and every seven minutes a pedestrian is injured.⁴⁰ The Pedestrian Safety Act takes a comprehensive approach to implementing safety improvements to prevent needless deaths and injuries to pedestrians and bicyclists. A broad coalition representing consumer, health and safety groups, children and older adults, pediatricians, emergency nurses and walking and biking advocates (list of coalition is attached) supports the solutions proposed in S. 2284, sponsored by Senator Kirsten Gillibrand (D-NY) and cosponsored by Subcommittee Members Senators Richard Blumenthal (D-CT), Brian Schatz (D-HI) and Cory Booker (D-NJ), to improve safety for those who are walking or biking.

As noted above, more pedestrians were killed in motor vehicle crashes in 2012 than in any of the previous four years. In 2012, 4,743 pedestrian were killed and 76,000 injured. Similarly, there was a six percent increase in the number of fatalities of bicyclists and other cyclists from 2011 to 2012. In 2012, there were 726 bicyclists and other cyclists killed and an additional 49,000 injured. Vulnerable populations make up a significant share of pedestrian fatalities. In 2010, pedestrian/cyclist crashes resulted in an economic cost of \$19 billion. The comprehensive cost for these crashes was \$90 billion.⁴¹

To address this significant public health concern, improvements to both the vehicle and the roadway are needed to promote safety for pedestrians, bicyclists and motorists. It takes the comprehensive approach proposed in S. 2284 to effectively reduce preventable deaths and injuries. The MAP-21 Reauthorization Act, S. 2322, reported out by the Committee on Environment and Public Works, includes a provision in S. 2284 to add pedestrian safety roadway improvements to the list of safety projects that are eligible for 100 percent Federal funding.⁴²

Being hit by a car does not have to be a death sentence. Advocates and supporters of the bill urge the Committee on Commerce, Science and Transportation, which has jurisdiction over requirements in the bill addressing motor vehicle safety improvements, to support enactment of provisions in S. 2284 directing the DOT to issue a final rule establishing standards for the hood and bumper areas of motor vehicles in order to reduce the severity of injuries suffered by pedestrians and bicyclists that frequently result in death and lifelong disabilities. Just as added padding and restraint systems provide occupant protection inside the vehicle in the event of a crash, design improvements to the hood and bumper, which are already available on some makes and models sold in the U.S., can protect pedestrians and bicyclists on the outside of the vehicle in the event of a crash. As we encourage people to get out of their cars and to walk and bike, it is essential that we create a safe environment for children and adults who choose this mode of transportation.

Traffic Safety Programs

For nearly 20 years, through four separate authorization laws, the Nation has spent billions of dollars on traffic safety programs and various issue-specific incentive grant programs.⁴³ The highway safety and incentive grant programs have supported many worthwhile efforts, especially state and local enforcement campaigns that have been the cornerstone of local safety initiatives. Also, several states have adopted optimal safety laws in response to the incentive grant programs. However, while there has been progress in adoption of lifesaving traffic safety laws, far too

⁴⁰Traffic Safety Facts, 2012 Data, Pedestrians, DOT HS 811 888; p. 1, U.S. DOT, NHTSA.

⁴¹The Economic and Societal Impact of Motor Vehicle Crashes, *op cit*.

⁴²Title 23 U.S.C. § 120.

⁴³Moving Ahead for Progress in the 21st Century (MAP-21) Act, Pub. L. 112-141 (July 6, 2012); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (Aug. 10, 2005); the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178 (June 9, 1998); and, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 (Dec. 18, 1991).

many states have failed to enact numerous safety statutes resulting in an arbitrary patchwork quilt of laws across the Nation.

In 1989, when Advocates was founded, only six states had a seat belt law subject to primary enforcement and no state's law covered rear seat occupants. In addition, not one state had enacted a statute requiring IIDs for drunk drivers or booster seats for children. Today, 33 states and the District of Columbia (D.C.) have a seat belt law subject to primary enforcement and 17 of those states and D.C. extend the law to cover all occupants. Thirty-one states and D.C. have booster seat laws that cover children through age seven. IIDs for all drunk drivers are required in 24 states.⁴⁴

In 1989, 22 states and D.C. had laws requiring all motorcycle riders to wear helmets; however, that number has unfortunately decreased over the years to 19 states in 2014 leading to a tremendous rise in motorcycle rider deaths. The number of motorcycle crash fatalities has more than doubled since a low of 2,116 in 1997.⁴⁵ The use of electronic devices in motor vehicles was not yet common in 1989 but today 39 states and D.C. have recognized the significant public safety threat posed by distracted driving and have enacted all-driver texting bans subject to primary enforcement. Yet, despite some progress, far too many states still lack basic highway safety laws that have been proven to reduce occupant and motorcyclist fatalities, protect novice teen drivers, prevent drunk drivers from getting behind the wheel, and curb crashes due to distracted driving.

Today, the majority of states (33) do not have a seat belt law that is subject to primary enforcement for all occupants of a motor vehicle. States that have passed a primary enforcement seat belt law have seen dramatic increases in belt use rates. In 2013, states with primary enforcement seat belt laws had a use rate of 91 percent, while states with secondary enforcement laws or without seat belt laws had a seat belt use rate of 80 percent.⁴⁶ Seat belt use, reinforced by effective safety belt laws, is a proven lifesaver. Lap-shoulder belts, when used, reduce the risk of fatal injury to front seat car occupants by 45 percent and the risk of moderate-to-critical injuries by 50 percent. For light truck occupants, seat belts reduce the risk of fatal injury by 60 percent and moderate-to-critical injury by 65 percent.⁴⁷

Currently, 19 states do not have a booster seat law that covers children through age seven although using a booster seat with a seat belt instead of a seat belt alone reduces a child's risk of injury in a crash by 59 percent.⁴⁸ Furthermore, expanded child restraint laws covering children through ages seven and eight were associated with a five percent reduction in the rate of children with injuries of any severity, a 17 percent reduction in the rate of children with fatal and incapacitating injuries, and a six percent increase in the number of booster-age children seated in the rear of the vehicle where children are more protected.⁴⁹

According to a 2012 Government Accountability Office (GAO) report, "laws requiring all motorcyclists to wear helmets are the only strategy proved to be effective in reducing motorcyclist fatalities."⁵⁰ However, only 19 states and D.C. currently require all motorcycle riders to wear a helmet despite the fact that motorcyclist fatalities have more than doubled since a low of 2,116 motorcycle crash deaths in 1997.⁵¹ Moreover, according to the latest statistics from NHTSA, in 2012, there were 10 times as many unhelmeted fatalities (1,858) in states without a universal helmet law compared to states with a universal helmet law (178 deaths).⁵²

⁴⁴ Ohio's booster seat law covers children through age 7 but is subject to secondary enforcement and is not included in this statistic.

⁴⁵Traffic Safety Facts 2012: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System, DOT HS 812 032, NHTSA (2014).

⁴⁶Traffic Safety Facts Research Note: Seat Belt Use in 2013—Overall Results, DOT HS 811 875, NHTSA (Jan., 2014), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811875.pdf>.

⁴⁷Traffic Safety Facts: 2012 Data, Occupant Protection, DOT HS 811 892, NHTSA (Mar., 2014), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811892.pdf>.

⁴⁸Ohio's booster seat law does cover children through age 7 but it is subject to secondary enforcement and is included as one of the 19 states cited above. Durbin, D.R., Elliott, M.R. and Winston, F.K., Belt-positioning booster seats and reduction in risk of injury among children in vehicle crashes, *Journal of the American Medical Association*, 289:2835–40 (2003).

⁴⁹Kids in Crashes Far Better IF States Have Tough Restraint laws, IIHS Status Report, V. 46, No. 9 (Oct. 2011).

⁵⁰Motorcycle Safety: Increasing Federal Flexibility and Identifying Research Priorities Would Help Support States' Safety Efforts, Report No. GAO-13-42, 2012, pg. 16, Government Accountability Office (GAO), (2012).

⁵¹Traffic Safety Facts 2012.

⁵²These states were nearly equivalent with respect to total resident populations. Traffic Safety Facts: Research Note: 2012 Motor Vehicle Crashes Overview, p. 5, DOT HS 811 856, NHTSA (Nov., 2013), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811856.pdf>.

Motor vehicle crashes are the number one killer of American teens.⁵³ On average, more than seven teens were killed in the United States each day of 2012 as a result of motor vehicle crashes.⁵⁴ Teen drivers are far more likely to be involved in fatal crashes because they lack driving experience and tend to take greater risks, but there is a proven solution. States that have adopted graduated driver licensing (GDL) programs that introduce teens to the driving experience gradually by phasing in full driving privileges over time and in lower risk settings, have had overall crash reductions among teen drivers of about 10 to 30 percent.⁵⁵ However, at present, there is no state in the Nation that has enacted all of the optimal GDL provisions recommended by Advocates.

Drinking and driving continues to be a national scourge on our highways. An average of one alcohol-impaired driving fatality occurred every 51 minutes in 2012.⁵⁶ Yet, the majority of states (26) do not require all drunk driving offenders to install an IID even though 82 percent of offenders themselves believe the IID was effective in preventing them from driving after drinking.⁵⁷ In addition, when IIDs are installed, they are associated with an approximately 70 percent reduction in arrest rates for impaired driving.⁵⁸

Finally, it is clear from a growing body of safety research, studies and data that the use of electronic devices for telecommunications (such as mobile phones and text messaging), telematics and entertainment can readily distract drivers from the driving task. In fact, sending or receiving a text message causes the driver's eyes to be off the road for an average of 4.6 seconds. When driving 55 miles per hour, this is the equivalent of driving the entire length of a football field blind.⁵⁹ Yet, 11 states still do not have a ban on texting while driving that is subject to primary enforcement and covers all drivers.

Advocates supports the National Priority Safety Programs, contained in Section 31105 of MAP-21,⁶⁰ that provide incentive grants to the states to pass these life-saving safety laws. These grants are helpful to encourage action in state legislatures to pass measures that will reduce fatalities on our Nation's roads. However, Advocates believes that the current requirements must be modified so that these grants serve as a true incentive to the states to strengthen their statutes. For both the 2013 and 2014 fiscal years, not one state qualified for a GDL grant and only eight states received Federal funding to combat distracted driving including just one state in 2014. While Advocates urges Congress to amend these grant requirements so that they encourage states to enact these highway safety laws, modifications must not dilute requirements that have been proven to be effective in reducing deaths and injuries on our Nation's roads. We would like to work with this Subcommittee to implement changes to achieve that balance.

While Advocates applauds NHTSA for reorganizing the oversight of its grant programs to the states including monies disbursed under the National Priority Safety Programs, the recent report by the DOT IG shows that there is still much work to be done. The IG report found that from FY 2006 to FY 2012 there was \$539 million in unexpended grant funds including \$331 million in 2012 alone.⁶¹ As the DOT IG report notes, funds left unused represent opportunities missed to support programs that reduce deaths and injuries. In addition, the DOT IG report also determined that NHTSA lacks a strategy to address delays in states using the funds that have already been distributed. Thus, for the National Priority Safety Programs to achieve

⁵³Centers for Disease Control and Prevention, Teen Driver: Fact Sheet, citing Centers for Disease Control and Prevention. Web-based Injury Statistics Query and Reporting System (WISQARS) [Online] (2012). National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (producer). [Cited 2012 Sept 28], available at http://www.cdc.gov/motorvehiclesafety/teen_drivers/teendriv_drivers_factsheet.html.

⁵⁴Teenagers: Fatality Facts: 2012, IIHS, available at <http://www.iihs.org/iihs/topics/t/teenagers/fatalityfacts/teenagers>.

⁵⁵Graduated Licensing Laws and Fatal Crashes of Teenage Drivers: A National Study, Insurance Institute For Highway Safety (June, 2010), available at <http://www.iihs.org/research/topics/pdf/r1122.pdf>.

⁵⁶Traffic Safety Facts 2012 Data: Alcohol-Impaired Driving; DOT HS 811870, NHTSA (Dec., 2013), available at <http://www.nrd.nhtsa.dot.gov/Pubs/811870.pdf>.

⁵⁷Morse, BJ and DS Elliott. Hamilton County Drinking and Driving Study: 30 Month Report. Boulder, Colorado: University of Colorado (1990).

⁵⁸Injury Prevention & Control: Motor Vehicle Safety, Impaired Driving: Get the Facts website, CDC, available at http://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired_drv_factsheet.html.

⁵⁹Distraction.gov: Frequently Asked Questions, DOT NHTSA, available at <http://www.distraction.gov/content/get-the-facts/faq.html>.

⁶⁰Codified at Title 23 U.S.C. § 405.

⁶¹Enhanced Monitoring Tools Are Needed To Improve NHTSA's oversight of Highway Safety Grants, Report No: MH-2014-088, U.S. DOT, Office of the Inspector General (Aug. 21, 2014).

beneficial results and exert positive impacts on safety, the grant requirements must be modified and NHTSA must do a better job in administering this critical initiative.

Additional Needed Motor Vehicle Safety Standards

The safety title of the MAP-21 reauthorization bill will influence our Nation's safety agenda for years to come as well as the death and injury toll on our highways. There are several issues Advocates would like to bring to your attention for consideration and work with the Committee in advancing several key safety provisions. Every one of these issues represents an opportunity to address a serious and deadly problem.

Seatbelt Protection in Rollover Crashes

In 2012 alone, occupant protection measures including child restraints, seatbelts, frontal airbags and motorcycle helmets have saved at least 16,000 lives.⁶² Seatbelts have been proven to be effective at reducing the risk of injuries and fatalities in crashes in a large number of studies, in many cases cutting the risk in half.⁶³ In 2012 over 12,000 lives were saved by seatbelt use, and another 3,031 could have been saved with 100 percent seatbelt use.⁶⁴ Although seat belt use rates reached 86 percent in 2012,⁶⁵ nearly 45 percent of all car and light truck occupants killed in that year were using some form of restraint.⁶⁶ Upgrades to seat belt systems can improve seat belt performance and reduce the number of restrained occupants who are killed in motor vehicle crashes.

Rollover crashes have accounted for more than a third of all fatalities in these vehicles annually since 2005.⁶⁷ In 2012, 7,500 passenger car and light truck occupants were killed in rollover crashes, amounting to 35 percent of all fatalities in light vehicles.⁶⁸ Little has been done to improve occupant restraint system protection in rollover crashes. Improvements in vehicle design, and the adoption of regulations for ESC, roof strength, and ejection mitigation, which address some causes of rollover crashes and injuries, have not eliminated rollovers as a major source of serious head and other occupant injuries.

Current seatbelts systems are designed to provide safety in a frontal crash but do not retain the occupant in a safe position in the vehicle seat during a rollover crash. According to NHTSA data, 13 percent of fatal occupants and 27 percent of seriously injured non-fatal occupants who were partially or completely ejected through side windows in rollovers were belted.⁶⁹ These statistics reflect the inability of current seatbelts to perform effectively in rollover crashes.

Given the large number of rollover deaths and injuries that could be prevented or mitigated, NHTSA should be directed to issue a final rule to establish vehicle seatbelt rollover crash performance requirements, based on occupant excursion or other safety performance measures that require the use of existing technology, such as pre-tensioners, emergency locking retractors, and other belt-based safety devices to reduce occupant motion relative to the vehicle in the event of a rollover crash.

Electronics Safety Standard

In recent years, nearly all vital functions of motor vehicles have become reliant on electronic systems and computer controls. Critical safety systems such as the vehicle transmission, throttle control, braking and power window systems, as well as occupant restraint systems, among other functions, are dependent on electronics and are monitored and governed by electronic control units. Vehicle electronics are vital to the proper operation of all new passenger motor vehicle models. Modern motor vehicles are built using, on average, 40 electronic controllers, five miles of wiring that support numerous functions and are monitored and regulated by 10 million

⁶²Traffic Safety Facts 2012.

⁶³Fatality Reduction by Safety Belts for Front-Seat Occupants of Cars and Light Trucks, DOT HS 809 199, NHTSA (Dec. 2000); Dissanayake, S. and Ratnayake, I., Effectiveness of Seat Belts in Reducing Injuries: A Different Approach Based on KABCO Injury Severity Scale, *Journal of the Transportation Research Forum*, Vol. 47, No. 4, pp. 135–146 (Fall 2008); Evand, L., Safety-Belt Effectiveness: The Influence of Crash Severity and Selective Recruitment, *Accid. Anal. and Prev.*, Vol. 28, No. 4, pp. 423–433 (1996).

⁶⁴Traffic Safety Facts 2012.

⁶⁵Traffic Safety Facts Research Note: Seat Belt Use in 2012—Overall Results, DOT HS 811 691, NHTSA (Nov. 2012).

⁶⁶Traffic Safety Facts 2012.

⁶⁷*Id.*

⁶⁸*Id.*, Table 23.

⁶⁹Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference, Final Rule; NHTSA, 76 *Federal Register* 3212, 3217 Table 7 (Jan. 19, 2011).

lines of software code.⁷⁰ MAP-21 requires the DOT Secretary to complete an examination of the need for safety standards to ensure a minimum level of performance by electronic systems in passenger vehicles. The study is required to consider electronic components and the interaction of those components, the security needs for electronic systems to prevent unauthorized access and the effect of the surrounding environment on the vehicle electronic systems.⁷¹ The NHTSA study is still in progress and will not be submitted to Congress by the September 30, 2014 deadline.

Despite the on-going study, Advocates is concerned that the failure to adopt minimum standards for complex electronic functions will lead to potentially serious safety problems. In the past six months alone, manufacturers have twice filed petitions requesting a decision of inconsequential noncompliance regarding interference with vehicle displays by non-safety systems such as accessing the radio, an mp3 player, or Bluetooth® connected phone. In each case the use of a non-safety function interfered with a vehicle safety function causing a non-compliance with Federal Motor Vehicle Safety Standards (FMVSS). While these two situations may not have seriously compromised safe operation of the vehicles involved, they are clear examples of the need for a safety standard. At a minimum, such a standard for vehicle electronics should ensure that the proper functioning of safety systems cannot be degraded, inhibited, or interfered with by non-safety features.

Seatback Strength

The safety standard for seatback performance has not been upgraded since it was first adopted in 1967. When the driver or front passenger seatback fails or collapses in a crash, it endangers both the front and rear seat occupants. Regulatory compliance rear impact crash tests for fuel system integrity (FMVSS 301), conducted by NHTSA, reveal that almost every seatback fails, allowing a front seat occupant to be propelled into the rear seating area. Seat belt systems that are effective in frontal crashes are not designed to keep front seat occupants from slipping out of the belt system when the seatback collapses, leading to an increase in the risk of injury to the front seat occupant, often paraplegia or quadriplegia.

Parents have long been advised to secure young children in the rear seat. Also, as the U.S. passenger vehicle fleet gradually downsizes in response to more costly fuels as well as environmental concerns, the distance between front seats and rear seated occupants will be reduced. Children's Hospital of Philadelphia (CHOP) has determined that collapsing seatbacks are a serious threat to children seated behind adult occupants in the front seats. Many children were found to have been injured in crashes in which seatbacks collapse or there is excessive seat deformation. The failure of a seatback directly in front of a child places the child at risk, and when there is an occupant in the seat that fails there is double risk of injury to the child.⁷² NHTSA noted in a 1997 study that an examination of the interaction between front seatback failures and injuries to rear seat occupants may be important to assess the entirety of the occupant protection implications of seatback failure.⁷³ NHTSA has stated that the weight of a passenger when added to the weight of the seatback itself will, even in a low severity crash, produce loads exceeding the level required by FMVSS 207.⁷⁴

In light of this information and the lack of action by the agency, we strongly urge this Committee to direct the DOT to upgrade the performance of vehicle seatbacks, including head restraints, to increase the protection of children and adults in passenger motor vehicle crashes. The seat back standard is more than 45 years old and needs to be upgraded.

Consumers Must Be Able to Purchase Safety Equipment as Stand-Alone Options

Safety systems that are not required as standard equipment by Federal regulation are promoted by vehicle manufacturers as optional equipment, but are often sold bundled together with non-safety features and only in certain vehicle model trim levels. For example, in 2012, consumers could not purchase a rearview or back-up

⁷⁰ Klier, T.H., and Rubenstein, J.M., *Making Cars Smarter: The Growing Role of Electronics in Automobiles*, Chicago Fed Letter, No. 291a, The Federal Reserve Bank of Chicago (Oct. 2011) available at http://www.chicagofed.org/webpages/publications/chicago_fed_letter/2011/october_291a.cfm.

⁷¹ *Electronic Systems Performance*, § 31402, MAP-21.

⁷² Jermakian, J.S., Arbogast, K. B., Durbin, D.R. and Kallan, M.J. Injury Risk for Children in Rear Impacts: Role of the Front Seat Occupant, *Ann. Adv. Automot. Med.*, 52:109-16 (Oct., 2008).

⁷³ Preliminary Assessment of NASS CDS Data Related to Rearward Seat Collapse and Occupant Injury; U.S. DOT, NHTSA (May, 1997).

⁷⁴ Performance of Seating Systems in a FMVSS No. 301 Rear Impact Crash Test, ESV Paper No. 18-00248, U.S. DOT, NHTSA.

camera system on the basic model of the highest selling passenger car.^{75,76} Backup camera systems, which are not yet required in all vehicle models until the new standard takes effect in 2018,⁷⁷ were available only in a pricier version of many vehicle model lines, and then only as part of an expensive options package including many non-safety upgrades such as a power moon-roof, push button engine start, auto dimming mirrors, and leather trimmed seats that cost as much as \$5,175.⁷⁸

In this example, a safety conscious consumer looking to buy what at that time was the country's most popular passenger car would have to pay a 28 percent premium over the base price for improved rear visibility that could save the life of a child or pedestrian. This additional cost for consumers is even more shocking considering that NHTSA has already concluded that installation of rearview cameras would cost no more than \$203.⁷⁹ The current practice of bundling identified safety technologies into convenience packages that include non-safety features benefits the manufacturer's bottom line, but not the wallet of consumers. It forces consumers either to risk their safety and the safety of others to avoid paying extremely high prices for critical safety features not yet required by Federal safety rules or to purchase non-safety features and equipment they do not want in order to get a desired safety protection feature.

Safety conscious consumers should not be limited to the marketing campaigns of vehicle manufacturers when it comes to safety equipment. We urge the Committee to support amending Federal law to authorize and direct the DOT to issue a final rule requiring that manufacturers must offer for sale as a stand-alone option (separately from any other technology or options package) any safety device, feature or technology that is listed by NHTSA as a recommended safety feature by the New Car Assessment Program (NCAP). Any such safety device, feature or technology that is offered on any trim level of a vehicle model must be offered on all trim levels of that vehicle model.

Crash Avoidance Technology Can Reduce Large Truck Crash Involvement

In 2012, there were over 5.6 million crashes on U.S. roads which injured over 2.3 million people and claimed the lives of over 33,500 people.⁸⁰ Despite representing only 4 percent of registered vehicles, collisions involving large trucks accounted for 12 percent of all fatalities in 2012.⁸¹ Nearly 60 percent of all large trucks involved in fatal collisions in 2012 were in frontal impacts. Frontal impacts also accounted for 45 percent of all large trucks in injury crashes, and 36 percent of all large trucks in property damage only crashes.⁸² In fatal two-vehicle crashes involving a large truck, the front of the vehicle was the impact point on the large truck in 62 percent of the cases.⁸³

Crash imminent braking (CIB), also called an autonomous emergency braking system (AEBS), is a crash avoidance system that can detect objects or obstacles in the vehicle path and apply the brakes automatically to prevent or mitigate frontal collisions. It is important to note that these systems do not take control of braking away from the driver unless a collision is imminent and almost unavoidable. This type of automatic braking system would both alert the driver and automatically begin braking in cases where the driver is not alert to the emergency nature of the situation.

The Insurance Institute for Highway Safety (IIHS) found one vehicle manufacturer's CIB system reduced bodily injury claims by 18 to 33 percent, property damage liability claims by 15 to 16 percent, and collision claims by nine to 20 percent.⁸⁴ Research by the European New Car Assessment Program (EuroNCAP) suggests that CIB systems can reduce crashes by up to 27 percent.⁸⁵ A 2009 report on Forward

⁷⁵To 10 Best-Selling Cars of 2012, Car.Com website <http://blogs.cars.com/kickingtires/2013/01/top-10-best-selling-cars-of-2012.html>.

⁷⁶Toyota.com Camry and Camry Hybrid 2014 models webpage, accessed July 14, 2013, <http://www.toyota.com/camry/features.html#!/interior/2514/2532/2546/2540>.

⁷⁷Rear Visibility Final Rule, 79 *Federal Register* 19178, 19228 (Apr. 7, 2014).

⁷⁸Toyota.com "Build A Camry" tool, accessed Jul. 14, 2013, <http://www.toyota.com/configurator#!/series/camry/grade/SE>.

⁷⁹Preliminary Regulatory Impact Analysis, Backover Crash Avoidance Technologies, NPRM, FMVSS No. 111, NHTSA (Nov. 2010).

⁸⁰Traffic Safety Facts 2012.

⁸¹*Id.*

⁸²*Id.*

⁸³Traffic Safety Facts, 2012 Data, Large Trucks, DOT HS 811 868, NHTSA (May, 2014).

⁸⁴Volvo City Safety loss experience—Update, IIHS Highway Loss Data Institute, Bulletin Vol. 29, No. 23 (Dec. 2012).

⁸⁵Euro NCAP to drive availability of Autonomous Emergency Braking systems for safer cars in Europe, Euro NCAP press release, Jun. 2012, <http://www.euroncap.com/Content-Web-Arti->

Collision Warning Systems for trucks (which are basic CIB systems that only warn but do not autonomously brake the vehicle) found that these systems could prevent as many as 18,000 rear-end crashes of trucks into other vehicle.⁸⁶ The NTSB previously included a mandate for CIB systems as part of its 2013 Most Wanted List,⁸⁷ and the European Union requires these systems on new heavy trucks and buses which were phased in beginning in 2013 and will apply to all trucks and buses by the end of 2015.⁸⁸ Even where CIB systems cannot completely prevent a collision, the technology provides a significant benefit by reducing the impact speed at which a collision would otherwise have occurred, resulting in less severe injuries.

Advocates urges Congress to expedite the installation of this safety technology by directing DOT to establish a safety standard that sets performance requirements for CIB systems and requires the installation of CIB systems that meet the performance requirements in trucks and buses.

Reminders to Prevent Unattended Child Deaths

All too often, adults inadvertently leave infants and young children in child restraint systems in the rear seats of passenger vehicles and many of these incidents tragically lead to death. Among parents with only a child or children age three and under, 23 percent said that they had mistakenly left a child in a locked and parked vehicle.⁸⁹ Exposure of young children, particularly in hot and cold weather, leads to hyperthermia and hypothermia that can result in death or severe injuries. In 2013 alone, 44 children in the U.S. died of heatstroke.⁹⁰ Over the period 1998 to 2013, 606 children were killed from heatstroke.⁹¹ This is the leading cause of non-crash-related deaths among children 14 and younger.⁹² Of these needless deaths, 52 percent occurred when children were forgotten in the vehicle.⁹³ This risk of heatstroke is higher among children than adults because a child's temperature heats up three to five times faster and risk is exacerbated if the child is too young to communicate.⁹⁴

Just as with the issue of rear visibility and the inability of drivers to see in blind zones behind a motor vehicle, educational campaigns alone are not enough to stop these preventable deaths. Such inadvertent deaths can be avoided by equipping vehicles with sensors to detect the presence of the child and sound a warning at the time the driver locks the vehicle with a child inside. This is not rocket science. Similar warning features currently remind drivers when they have left the key in the ignition, left the headlamps on, and when a door or trunk is open while the vehicle is in motion. We urge the Committee to support a technological solution to this deadly problem including requiring the agency to issue a final rule by a deadline date within the next few years.

NHTSA Crash Data Collection Improvements—Need for Use of Cameras

Crash data collection is among the many critical areas under NHTSA's jurisdiction that urgently need to be modernized. Presently the agency oversees the collection of crash data for three related databases; the General Estimates System (GES) and the Crashworthiness Data System (CDS) which together are known as the National Automotive Sampling System, or NASS, and the Fatality Analysis Reporting System (FARS). The data collected for these systems form the bedrock of almost every safety analysis conducted by NHTSA and other Federal agencies, and form the foundation for safety initiatives and rulemaking. Despite the fact that these databases are critical to identifying safety problems and developing safety counter-

[cle/c79b2bdc-f914-4ad0-8d49-54254cda0ddc/euro-ncap-to-drive-availability-of-autonomous-emer.aspx](http://www.nhtsa.gov/c79b2bdc-f914-4ad0-8d49-54254cda0ddc/euro-ncap-to-drive-availability-of-autonomous-emer.aspx).

⁸⁶ Analysis of Benefits and Costs of Forward Collision Warning Systems for the Trucking Industry, FMCSA (Feb., 2009).

⁸⁷ Mandate Motor Vehicle Collision Avoidance Technologies, NTSB, available at http://www.nts.gov/safety/mwl10_2012.html.

⁸⁸ Regulation (EC) No. 661/2009 and Commission Regulation (EU) No. 347/2012.

⁸⁹ "New Study: 14 percent of Parents Say They Have Left A Child Alone Inside Parked Vehicle Despite the Risks of

Heatstroke," Safe Kids Worldwide, April 2014, available at <http://www.safekids.org/press-release/new-study-14-parents-say-they-have-left-child-alone-inside-parked-vehicle-despite>

⁹⁰ Kids in Hot Cars: Heat Stroke Fact Sheet, NHTSA, accessed at <http://www.safercar.gov/parents/heat-involved.html> on 9/11/2014.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

measures, the crash data systems have been woefully underfunded.⁹⁵ This has limited the collection and availability of data and the strength of research needed to improve vehicle safety to address the injuries sustained by more than 2 million people and the more than 33,000 deaths that occur each year in traffic-related collisions.

The underlying original source for the data used in the NHTSA crash data systems are police accident reports (PARs) generated by law enforcement officers responding to motor vehicle crashes. NHTSA collects information from police reports in every fatal crash in the FARS database, providing a census of all fatal crashes each year. The agency also collects information from police reports on a statistically based sample of approximately 50,000 non-fatal crashes, out of the more than 5 million crashes reported annually, in the GES database in order to develop an overview of motor vehicle crashes. The agency then investigates a selected sample of these cases to obtain in-depth data beyond the information contained in the police reports, as part of the NASS-CDS database for the analysis and development of safety countermeasures.

The CDS system, as originally conceived, was intended to conduct extensive investigations of a sample of 19,000 of the cases selected from the GES. As of 2012, the number of cases investigated has fallen below 4,000 and the agency has predicted that just over 3,000 cases were investigated in 2013. Budget limitations have severely reduced the capability of the program to less than a quarter of the original design size that was considered necessary as a minimum requirement to provide a robust sample of crashes involving recent vehicle models. This lack of funding seriously compromises the usefulness of the data that is critical to issuance of Federal motor vehicle safety standards.

The modernization and improvement of the PARs which form the basis of the entire data collection system is a critical and necessary step. Considering the significantly limited number of cases which the agency is currently able to investigate, it is imperative that the agency be able to identify the most important cases which will provide meaningful data from a safety research standpoint. This modernization should include universal and improved electronic recording of PARs using laptops or handheld computing platforms already available to most law enforcement agencies. Such a change could improve the accuracy of PARs and provide a platform for increased transfer of information to state and Federal crash databases.

The addition of digital photographs of vehicles involved in each police-reported collision, appended to the electronic police report, is another essential and inexpensive improvement that would provide a substantial benefit for crash data collection. Such a system would assist NHTSA investigators in selecting significant cases and would also benefit law enforcement at the local level by providing officers with visual documentation of conditions during an investigation. Although Advocates has strong reservations about relying solely on the PARs to make administrative *ad hoc* determinations of culpability for a crash, these modernizations would be focused on improving the amount and accuracy of information provided in PARs which will result in direct improvements in national safety data.

Advocates calls on Congress to provide the funding to modernize national motor vehicle crash data collection and to direct the DOT to initiate a pilot program to examine the cost effectiveness of modernizing PARS and improving the design and statistical basis of the NASS databases.

Conclusion

The quality of life for all Americans depends on a safe, reliable, and economical surface transportation system. Transportation solutions to promote mobility and the economy must involve not only financial investments, but also investments in safety as well. Highway crashes cost our Nation more than \$870 billion in comprehensive costs annually. This is money that could be better spent on addressing surface transportation needs.

The decrease in highway fatalities that has occurred over the last six years affords an opportunity to continue the downward trend and make substantial and lasting reductions in annual fatalities. The tragedies caused by GM's inadequate recall process sounded the alarm on lapses in procedures to identify and disclose safety defects and laws to deter corporate actions that result in needless deaths and injuries. Now is the time to take direct and swift action by advancing The Motor Vehi-

⁹⁵The NHTSA Fiscal Year 2015 budget overview indicates that the total budget for the National Center for Statistics and Analysis (NCSA), which operates the FARS, GES and CDS databases, is \$28.5 million with less than that apportioned for crash data collection, available at http://www.nhtsa.gov/staticfiles/administration/pdf/Budgets/NHTSA_Budget_Highlights_FY2015.pdf.

cle and Highway Safety Enhancement Act of 2014, S. 2760, The Early Warning Reporting System Improvement Act, S. 2151, The Motor Vehicle Safety Act of 2014, S. 2559, and The Automaker Accountability Act of 2014, S. 2398. Additionally, the recent and dramatic increase in pedestrian fatalities calls for the advancement of The Pedestrian Safety Act of 2013, S. 2284. There are no acceptable excuses for delaying any longer the adoption of lifesaving laws, consumer protections, increased penalties for corporate misbehavior, strengthening NHTSA's authority and resources, and improved vehicle safety standards that can save lives and reduce injuries, especially when the solutions are at hand as we have highlighted today.

Thank you for the opportunity to testify before you today and I am pleased to answer your questions.

ORGANIZATIONS IN SUPPORT OF THE PEDESTRIAN SAFETY ACT OF 2014, S. 2284

AARP

Advocates for Highway and Auto Safety

Alliance for Biking & Walking

America Walks

American Academy of Pediatrics

Association of Metropolitan Planning Organizations (AMPO)

Child Injury Prevention Alliance

Citizens for Reliable and Safety Highways (CRASH)

Consumer Federation of America

Emergency Nurses Association

KidsAndCars.org

League of American Bicyclists

National Resources Defense Council (NRDC)

Parents Against Tired Truckers (P.A.T.T.)

Public Citizen

Society for the Advancement of Violence and Injury Research

Trauma Foundation

Truck Safety Coalition

MAP-21 Motorcoach Safety Action Items and Schedule

Issue	Section	Action Required	Action Date	Action Taken (In Italics)
<i>Motorcoach Safety Rules—Improved Occupant Protection</i>	32703(a)	<i>NHTSA to issue final rule on seat belts</i>	<i>10/1/2013 (1 year)</i>	<i>Final rule issued 8/2013.</i>
	32703(b)	<i>NHTSA to issue final rules on</i> <ul style="list-style-type: none"> • <i>Roof strength</i> • <i>Anti-ejection glazing</i> • <i>Rollover crash avoidance</i> 	<i>10/1/2014 (2 years)</i>	<i>Proposed rule (NPRM) on roof strength and interior occupant protection issued 8/6/14. Addresses roof strength, luggage racks and requires windows on opposite side of coach from the crash to remain in place in tip over test, but does not require installation of break-proof laminated glass. Does not include rollover crash avoidance.</i>
	32703(c)	<i>NHTSA to issue final rule requiring tire pressure monitoring systems or report to Congress reasons for not prescribing safety standard</i>	<i>10/1/2015 (3 years)</i>	<i>Final rule must be issued unless agency determines standard is not practicable, does not meet the need for motor vehicle safety and cannot be stated in objective terms.</i>
	32703(d)	<i>NHTSA to consider need to issue final rule to upgrade tire performance standard</i>	<i>10/1/2015 (3 years)</i>	<i>Final rule must be issued unless agency determines standard is not practicable, does not meet need for motor vehicle safety and cannot be stated in objective terms.</i>
	32703(e)	<i>NHTSA to report to Congress on feasibility of retrofit of seat belts and ejection safety countermeasures</i>	<i>10/1/2014 (2 years)</i>	<i>NHTSA determined that seat belt retrofit is not feasible. Decision on retrofit of ejection countermeasures is pending.</i>
<i>Fire Prevention and Mitigation Standards</i>	32704	<i>NHTSA to issue final rules for:</i> <ul style="list-style-type: none"> • <i>Flammability of exterior parts</i> • <i>Smoke suppression</i> • <i>Wheel well fires</i> • <i>Automatic fire suppression</i> • <i>Passenger evacuation</i> • <i>Causation & prevention of fires</i> • <i>Improved fire extinguishers</i> 	<i>10/1/2015 (3 years)</i>	<i>Final rules must be issued unless agency determines standards are not practicable, do not meet need for motor vehicle safety and cannot be stated in objective terms.</i>

MAP-21 Motorcoach Safety Action Items and Schedule—Continued

Issue	Section	Action Required	Action Date	Action Taken (In Italics)
<i>Occupant Protection, Collision Avoidance, Fire Causation and Fire Extinguisher Research & Testing</i>	32705	<i>Complete research / testing on:</i> <ul style="list-style-type: none"> • <i>Interior impact protection</i> • <i>Compartmentalization</i> • <i>Collision avoidance systems</i> 	<i>10/1/2015</i> <i>(3 years)</i>	<i>NHTSA to complete research on each topic.</i>
		<i>NHTSA to issue final rules on above topics.</i>	<i>10/1/2017</i> <i>(5 years)</i>	<i>Final rules must be issued unless agency determines standards are not practicable, do not meet need for motor vehicle safety and cannot be stated in objective terms.</i>
<i>Motorcoach Service Provider: Safety Reviews</i>	32707(a)	<i>FMCSA to assign safety ratings to passenger and freight motor carriers</i>	<i>10/1/2014</i> <i>(2 years)</i>	<i>Assign safety ratings for new entrants</i>
			<i>10/1/2015</i> <i>(3 years)</i>	<i>Assign safety ratings for existing providers</i>
<i>Motorcoach Service Provider: Disclosure of Safety Ratings</i>	32707(b)	<i>FMCSA to consider improved public access of passenger motor carrier safety information by requiring public posting of safety rating in each motorcoach, terminal and all points of sale of motorcoach services.</i>	<i>10/1/2013</i> <i>(1 year)</i>	<i>FMCSA provides information on passenger motor carrier safety measurement scores and released an Internet “app”—Look Before You Book—to expedite consumer access to this information</i>
<i>Report on System of Certification of Training Programs</i>	32708	<i>FMCSA to report to Congress on feasibility of establishing certification system for schools and motor carriers that provide driver training.</i>	<i>10/1/2014</i> <i>(2 years)</i>	<i>Status of report unknown. FMCSA withdrew NPRM on entry-level driver training in 2013 and in September 2014 requested views on whether to initiate a negotiated rule-making on topic.</i>
<i>CDL Passenger Endorsement</i>	32709(a)	<i>FMCSA study to assess current CDL passenger endorsement knowledge and skills testing</i>	<i>10/1/2014</i> <i>(2 years)</i>	
	32709(b)	<i>FMCSA to report to Congress on recommendations for changes to CDL passenger endorsement testing</i>	<i>1/27/2015</i> <i>(120 days after study)</i>	
<i>Safety Inspection Program for CMVs of Passengers</i>	32710	<i>FMCSA to consider issuing final rule requiring States to establish annual program for inspection of passenger-carrying CMVs</i>	<i>10/1/2015</i> <i>(3 years)</i>	

List of Acronyms Used in Chart:

CMV: Commercial motor vehicle
NHTSA: National Highway Traffic Safety Administration
FMCSA: Federal Motor Carrier Safety Administration
CDL: Commercial Driver's License

NHTSA OVERDUE & AT-RISK SAFETY REGULATIONS

Statutory Deadlines Missed and At-Risk**Improved Child LATCH Restraint System (OVERDUE—Sept. 30, 2013)**

- Mandated in MAP-21 (Sec. 31502);
- Congressional deadline for initiating rulemaking—Sept 30, 2013;
- NHTSA has not issued an NPRM.

Civil Penalty Criteria (OVERDUE—Sept. 30, 2013)

- Mandated in MAP-21 (Sec. 31203).
- Congressional deadline for issuing Final Rule—Sept 30, 2013;
- NHTSA has not issued a final rule.

Electronics Systems Performance (REPORT DUE—Sept. 30, 2014)

- Mandated in MAP-21 (Sec. 31402)
- Examination of issue to be completed by Sept. 30, 2014
- Research ongoing; public notice will be issued after deadline for report

Motorcoach Safety Rules: See Separate Chart**Roof Strength/Crush Resistance (FINAL RULE DUE—Sept. 30, 2014)**

- Mandated in MAP-21 (Sec. 32703(b)(1)).
- Congressional deadline for issuance of Final Rule—Sept. 30, 2014;
- NPRM issued August 6, 2014.

Anti-Ejection Countermeasures (FINAL RULE DUE—Sept. 30, 2014)

- Mandated in MAP-21 (Sec. 32703(b)(2)).
- Congressional deadline for issuance of Final Rule—Sept. 30, 2014.
- NPRM issued August 6, 2014.

Anti-Ejection Retrofit (FINAL RULE DUE—Sept. 30, 2014)

- Mandated in MAP-21 (Sec. 32703(e)(2)).
- Congressional deadline for issuance of Final Rule—Sept. 30, 2014.
- NPRM issued August 6, 2014.

Rollover Crash Avoidance (FINAL RULE DUE—Sept. 30, 2014)

- Mandated in MAP-21 (Sec. 32703(b)(3)).
- Congressional deadline for issuance of Final Rule—Sept. 30, 2014.
- No NPRM has been issued.

CAROL (CALLY) HOUCK, MOTHER OF RAECHEL AND JACQUELINE HOUCK;
 CONSUMERS FOR AUTO RELIABILITY AND SAFETY; ADVOCATES FOR HIGHWAY
 AND AUTO SAFETY; CENTER FOR AUTO SAFETY; CONSUMER ACTION; CONSUMER
 FEDERATION OF AMERICA; CONSUMERS UNION; NATIONAL ASSOCIATION OF
 CONSUMER ADVOCATES; TRAUMA FOUNDATION

May 9, 2013

Hon. JAY ROCKEFELLER,
 Chairman,
 Hon. JOHN THUNE,
 Ranking Member,
 United States Senate,
 Committee on Commerce, Science, and Transportation,
 Washington, DC.

Re: SUPPORT FOR THE RAECHEL AND JACQUELINE HOUCK SAFE RENTAL CAR ACT

Dear Chairman Rockefeller and Ranking Member Thune:

On behalf of each of our organizations, we write in support of the Raechel and Jacqueline Houck Safe Rental Car Act, sponsored by Sens. Charles Schumer, Lisa Murkowski, Barbara Boxer and Claire McCaskill. This bipartisan legislation will re-

quire that rental car companies ground vehicles that are subject to a safety recall until they are fixed.

This measure is named in memory of Raechel and Jacqueline Houck, daughters of Carol (Cally) Houck, who were killed by a rental car that was recalled due to a defect in a steering component, which caused an under-hood fire and loss of steering control. The car had not been repaired before it was rented out. Raechel and Jacqueline were ages 24 and 20.

In addition to our organizations, the legislation is also supported by all the major rental car companies and the American Car Rental Association, which represents the major rental car companies and most of the smaller rental car companies. To have leading national auto safety organizations and the rental car industry in agreement on legislation that would place rental car companies under Federal safety regulation for the first time is truly historic. Other supporters include the Truck Renting and Leasing Association, the American Automobile Association, and State Farm Insurance Company.

This legislation represents a major improvement in auto safety, particularly since rental car companies are the largest purchasers of new vehicles in the Nation. We hope that with enactment of this measure, consumers who rent or purchase rental cars, either as new or used vehicles, can do so with confidence that the vehicles do not have latent safety defects that are subject to a safety recall.

We respectfully request that you support the bill and work diligently with us, the sponsors, the rental car industry, the AAA and other supporters to enact the legislation this year. Thank you for your consideration of our views.

Sincerely,

CAROL (CALLY) HOUCK,
Mother of Raechel and Jacqueline Houck.
ROSEMARY SHAHAN,
President,
Consumers for Auto Reliability and Safety.
CLARENCE DITLOW,
Executive Director,
Center for Auto Safety.
JACQUELINE S. GILLAN,
President,
Advocates for Highway and Auto Safety.
KEN MCELDOWNEY,
Executive Director,
Consumer Action.
AMI V. GADHIA,
Senior Policy Counsel,
Consumers Union.
JACK GILLIS,
Public Affairs Director,
Consumer Federation of America.
IRA RHEINGOLD,
Executive Director,
National Association of Consumer Advocates.
BEN KELLEY,
Director, Injury Control Policy,
Trauma Foundation.

Cc: Sen. CHARLES SCHUMER
Members of the Committee on Commerce, Science, and Transportation

Senator McCASKILL. Thank you, Ms. Gillan. Mr. Poole?

**STATEMENT OF KENDELL POOLE, CHAIRMAN, GOVERNORS
HIGHWAY SAFETY ASSOCIATION (GHSA)**

Mr. POOLE. Thank you, Chairman McCaskill and members of the Committee for allowing us the opportunity to testify. I'm Kendell Poole. I am the Chairman of the Governors Highway Safety Association. I also serve as the Director of the Governors Highway Safety Office in the State of Tennessee.

The Governors Highway Safety Association represents state highway safety offices in all 50 states, the District of Columbia, and also U.S. territories. GHSA members administer the Behavioral Highway Safety Grant programs under MAP-21.

And although we've made some significant progress over the last several years, there were still over 33,000 traffic-related fatalities and more than 2 million injuries in 2012. Addition—in addition to the mental and emotional toll on families, NHTSA has found that crashes cost the nation an estimated \$871 billion in economic loss and societal harm annually.

To address this problem, the Federal Government must make the reduction of highway fatalities and injuries a national priority and play a strong role in developing highway safety policies and programs. And I might note that NHTSA has also estimated that over 90 percent of our fatalities can be attributed to driver behavior.

States have been administering grants under MAP-21 for nearly 2 years now. MAP-21 brought in new administrative processes that were not present in SAFETEA-LU—and there was little to no time for the states or NHTSA to get the processes fully developed before having to implement them. When you discuss the challenges of implementing MAP-21, the biggest challenge was actually condensing five years of program development and implementation into two fiscal years.

Given the limited staff that many state highway safety offices have, developing and implementing highway safety programs can be difficult. When you add in the condensed timeframe of MAP-21 and the prescriptive nature of many grant programs, the administrative burden faced was nearly overwhelming.

GHSA members spend a disproportionate amount of time providing required maintenance of effort, or MOE, documentation as well as going back and forth with NHTSA regional offices and NHTSA headquarters on the exact grant requirements and grant uses. The Administration recognized the burdensome nature of these maintenance of effort requirements, and in GROW AMERICA, the provisions were removed. At a minimum, the MOE requirements need to be modified to recognize that the state highway safety offices have no control over many of the state agency budgets that are used to calculate the MOE.

The recent DOT OIG report showed that grantees fulfilled their grant requirements, and there were no lapses in oversight, and grantee transactions met all funding parameters. This shows that the state highway safety offices and NHTSA have a very effective relationship and are using funds in an appropriate manner to tackle difficult highway safety issues.

But the report did miss that there are many complicating factors for states to use their funds. This includes variances in State budget processes and the unpredictable nature of Federal funding. Many states cannot begin a project until a full year's funding is available, and with short-term extensions only providing partial funding for programs, programs would be delayed until full funding would be available.

GHSA understands the need for oversight, but the recommendations made by the OIG would go beyond appropriate and create additional and unnecessary administrative burdens.

As Congress discusses the next transportation bill, GHSA and its members support a long-term reauthorization that has similar format to what is found in MAP-21. Two years makes it difficult for states to plan and attain performance targets.

MAP-21 made changes in the Behavioral Safety Programs, and for the most part, consolidation has been welcome by the state highway safety offices. GHSA recommends that Section 402, the State and Community Highway Safety Grant Program, receive a bulk of this funding. Section 402 is our building block of highway safety, and it's the pillar grant program that we deal with.

The funds in Section 402 allow the states the needed flexibility to address old and new challenges with research-based solutions. My written testimony provides suggestions on how to modify the Section 405 National Priority Safety Program to better assist and encourage states to reach for the specified highway safety standards.

Any changes that Congress does make to the Behavioral Safety Programs, GHSA only asks that adequate time be provided to the states so they can best implement the changes.

GHSA members are committed to saving lives and reducing injuries on our Nation's highways. It is important to recognize that each state has different needs and concerns, and there is a danger in treating each state the same. The more programs and initiatives mandated, the less flexibility states have in tackling the issues of greatest concern to them.

Thank you, again, for the opportunity to provide testimony, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Poole follows:]

PREPARED STATEMENT OF KENDELL POOLE, CHAIRMAN, GOVERNORS HIGHWAY SAFETY ASSOCIATION (GHSA)

I. Introduction

Good afternoon. My name is Kendell Poole and I am the Chairman of the Governors Highway Safety Association (GHSA) and the Director of the Tennessee Governor's Highway Safety Office. GHSA is a nonprofit association representing the highway safety offices of states, territories, the District of Columbia and Puerto Rico. Our State Highway Safety Office members administer Federal behavioral highway safety grant programs. Areas of focus include: impaired driving; inadequate occupant protection; speeding and aggressive driving; distracted driving; younger and older drivers; bicycle, motorcycle and pedestrian safety; traffic records and highway safety workforce development.

Traffic-related fatalities and injuries continue to be a major public health problem in this country. Although we have made some significant progress, we experienced 33,561 fatalities and 2.36 million injuries in 2012, the most recent year for which complete statistics are available. Traffic crashes are not only devastating to family and communities, they are economically burdensome. A recent study from the National Highway Traffic Safety Administration (NHTSA) looked at crash data from

2010 and found that the economic loss and societal harm from motor vehicle crashes cost the United States \$871 billion.

To address this, the Federal Government must continue to be a leader and make the reduction of highway fatalities and injuries a national priority. Working together with state and local partners, the Federal Government plays a key role in influencing and supporting highway safety policies and programs.

States now have two years of experience with the recent transportation authorization known as MAP-21 (Moving Ahead for Progress in the 21st Century). This authorization provided critical resources to states to allow them to address dangerous driver behaviors.

II. MAP-21 Implementation

When MAP-21 was passed, there was very little time for State Highway Safety Offices (SHSO) to fully prepare for new guidelines and regulations needed to implement highway safety programs. The same can be said for our Federal partners at NHTSA. NHTSA worked cooperatively with GHSA to host webinars, answer questions and develop necessary materials to facilitate program approvals for the first year of MAP-21, FY 2013. This was all accomplished without any finalized regulations in place. The framework was acknowledged and SHSOs had an idea of the regulations to come, but it wasn't until well into FY 2013 that the Interim Final Rules (IFR) were issued. Given the deadlines associated with the compressed first year of MAP-21, states only had two months to address any potential legislative or administrative issues that, based on the IFR, would disqualify them from receiving certain incentive grants. That is very little time, and in many states an unreasonable expectation given the fact they may not have had a legislative session or would have missed key deadlines of their state's short session. To compound the issues the states were facing, the deadline for FY 2014 grants was only months after the FY 2013 grant deadline. That essentially left states with one chance to address concerns in order to qualify for grants. Under ideal circumstances, it is difficult to encourage legislative action, much less with such a short time frame.

As states began to create their FY 2015 Highway Safety Plans (HSP) and grant applications, there was not only uncertainty on the status of MAP-21, but they were still operating under the IFR because no final rules had been issued yet. After providing comments on the IFR and sharing concerns about the overly prescriptive nature of the rules, GHSA and its members expected to see final rules that would take those concerns into account. Given the relative speed at which the IFR were drafted, it has been surprising that no final rules have been issued. Why ask states for their feedback on an interim final rule if no final rule is going to be issued?

GHSA appreciates working with our Federal partners and values our collaborative relationship. But as regulations, rule-makings, and agency interpretation become more prescriptive, it makes it hard for states with limited staff to implement incentive programs that have been established to address safety on their roadways. Many of the delays and unnecessary administrative burdens of implementing MAP-21 were related to the short time frame, inconsistent communication, and differing interpretations of legislative language as they related to incentive grant applications.

For most states, they spend months preparing their HSP and grant applications, follow the strict guidelines for submitting the documents, and after NHTSA review they are notified they did not meet the qualifications for an incentive grant. This is often after working with their regional office and providing additional information that is not necessarily required by statute or rulemaking. In the hopes of addressing the disqualifying criteria, states would seek guidance from NHTSA on what legislative actions would be needed in order to qualify for the grant in future years. Unfortunately, once a disqualifying criteria was identified, analysis was stopped on the incentive grant application and no further review was provided.

All of the incentive grants are extremely important to highway safety and it is understandable that there are states that may not qualify for a specific incentive grant, particularly since the criteria are designed to encourage legislative action in states so they can reach the next level in highway safety. But not knowing what legislative action is needed to qualify makes it difficult for a state to recommend changes to their Governor or legislature. While states could do their best and guess what is needed, it is up to the interpretation and decision of NHTSA that ultimately determines if a state qualifies.

III. NHTSA Oversight

Recently, the Department of Transportation Office of Inspector General (DOT OIG) released a report examining the oversight of the highway safety grants, *Enhanced Monitoring Tools Are Needed To Improve NHTSA's Oversight of Highway Safety Grants*. GHSA was pleased to see that the DOT OIG report confirms that

NHTSA and the SHSOs have an effective relationship by finding that grantees fulfilled their grant requirements, there were no lapses in oversight, and grantee transactions met all funding parameters. Developing and implementing research-based programs in the most efficient manner possible is a key responsibility of a SHSO.

The DOT OIG report did note that states sometimes do not expend grant funds immediately, but it did not fully note the reasons. The delay is often due to the unpredictable amount and unknown timing of Federal funding and the requirements of the state budgeting processes. Fortunately, this has been taken into account within Federal statutes which allow expenditures to cover multiple fiscal years. Federal grant funds have been allocated to the states as late as 10 months into a Fiscal Year. That leaves no time for a state to properly plan how to effectively and efficiently liquidate the funds. And given that many of the funds are often earmarked for specific issues, it takes even longer to develop appropriate programs. GHSA understands and supports an appropriate level of NHTSA oversight, but the recommendations suggested by the DOT OIG would go beyond appropriate and create an additional burden to states which already must operate under a heavy administrative load.

IV. Recommendations for Reauthorization

As Congress discusses the future of highway safety programs, *GHSA supports a long-term reauthorization that has a similar format to what is currently found in MAP-21, with minor changes.* MAP-21 was only authorized for two years and it is difficult for states to adequately plan and forecast future needs as well as attain performance targets when funding and program authority are uncertain.

Adjust Behavioral Safety Program Funding Percentages

MAP-21 consolidated the behavioral highway safety programs into two programs: the long-standing Section 402 State and Community Highway Safety grant program and the new Section 405 National Priority Safety Program. With the consolidations of the two behavioral safety programs, Congress also adjusted funding levels for the programs. Section 402 is the pillar grant program and known as the “building block” of highway safety. However, Section 405 programs receive the bulk of behavioral safety funding. While Section 405 programs are important, their scope is limited to specifics of the individual incentives. The limited funds available in Section 402 have significant responsibility to address a wide spectrum of highway safety issues. The Section 402 funds allows states the needed flexibility to address unique and new challenges, such as drug impaired driving, with research based solutions. *GHSA recommends that Section 402 should receive a greater percentage of the funding available.*

Allow States to Spend More Time on Programing, Less Time on Non-critical Administration

The consolidation of the behavioral safety programs also authorized a single grant application. GHSA appreciates the consolidation and urges Congress to maintain that approach. However, even with consolidation, states are continuing to spend too much time preparing the grant application and administering the program. GHSA surveyed states on the process for FY 2013 Highway Safety Plans and found that state applications averaged 127 pages, with some that were more than 200 pages. And this does not include the many pages of attachments that were also required.

This process can be improved by:

- Allowing the states to submit required attachments through electronic links;
- Clarifying that the required problem identification and data analysis information should be written completely, but in a brief format; and
- Permitting the required project list to be submitted up to 60 days after the September 1 plan approval deadline.

Administrative burden needs to be reduced in both the Section 402 and Section 405 programs. As an example, even though funding for the motorcycle safety incentive tier in Section 405 was significantly reduced in MAP-21, the amount of paperwork and background material required to qualify was significantly increased. At least a few states determined that it was not a good use of their time to expend so much effort for such a small grant program, so they decided to not even apply for these funds. *GHSA urges Congress to continue efforts to simplify grant processes so states can spend as much time as possible on programming.*

For most states, the Maintenance of Effort (MOE) requirement is increasingly burdensome. The Association understands and fully supports the need for a Federal MOE requirement to show proof that there is no supplanting with Federal funds.

However, it is also necessary to acknowledge that many states continue to struggle economically. Furthermore, it is impossible for the states to identify and track local sources of expenditures. To remedy this, one approach could be to establish a waiver period with specific criteria that states would have to meet, and eliminate the requirement to maintain local expenditure sources. *GHSA recommends that Congress alter the current MOE requirements in order to provide relief to economically distressed states.*

Improve Effectiveness of Safety Outcomes by Allowing Use of More Timely Data

MAP-21 requires states to use the most recent final Fatality Analysis Reporting System (FARS) data to set performance targets in highway safety plans. However, FARS data continues to be finalized very slowly.

As states develop their highway safety plans, they are forced to use Federal fatality data that may be outdated by as much as two years. For instance, when states were working on their FY 2015 plans, the most recent final Federal fatality data available was from calendar year 2012—despite the fact that 2013 state data is now available in many states. *To improve effectiveness of safety programs, states should be given the option of using the most recent state or Federal data in their highway safety plans. GHSA also urges NHTSA to continue its work in improving the timeliness of FARS.*

Restructure Section 405 National Priority Safety Program

MAP-21 created a consolidated incentive program in Section 405 that covers six different areas: occupant protection, traffic records, impaired driving, motorcyclist safety, distracted driving and state GDL laws. It created tiers by designating a portion of the consolidated program for each area. States receive funding for each tier by satisfying rigorous eligibility criteria which require a significant investment of time to provide the necessary information. GHSA supports continuing the occupant protection and traffic records tiers. *However, Congress should make significant changes to tiers addressing impaired driving, motorcyclist safety, distracted driving and graduated drivers licensing. And the states should be given adequate time to react to any changes made. This will allow them to work with their legislatures, and others, to address incentive requirements.*

Impaired Driving

Fifteen percent of the impaired driving incentive tier is earmarked for states that adopt and enforce an ignition interlock law for all persons convicted of driving under the influence of alcohol. While eighteen states have these laws for all offenders, only a handful of states (four in FY 2014) qualified for these funds, as NHTSA has disqualified states that grant rare exemptions for medical and work issues. *To address this, Congress should allow for state laws that grant reasonable, rare exemptions and successfully require interlocks for nearly all offenders.*

Distracted Driving Grants

Eight-and-a-half percent of Section 405 funds are earmarked to reward states with strong distracted driving laws. However, to qualify, states must meet rigorous definitions and criteria, including laws with minimum fines for first offense, increased fines for subsequent offenses as well as a state statute requiring distracted driving issues to be tested as part of the drivers license exam. The criteria are so strict that even though 37 states are enforcing primary texting bans, only one state qualified for this funding in FY 2014. *To remedy this, Congress should modify the definitions, simplify this program and reward states that are enforcing primary texting bans for all drivers and complete cell phone bans for novice drivers.*

Motorcyclist Safety

One-and-a-half percent of the tier is earmarked for states that adopt and implement effective programs to reduce the number of motorcycle crashes. While the large majority of states qualify for this funding, the funds can only be spent on motorcycle training and awareness programs. NHTSA's National Agenda for Motorcycle Safety and a recent General Accountability Office review of this issue both called for a broader approach to motorcycle safety. This approach includes licensing, education and training, protective gear, roadway safety, public information programs on speeding and impairment, vehicle improvements and share the road programs. *Congress should change this tier to allow for a more comprehensive approach to motorcycle safety.*

Graduated Drivers Licensing (GDL)

The GDL tier should be completely reexamined, as no state qualified in either FY 2013 or FY 2014. Every state has some form of a three-stage GDL System. These laws have been widely credited for the dramatic reduction in teen driving deaths over the last 15 years. States should be rewarded for enacting and enforcing strong, research-based laws. That's not the case with the current incentive.

V. Conclusion

GHSA members are committed every day to save lives and reduce injuries on our Nation's highways and have contributed to the substantial reduction in fatalities the country has experienced. This reduction in fatalities did not happen on its own. It came about because SHSOs analyzed their data and trends and responded to their state's identified safety needs with appropriate and proven programs. It's important to recognize that each state has different needs and concerns. There is a danger in treating every state the same and this is what is happening as more initiatives and programs are mandated by Congress and agency regulations. To successfully continue to lower fatalities and prevent injuries in our nation, states must have greater flexibility in tackling the issues of greatest concern to them. As more funds are being tied to specific issues, states could be mandated to create a program for an issue that is minimal or doesn't exist in their state. This diverts limited funding away from the real problems facing a state and their communities.

Thank you for holding this hearing and for the opportunity to share the Association's views before the Committee. GHSA looks forward to working with the Committee on the next surface transportation reauthorization.

Senator McCASKILL. Thank you, Mr. Poole. Mr. Strassburger?

STATEMENT OF ROBERT STRASSBURGER, VICE PRESIDENT, VEHICLE SAFETY AND HARMONIZATION, ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. STRASSBURGER. Thank you, Chairman McCaskill, Ranking Member Heller, and members of this Subcommittee.

As we have already heard this afternoon, the nation continues to record declines in traffic fatalities. In fact, driving has never been safer. Deaths have declined by 20 percent since 2007, and preliminary estimates by NHTSA and others project continued declines in 2014. However, in an era of limited resources, we have a difficult task ahead if we are to ensure continued progress.

As this committee moves forward with the reauthorization of NHTSA, we urge you to focus on those provisions that will provide the greatest safety benefits. The Alliance has the following recommendations.

First, approximately a third of traffic fatalities continue to involve drunk drivers. We need to redouble our efforts to reduce impaired driving. The Alliance supports making alcohol ignition interlock grants more usable by states. The Alliance also supports continued funding of research of advanced vehicle integrated technology, known as DADSS, that holds promise to significantly reduce drunk driving. And the Alliance supports including resources for NHTSA to study the potential impacts of legalizing marijuana on traffic safety and giving states flexibility to use Federal grants to tackle this issue.

Second, according to NHTSA, more than 90 percent of all crashes are a result of driver error. The future of vehicle safety must include crash avoidance technologies that help to avoid or mitigate crashes. There are about 20 different crash avoidance technologies available on today's cars and trucks, and more are coming.

Looking toward the future, cars that communicate wirelessly with one another and the infrastructure may provide additional

crash avoidance opportunities. This committee can help realize the promised crash avoidance technologies in several ways.

One, the Alliance urges this committee to use this reauthorization to preserve the ability to use the 5.9 gigahertz radio frequency spectrum designated for vehicle-to-vehicle communications unless and until rigorous testing shows that auto safety will not be compromised if this spectrum is shared.

Two, the Alliance also recommends that this committee provide resources to help establish an ISAC for the auto sector to exchange cyber threat information.

Three, the Alliance recommends that this committee fully evaluate the model needed for creating and operating a robust security certificate management system that is necessary for the implementation of vehicle-to-vehicle communications.

And four, this committee can help to accelerate the adoption of crash avoidance technologies by directing NHTSA to provide fuel economy compliance credits when these technologies are installed. Credits are a win for safety, for the environment, and for consumers.

Finally, distracted driving remains a concern. Almost 18 months ago, NHTSA issued driver distraction design guidelines for vehicle integrated systems. Similar guidance for handheld smartphones are critical to avoid adverse traffic safety consequences. The Alliance urges this committee to use this reauthorization to make clear NHTSA's authority to regulate portable handheld devices when used in motor vehicles.

In closing, reducing injuries and fatalities from auto crashes is a significant public health challenge. We appreciate the leadership shown by members of this subcommittee to address these issues. We look forward to continuing to work with you to make our roads the safest in the world.

Chairman McCaskill, Ranking Member Heller, and members of the Subcommittee, I would be happy to answer your questions.

[The prepared statement of Mr. Strassburger follows:]

PREPARED STATEMENT OF ROBERT STRASSBURGER, VICE PRESIDENT, VEHICLE SAFETY AND HARMONIZATION, ALLIANCE OF AUTOMOBILE MANUFACTURERS

On behalf of the twelve automakers who are members of the Alliance of Automobile Manufacturers (Alliance), thank you for this opportunity to provide the Committee with an update on the state of motor vehicle safety and our industry's thoughts on developing a reauthorization proposal.¹

It is important to recognize that this is the *safest* time in our Nation's history in terms of motor vehicle safety. From 2007 to 2013, traffic fatalities fell by 20 percent.² Preliminary estimates released last month by the National Highway Traffic Safety Administration (NHTSA) and the National Safety Council project continued declines in 2014.^{3,4}

¹The Alliance is a trade association of twelve car and light truck manufacturers comprised of BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars, Toyota, Volkswagen Group, and Volvo Cars. Together, Alliance members account for roughly three out of every four new vehicles sold in the U.S. each year. Auto manufacturing is a cornerstone of the U.S. economy, supporting eight million private-sector jobs, \$500 billion in annual compensation, and \$70 billion in personal income-tax revenues

²“Early Estimate of Motor Vehicle Traffic Fatalities for the First Quarter of 2014,” NHTSA, DOT HS 812 055 (August 2014)

³*Ibid.*

⁴“Motor-vehicle deaths down 4 percent in first six months of 2014,” National Safety Council (August 2014)

These are not just declines in the rate of traffic deaths (which is measured per 100 million vehicle miles traveled), but more remarkably, an absolute decline in the number of fatalities, even as the “exposure rate”—the number of Americans driving and vehicle miles driven—has increased dramatically. Nearly 18,000 fewer people died in traffic related crashes in 2012 than in 1980, even though there are approximately twice as many licensed drivers driving about twice as many vehicle miles as there were three decades ago.⁵

There is another facet of this success story of which auto manufacturers and the eight million Americans working in the auto sector are justifiably proud—motor vehicle occupant deaths have declined at a faster pace than the overall decline in traffic deaths. In 2007, 70 percent of people killed in traffic crashes were in passenger vehicles. By 2012, 65 percent were in passenger vehicles. At the same time overall traffic deaths were declining by 19 percent, deaths in passenger vehicles declined by 26 percent.⁶

A recent study by NHTSA confirms that automakers deserve a significant portion of the credit for the reduction of deaths and serious injuries for occupants of motor vehicles. In an analysis of fatal crashes in MY 1985 through MY 2012 vehicles, NHTSA found that drivers of MY 1985—MY 1992 vehicles were 76 percent more likely to be killed in a crash than drivers of MY 2008—MY 2012 vehicles.⁷ Similarly, drivers of MY 2003—MY 2007 vehicles were 20 percent more likely to be killed in a crash than drivers of MY 2008—MY 2012 vehicles. These numbers represent dramatic improvements, but even so, motor vehicle safety remains a top concern for all Alliance members.

More than 90 percent of all crashes are a result of driver error, according to a recent NHTSA study of crash causation.⁸ Thus, if our shared goal is to continue to reduce traffic fatalities and injuries, we need to continue our efforts on ways to reduce driver error or mitigate its effects. Moving forward, this is clearly the industry’s focus—one we hope is shared by NHTSA and the Congress.

The future of vehicle safety is evolving to include “crash avoidance” technology that helps prevent or mitigate crashes. Crash avoidance systems employ sophisticated software to interpret data from sensors, cameras, global positioning devices, and/or radar-based technologies that allow vehicles to sense the environment around them. Their features assist drivers to be aware of impending dangers, in some cases even taking over for drivers to help avoid accidents. There are about twenty different crash avoidance technologies available already on today’s vehicles, with more coming. Notably, all of these systems are being initiated and developed by automakers and suppliers and installed on vehicles—not as the result of government mandates.

Intervention technologies include electronic stability control and anti-lock brakes that help the driver keep the vehicle under control. These two technologies are present in nearly every new passenger car sold in America. In addition to these systems, new technologies, such as crash imminent braking and dynamic brake support, are being introduced to assist drivers to avoid or mitigate crashes in emergency situations. According to recent data compiled by the Highway Loss Data Institute, vehicles that brake automatically are expected to offer significant safety benefits.⁹ Drivers of vehicles with these systems file 15–25 percent fewer property damage claims, and they are 33 percent less likely to file claims for crash injuries than the owners of similar, but unequipped, vehicles.¹⁰

Warning technologies—including blind spot warnings, lane departure warnings, cross traffic alerts, and forward collision warnings—provide audio, visual or other sensory alerts to help drivers take corrective action to avoid a crash. While drivers have the means to operate a vehicle safely without these features, these systems provide early warnings so that drivers can react to situations prior to a crisis or emergency developing.

Active driver assistance technologies may include lane keeping systems, adaptive cruise control, and automatic high beams. Drivers decide when to activate these sys-

⁵“Chart VMT 421-C,” FHWA, Office of Highway Policy Statistics (2012)

⁶Analysis of “Passenger Vehicle Occupant Fatalities: The Decline for Six Years in a Row From 2005 to 2011,” NHTSA, DOT HS 812 034 (June 2014) and “Traffic Safety Facts 2012,” NHTSA, DOT HS 812 032 (2014)

⁷“How Vehicle Age and Model Year Relate to Driver Injury Severity in Fatal Crashes,” NHTSA, DOT HS 811 825 (August 2013)

⁸“National Motor Vehicle Crash Causation Survey; Report to Congress,” NHTSA DOT HS 811 059 (July 2008)

⁹“Collision Avoidance Features: Initial Results,” Matthew Moore (Highway Loss Data Institute) and David Zuby (Insurance Institute for Highway Safety), ESV Paper Number 13-0126

¹⁰*Ibid.*

tems, which then may assist the driver during routine driving tasks, provided road and environmental conditions permit.

As we move into the future, continuing to develop and implement crash avoidance beyond the constraints of a discrete vehicle by developing infrastructure and vehicles that communicate with each other has the potential to further enhance road safety. According to NHTSA, when fully deployed, connected vehicle technology could potentially address approximately 80 percent of crash scenarios involving non-impaired drivers. Connected vehicles also may help to enhance or enable a host of critical crash avoidance technologies.

The promise of a connected vehicle transportation system, however, requires the successful resolution of a number of complex policy and technical issues that will require unprecedented coordination between the public and private sectors and among disparate Federal agencies for such things as governance, funding, implementation, and enforcement. Among the issues that Congress should be watching in this area are: infrastructure for connected vehicle security networks; governance of connected vehicle security certificates for safety; protection of consumer privacy, including data ownership, for connected vehicle data generation, transmission, and use (proper use and misuse); sustainable funding for implementation, and ongoing operations, governance, and maintenance of a connected vehicle infrastructure; international cross border needs and agreements; liability risk and intellectual property protection; and security licensing requirements.

Auto manufacturers are doing a great deal to usher in a new era in motor vehicle safety. As you consider the next NHTSA reauthorization bill, we recommend that the Committee focus on how the legislation can help NHTSA and the industry continue to improve traffic safety. The Alliance does not believe that increasing fines for the auto sector or potentially criminalizing interactions between auto manufacturers, suppliers and NHTSA will help make vehicles safer. Our overall record and approach speaks to our commitment to traffic safety, and the dramatic reduction in motor vehicle deaths confirms we are doing the right things.

Earlier this year the Department of Justice announced a fine against one automaker that vastly exceeded the civil penalty cap authorized under Title 49, demonstrating that the government already has adequate authority to address situations where it feels larger penalties are appropriate. We believe it a much more useful exercise to focus efforts on public policies that are critical to the broader safety goal of reducing driver errors that lead to fatal crashes on our Nation's roads.

There are several things we believe that Congress can do to help expand auto safety.

First, protecting the radio frequency spectrum reserved for vehicle-to-vehicle (V2V) and vehicle-to-infrastructure (V2I) communications is critical. With the recent release of its ANPRM for V2V systems, the DOT has initiated rulemaking to require the industry to develop and implement these systems. The Federal Communications Commission (FCC) is proposing to open the 5.9 GHz band of spectrum to unlicensed users. To support the mission of reducing traffic fatalities, the FCC should adopt a "do-no-harm" policy of preserving this band of spectrum for V2V use unless and until rigorous testing has shown that auto safety potential will not be compromised.

The Alliance believes that the potential exists to achieve a good public policy outcome both for vehicle safety and for expanded wireless access; however, the requisite interference testing must be completed, and any outstanding issues must be resolved before a final rule is issued by the FCC. We encourage this Committee—which has jurisdiction over both agencies—to use the reauthorization to make very clear where it stands on this critical public safety issue.

Second, there needs to be renewed focus on reducing impaired driving and support of enhanced enforcement efforts. Impairment is a leading cause of driver error, and by far the leading cause of fatal crashes. Eliminating impaired driving would significantly help to reduce the number of people who die on our roads each year. For years, our primary focus—for obvious reasons—has been on reducing the number of alcohol-related crashes. The Alliance supports section 103 of S. 2760, which would make alcohol interlock grants more usable by states. In addition, Alliance members have been working in partnership with NHTSA to research advanced in-vehicle technology (a program called "DADSS")—that holds promise to help greatly reduce drunk driving. The Alliance appreciates the leadership role taken by this Committee in the last reauthorization to support this effort.

Looking ahead, we are concerned that the recent move by some states to legalize marijuana may open new challenges in the fight to stem impaired driving. We feel that any reauthorization should include resources for NHTSA to study this emerging issue and explicit additional flexibility for states to use Federal safety grants to tackle this issue prior to the next reauthorization cycle.

Third, we urge you to continue to focus on distracted driving. As you are aware, NHTSA is only one-third of the way through its proposed strategy to address sources of distraction in motor vehicles. Almost 18 months ago, NHTSA published guidelines for in-vehicle systems, based on similar guidelines developed by Alliance members a decade ago. The Agency's stated next step is to develop similar guidelines for portable devices, such as smartphones and portable navigation systems, when they are used by drivers. Failing to develop such complementary guidelines could have significant adverse safety consequences because it likely will incentivize drivers to use unregulated, hand-held devices rather than more limited, hands-free in-vehicle systems.

One reason for the apparent delay in progress on portable device guidelines is the question over NHTSA's authority to regulate such devices, even when used in vehicles. Former Administrator Strickland has said that the Agency has that authority, and we agree. The DOT requested that Congress further clarify the Department's authority in Section 4105 of the reauthorization proposal it submitted to Congress. We encourage the Committee to provide the requested clarification or otherwise clearly delineate the Agency's authority to carry out this important task. We live in a world where smart phones and other portable devices are far more ubiquitous than in-vehicle systems, and policies should be developed to address this key factor of the distracted driving problem.

Fourth, we encourage the Committee to set aside some resources to help address the growing need for cybersecurity measures in the auto sector. The implementation of advanced computer systems has resulted in significant improvements to vehicle safety and the overall driving experience; however, it also raises our awareness that bad actors could try to hack into vehicle systems. The industry as a whole has demonstrated its clear intent to address possible future threats. Recently, the Alliance and Global Automakers announced that we are jointly investigating the development of a cyber-threat information-sharing platform, such as an Information Sharing and Analysis Center (ISAC), which further demonstrates our members' collective and proactive approach. Setting up a properly functioning ISAC or other comparable program is a significant undertaking, as evidenced by the recent announcements by the aviation and oil and gas industries. Those industries are expected to stand up their ISACs later this year after a thorough 12–18 month process. Historically, the Federal Government has provided seed money in partnership with the private sector to help jump-start the process and in recognition that protecting against cyber-attack is a shared responsibility and a public good.

In the coming years, NHTSA and the auto sector will also have to ensure that safety critical applications, such as V2V communications, are secure, particularly given that those systems depend on transmission and receipt of data outside the vehicle. A properly functioning V2V system will require a robust security certificate management system (SCMS). NHTSA's research report has indicated that the initial costs of setting up a SCMS just for V2V will run into the tens of millions of dollars. The SCMS in effect will function as a highway version of an air traffic control system. An SCMS that additionally comprehends wireless connections between vehicles and infrastructure, as well as between vehicles and other devices, will require a much larger SCMS that will have to manage a significantly more complex security space. As such, it will cost even more and require more oversight. Given that the potential societal benefits will be to public roads, the funding model and rule structure for creating and operating the SCMS should be fully evaluated.

Finally, we encourage the Committee to accelerate the proliferation of crash avoidance technologies in the new car fleet by directing NHTSA to provide fuel economy compliance credits for the installation of these technologies. In a recent white paper, NHTSA noted that "Vehicle control systems that automatically accelerate and brake with the flow of traffic can conserve fuel more efficiently than the average driver. By eliminating a large number of vehicle crashes, highly effective crash avoidance technologies can reduce fuel consumption by also eliminating the traffic congestion that crashes cause every day on our roads."¹¹ The Federal Highway Administration estimates that 25 percent of congestion is attributable to traffic incidents, around half of which are crashes.¹² The addition of crash avoidance technologies has the potential to reduce crashes, which will in turn reduce congestion.

NHTSA should be directed to estimate potential fuel savings of crash avoidance technologies and to incorporate equivalent credits into manufacturers' fuel economy compliance. The credits are a win for safety, for the environment, and for con-

¹¹National Highway Traffic Safety Administration (May 30, 2013) Preliminary Statement of Policy Concerning Automated Vehicles. Washington, D.C.

¹²Federal Highway Administration (2005). Traffic Congestion and Reliability: Linking Solutions to Problems. Washington, D.C.

sumers, who will see the proliferation of such systems sooner and at a lower price point, if installing them helps to offset the costs of fuel economy compliance.

The Alliance believes that the future of driving safety is very bright, and with the right public policies in place, industry and government can work together to continue the reduction in fatalities and serious injuries that we have been seeing. Getting there will require many pieces of a complex policy puzzle to fit together in addition to the technological advancements the industry is making.

Working together, we can make this vision reality.

Senator MCCASKILL. Thank you very much. Let me begin. I assume, Mr. Poole, you—since you referenced it in your testimony—you’ve looked at the Inspector General’s report that just came out a few weeks ago.

I was surprised that there was a half a billion dollars of highway safety funds that have been allocated to states that had not yet been expended, that, during the same period of time, \$4.2 billion in funds had been allocated to those programs, meaning that we’ve got 13 percent of the money over a six year period not being spent.

That represents, at worst, a lost opportunity to fund programs or a delayed opportunity, which is also problematic. Why—can you explain why states are leaving this money on the table and why this money is not getting expended?

Mr. POOLE. Yes, Senator. There are delays in funding, particularly when we have MAP-21 where the funding comes to us in increments. Sometimes, it’s as late as 10 or 11 months into the fiscal year before we receive that money. That is what we call carry forward funding, and the carry forward funding can be attributed to the next year when we receive it late in that Federal fiscal year.

In addition to that, there is transfer monies that are available to the states, for instance, through Section 154 or 164, that are generally split with the state engineering or state safety offices, and those projects for the hazard elimination projects also show up as carry forward money when, obviously, that is a construction issue. It takes a little longer to get that money out on their side. But it’s the delays in funding, Senator, that cause us to carry forward money.

I’ll use an example from the State of Tennessee. Because we received money so late this past Federal fiscal year under MAP-21, we have a carry forward of \$3 million that we will be utilizing for Fiscal Year 2015 just in the Behavioral Grant Programs.

Senator MCCASKILL. So you’re using last year’s money this year, and you’re using this month’s—this year’s money next year, and next year’s money the following year?

Mr. POOLE. Sometimes that does happen, yes. When we have late funding that comes in, we have to get that programmed out.

Senator MCCASKILL. So and I assume when the money is late, you inquire why the money is late. Is this a problem with Washington, that they’re just not getting their job done quickly enough?

Mr. POOLE. Our membership does view it that way. When we—when MAP-21 has a Continuing Resolution and the funding comes incrementally, we have projects that have to be fully funded before they’re implemented.

Senator MCCASKILL. Before you can begin them.

Mr. POOLE. Yes, ma’am.

Senator MCCASKILL. OK. Let me ask you, Mr. Strassburger, last year I held a legislative hearing on Senate Bill 921, the Raechel

and Jacqueline Houck Safe Rental Car Bill introduced by Senator Schumer, Senator Boxer, myself and others.

The bill has the support of many safety advocates and the rental car industry. However, at the hearing, your president and CEO, Mitch Bainwol, testified that your organization opposed the bill, because it potentially affected loss of liability use for your member companies.

Since then, there have been two key developments. First, General Motors has agreed to support the bill, one of your largest member companies, and second, Senators Schumer, Boxer, and I have reintroduced our bill with a provision that explicitly states that the bill will have no effect on any state liability issue.

So given these developments, can we expect you to weigh in with the endorsement of the Auto Alliance momentarily?

Mr. STRASSBURGER. Senator, when a vehicle is recalled, we want that vehicle repaired as quickly as possible, and to do that, we think that all customers need to be treated equally and fairly. And at the present time, we have not seen that—such in the legislation that we've seen.

We are fully committed to working with this committee and—

Senator MCCASKILL. How are they not being treated equally and fairly? Could you articulate that for the Committee?

Mr. STRASSBURGER. I'm sorry, repeat that, please.

Senator MCCASKILL. How are they not being treated equally and fairly? What is the unfairness or the lack of equality that you think is embraced by this legislation?

Mr. STRASSBURGER. We don't think the current draft of the legislation, either as introduced or the more recent language—we appreciate the effort—

Senator MCCASKILL. Let's stick with the recent language, since we've improved to try to address your concerns.

Mr. STRASSBURGER. OK. And we appreciate the efforts to try to address our concerns. Our members don't feel that they have been addressed. We still think there's disproportionate treatment, and we are committed to working with this committee to resolve all of the concerns of all of the stakeholders in fact—

Senator MCCASKILL. I need to know what disproportionate means. Who's getting treated better, and who's getting treated worse? You're saying it's unequal. I need you to articulate what the—what inequality it is that you're referring to.

Mr. STRASSBURGER. I think at the moment, the way it's structured, the—our understanding is that there is no intention by anybody involved to disturb or change the relationship between the manufacturer and the rental car company.

We think the language, the newest language, while attempting to try to preserve that relationship, doesn't go far enough yet.

Senator MCCASKILL. OK. You're still—I don't—I'm not following you. Is there something you're afraid to say or—I mean, what is the—can you—the fact that it doesn't go far enough, what is it—what would you like it to say?

Mr. STRASSBURGER. We still think that it creates disproportionate treatment, that it strives—that it gets involved in the relationship with the vehicle manufacturer and the rental car company. If we have a balanced language there that doesn't do that,

that preserves the relationship of those two parties, which we understand is the intent of everybody involved, then that is legislation that we would support.

Senator McCASKILL. OK. Have you offered language that you think would fix that?

Mr. STRASSBURGER. I believe—let me take that back. If we have not, then we will certainly do that.

Senator McCASKILL. Be great to get it by Friday.

Mr. STRASSBURGER. OK.

Senator McCASKILL. I mean, I'm confused at—you know, General Motors has now signed off, the rental car companies have now signed off. Clearly, this is a safety issue, and with all of the discussion about safety of vehicles on the road right now, I think the remaining manufacturers that are holding out on this bill are doing a great disservice to the driving public. And it's time for you to come with language that you think would address the problem and protect the manufacturers instead of just throwing up roadblocks to everything we try to do. It's frustrating.

So I'll look forward to hearing from the manufacturers, other than GM, which has—and let's hope that it doesn't take a crisis in these other companies to get them to come along, because, you know, obviously, General Motors took another view of this after they were confronted with an incredible public relations crisis in terms of the safety of their cars. I would hope it wouldn't take that for the other manufacturers to get them to be willing to address what is a serious safety concern for the driving public that is renting cars.

And finally, Ms. Gillan, the Justice Department recently settled a criminal lawsuit with Toyota. I think it's important to remember this was a criminal lawsuit. They paid \$1.2 billion in connection with a criminal prosecution.

Doesn't it make more sense to deter companies from withholding safety information from NHTSA by providing NHTSA with better criminal penalty authority and with bigger civil penalty stick rather than with the acrobatics of a DOJ settlement for wire fraud? I mean, it appears to me they used a criminal prosecution to get to the place where they could have a meaningful fine for the level of misconduct that was discovered around the Toyota problem.

Wouldn't we deter more effectively if all manufacturers saw the possibility of higher fines and criminal prosecutions at the level of a NHTSA enforcement?

Ms. GILLAN. Ah, absolutely, Senator McCaskill. The safety community strongly supports criminal penalties. Other regulatory agencies have the ability. It doesn't make sense to have to go to the Justice Department and have them find some other avenue to impose that.

We also support the provision to completely eliminate the cap on civil penalties. We want NHTSA to be a watchdog and to carry a big club. We've got to give them the enforcement authority to do that. And I was surprised when I looked at the auto industry's testimony that they want to keep the \$35 million cap as well as not impose any additional penalties.

In light of all of these defects and both Toyota and now, GM, and every day there's a new revelation—why we wouldn't want to go

ahead and give the Agency the authority to impose criminal penalties.

Senator McCASKILL. Thank you. Senator Blumenthal?

Senator BLUMENTHAL. Thank you. Thank you for being here. And let me just say—I didn't say it during the last panel—that one of the very sobering factual backgrounds for this hearing is the news released yesterday by Ken Feinberg that, in fact, he has found 19 deaths, which is far higher than the 13 the company has acknowledged, as a result of a defect that GM concealed. And that is only his first report. The eventual number is likely to be multiples of the 13 that the company acknowledged.

So that's a very chilling reminder that this issue has life and death consequences for Americans. We're not talking about abstractions. We're talking about real impacts on real people's lives.

And so let me ask you, Ms. Gillan, I know you mentioned the issue of resources in your testimony, do you think that NHTSA is devoting its resources properly, and do you think it should have more resources?

Ms. GILLAN. Senator, this has been an issue that the safety community has been concerned about, particularly Advocates for Highway and Auto Safety.

Right now, 94 percent of all transportation related fatalities and 99 percent of all transportation related injuries occur as a result of motor vehicle crashes, but NHTSA has 1 percent—only 1 percent—of the entire DOT budget.

Now, granted, money may not be the complete answer, and I think that there are a lot of changes that the agency needs, but we're not giving them the resources to do the job. Senator McCaskill mentioned the Office of Defects Investigation has been flatline budgeted at \$10 million.

In my statement, I talk about their budget. If you look back a decade, their operations and budgets experienced a 9 percent decrease in the last decade, and yet, there has been over 23 percent growth in the number of cars on the road.

I think that the public wants this agency to have the resources that they need, and I think it's very frightening for all of us when we read about these safety defects which seem to be occurring on a daily basis.

Senator BLUMENTHAL. Do you agree, Mr. Strassburger?

Mr. STRASSBURGER. The Alliance has historically said that the Agency should be adequately resourced, both in staff—

Senator BLUMENTHAL. You think it needs more resources?

Mr. STRASSBURGER. Let me say, again, that we have said that the agency should be adequately resourced, both dollar wise and staffing wise, etc. Beyond that, I think we don't have the data to say that they need X number of staff versus another. That is—

Senator BLUMENTHAL. Well, you've just heard Ms. Gillan, and you're familiar with the agency's systematic record of failure, which is attributed, at least in part, to lack of resources. Isn't that pretty compelling evidence that the current level is inadequate and therefore, that your position that it should be adequately staffed should lead you to say more resources—many more resources—are necessary.

Mr. STRASSBURGER. I don't have sufficient data. For example, how—the staffing report that's in abeyance that's been recommended by the IG, etc., without that kind of date, I'm not in a position to say it should have X number of staff versus Y.

What we have said repeatedly and consistently is that this agency should be adequately resourced, both staffing and dollar wise. And beyond that, the data is in your hands to determine how those—what those resources are and how they should be allocated.

Senator BLUMENTHAL. Let me switch topics slightly. On the issue of car safety, a number of you have talked about aspects of car defects, drunk driving, and distracted driving.

I want to raise the issue of cars that essentially provide dangers to children, because they may be left in those cars. Young children, when they are left in cars, can succumb to hypothermia or heat stroke. There have been a number of incidents in Connecticut just this summer. There is a surge, apparently, nationwide in the number of, in quotes, “hot car,” deaths or injuries resulting from careless or neglectful parents or caregivers, and many involve parents who simply forgot about their child in the back seat.

We had a very tragic instance in Connecticut—without attributing blame, because there hasn't been a finding yet officially. Benjamin Seitz, a young child, died in a car in Connecticut.

But one of the solutions that's been proposed is that NHTSA or DOT consider requiring that car seats alert drivers that a child is present if they are left in the car without anyone present. That kind of warning would be similar to the requirement for backup cameras that will warn that a driver is going to run over a child.

Whether it's that solution or another, I'd like to ask the panel, and perhaps I should do it in writing, because we're—I'm over my time, but whether you have any views as to what can be done to prevent this kind of tragic instance, which may not be, in number, comparable to the frequency of defective car deaths or injuries, but certainly, whenever it occurs, it is a searing and horrific loss for a family.

Ms. Gillan?

Ms. GILLAN. Senator, first of all, I want to say, I am not an engineer, but I'm married to an engineer. I will tell you that, just as with rearview cameras, at first the response was to educate parents to look behind the car—and that wasn't going to solve the problem.

And it took legislation passed out of this committee, the Cameron Gulbransen Act, of setting a deadline for NHTSA to act, which they just did and issued that final rule this year requiring rearview cameras. That is really the solution to saving children.

We can educate parents, but we can't rely on education alone. And it's really important. The development of sensor technology is increasing yearly. We have sensors that tell us we forgot our keys. We have sensors that remind us that our lights were left on. And I firmly believe that we can solve this problem through technology.

This committee had hearings years ago about distracted driving. We now see that technology is probably our best answer to preventing people from texting and other distractions. And so we firmly believe and support a requirement that NHTSA move forward and look at a technological solution.

Senator BLUMENTHAL. My time is up, but I might just note as a footnote or maybe a bookmark into this conversation that NHTSA is late issuing the rule on rearview visibility and yet another example of a gap in meeting the needs of car safety.

Thank you, Madam Chairman.

Senator MCCASKILL. Thank you. I just have one question before we adjourn the hearing. Ms. Gillan, is it true that deaths and serious injuries from distracted driving, driving while texting, driving while trying to do a Facebook post using a handheld device while you're driving, has now gone above driving while impaired due to alcohol in terms of safety risks on the highway?

Ms. GILLAN. No. About a third of all traffic fatalities involve alcohol. And the Department of Transportation's estimate on distracted driving is about, I believe, 4,000 deaths a year.

The comparison with alcohol is that when you take your eyes off the road it is impairment and when you're trying to text and talk on the phone, it's a cognitive distraction. So I think that's where the two are compared.

But clearly it's a serious problem with the issue of distraction as well as impaired driving. And those are issues that we still, in the next reauthorization bill, need to continue to look for opportunities to bring those deaths down.

Senator MCCASKILL. I agree. I want to thank all three of you for being here today. I appreciate it very much. Sorry to put you on the spot, Mr. Strassburger, but that's the nature of the beast. If I don't put you on the spot, we'll never get to a place we can get this bill passed, and I want to get this bill passed. We're going to get this bill passed with you or without you. I'd rather be with you.

Mr. STRASSBURGER. I appreciate your willingness to work with us.

Ms. GILLAN. Senator McCaskill, before you close the hearing, I wanted to know if we could submit some documents to the hearing record. I know there was a lot of discussion with the first panel about this issue of the agency needing to find a trend, and there has been a lot of debate about this in the Department of Transportation.

NHTSA's former general counsel during the 1970s issued an enforcement memo on the "per se" theory that I think is really important to address. You do not need a trend to identify a defect.

Senator MCCASKILL. Absolutely. We would welcome those additions to the record, and if any of the other witnesses have additions you would—they would like to put in the record, we would welcome those.

[Ms. Gillan submitted the following:]

Enforcement

Enforcement

- Recognition that investigative - litigation effort is law enforcement activity
 - Safety standards
 - Defects
 - Bumpers
 - Odometers
 - Fuel economy standards
- The role of prosecutorial discretion

Enforcement

1974 amendments to Vehicle Safety Act make mandatory recall of noncomplying or defective vehicles at manufacturer's expense

Enforcement - Defects

Defects which relate to motor vehicle safety must be corrected by manufacturer

"Defect includes any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment."

"Motor vehicle safety means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles."

Enforcement-Defects

Industry Defect Position:

- Some threshold number of accidents, injuries or deaths have occurred, and
- Some threshold number of accidents, injuries or deaths will occur in the future

Enforcement-Defects

- Inadequacy of accident, death and injury data attributable to a defect

Enforcement - Defects

- **The per se theory of defect law:**

- The demonstrated failure of a critical safety component (wheels, brakes, steering, lights, etc.) establishes the existence of a safety defect whether supporting accident data exists or not

See Exhibit F

Enforcement - Defects

The development of the large number of failures (per se) theory

- **Wheels**

- 200,000 trucks (1960-65)
 - 2,381 wheel failures

- **Pitman Arms**

- 284,000 Cadillacs (1959-60)
 - 26,000 failures

- **Quadrajets Carburetors**

- 375,000 Chevrolets and Buicks (1965-66)
 - 1,306 failures
 - 1,227 fires

- **Seat Brackets**

- 800,000 Ford Mustangs and Cougars (1968-69)
 - 130,000-170,000 failures

- **Windshield Wipers**

- 189,000 Capris (1971-73)
 - 75,000 failures

Enforcement Litigation

I

The Traffic Safety Act gives the NHTSA authority to require manufacturers of motor vehicles and replacement equipment to notify purchasers of defects related to motor vehicle safety and noncompliances with Federal motor vehicle safety standards and to remedy the defect or noncompliance at manufacturer expense. The recall remedy was added to the Act in 1974. Prior to that time the manufacturer was only required to notify purchasers of the defect or noncompliance. The 1974 amendments increased from \$400,000 to \$800,000 the maximum civil penalty for failure to issue notifications, and the NHTSA's investigative authority was increased by giving the agency subpoena power, its right to hold investigative hearings and conduct examinations of witnesses under oath.

In the defect enforcement cases the agency has been attempting to develop a per se theory of defect law, largely because of the limitations of existing accident information. Under this theory, the demonstrated failure of a critical safety component (wheels, brakes, steering, lights, etc.) would establish the existence of the safety defect whether supporting accident data exists or not. (This is analagous to the per se theory used by the government in anti-trust cases where evidence of certain economic practices is so pernicious that it is considered a per se violation of anti-trust law). The need for the establishment of a per se defect theory has emerged from the experience of our litigation and our increasing knowledge of industry record-keeping practices and available data files.

II

The industry argues that to prove the existence of a safety defect, the agency must in every case show that:

- (1) some threshold number of accidents, injuries or deaths have occurred; and
- (2) some threshold number of accidents, injuries or deaths will occur in the future.

The agency has based its case on accident information where the information was available and appropriate. In the Kelsey-Hayes Wheel case, for example, the agency relied

primarily on number of failures. The manufacturer, General Motors, agreed that the exploding wheels created an unreasonable risk to safety but refused to admit the wheels were defective. To prove the existence of a "defect in performance" under the statute, the agency turned to accident information. In pre-trial discovery the agency obtained from General Motors 2161 unverified reports of wheel failures. Taking a sample of those reports, the agency then obtained 160 owner affidavits. From the affidavits a statistician predicted that 700 of the owners who had reported wheel failure would, if asked, provide affidavits recounting some 1500 wheel failures. The agency then filed a motion for summary judgment on the basis of those affidavits, arguing that the large number of failures proved, as a matter of law, the existence of a "defect in performance." The District Court agreed with the agency and granted the motion for summary judgment. The Court of Appeals substantially agreed but thought the manufacturer had the right to attempt to prove, as an affirmative defense, that the vehicle owners themselves had caused the large number of failures through gross and unforeseeable abuse. The Court of Appeals therefore remanded the case to provide General Motors the opportunity to try its affirmative defense. At that point General Motors decided to settle the case and recall the wheels.

Although accident information may, on occasion, be useful, the industry's insistence that the agency always prove safety-defect cases by accident information alone is excessively rigid. From both a practical and statutory standpoint, reliance upon numbers alone would confine the agency's effectiveness and distort fulfillment of its statutory mission.

The practical problems begin in the first phase: data collection. Accident information is often erroneous, incomplete or unavailable. Although accident investigation systems are often mentioned as reliable data sources, they contain inherent limitations when used to define and substantiate the realm of all possible safety defects. The system usually involves a very limited geographical area. Its initial input is reports prepared by police who are not trained to identify safety defects. A group of investigators further limits the scope of the survey by selecting from the police reports a very small population of vehicle accidents for investigation. The investigation team then inspects the vehicle, records the road and driver conditions, and explores possible causal factors.

Sometimes it cannot finally determine the cause of the accident. In severe accidents, the question of whether a part broke before or because of the accident is a recurring and often unanswered one.

Thus, the accident investigation system, though useful for locating some possible defects, is insufficient to pick up and prove the existence of all or a majority or, perhaps, even a substantial proportion of existing safety defects.

A second major source of accident information is owner reports. Like the accident investigation systems, these reports are useful indicators of some possible safety defects but not definitive with respect to all possible safety defects. The first problem is that not all people who suffer accidents report them to the agency. The second problem is accuracy. Owners and their mechanics may not be able to correctly identify the cause of the accident. When the agency itself attempts to investigate the cause, it frequently finds the owner has repaired or modified the vehicle and disposed of the evidence.

Thus, the collection of accident data is a flawed and uneven process. Where available, accident information may help identify certain safety defects. At present, however, it cannot locate all possible safety defects. Enforcement cases which are confined in their basis and proof to available accident information may thus exclude a major portion of the safety defects in existence.

The practical problems with this approach continue in the second phase: proof before the court. Accident information collected in an investigation usually does not satisfy the evidence rules of the Court. Owner reports, for example, cannot be submitted into evidence to prove the truth of the matter reported. Instead, to support certain motions, the agency gathers affidavits from the owners. This process is costly and time-consuming, but trifling compared to the agency's cost at trial, where it must present witnesses to testify. The judge in the Ford Seat Back case recently suggested that at trial, to prove that the defect caused the accidents and that the accidents and injuries occurred, the Government must bring before the court all the owners reporting accidents, their mechanics and doctors, and other relevant witnesses. Requiring the agency to prove hundreds of tort cases in the context of each safety-defect case would unreasonably tax the time and funds of the court and both parties.

Like owner reports, accident investigation statistics, too, pose evidentiary problems in court. Because they stem from police reports which are frequently considered hearsay, courts might reject them. Other courts might accept the statistics into evidence but limit their weight because of doubts about their reliability and accuracy. Thus, proving a case based on numbers of accidents and injuries known to have occurred is a difficult, costly and time-consuming exercise.

The industry argues further that the agency, to prove the existence of a safety defect, must show not only that some threshold number of accidents, injuries or deaths have occurred, but also that some threshold number of accidents, injuries or deaths are likely to occur in the future. The industry calls this prediction of future events "risk analysis". It bases risk analysis on (1) the limited and inaccurate accident information available and (2) certain unproven assumptions. The reliability of risk analysis is thus inherently questionable. In addition, risk analysis consistently underestimates the future risk because, in each case, the number of accidents that occurred is probably greater than the reports of accidents, on which the analysis relies.

Proving every case according to the industry's scheme would, then, (1) limit the possible safety defects to those which appear from accident data and (2) impose severe cost, time and evidentiary burdens on any litigation emerging from the accident-based decision.

In addition to the practical difficulties, sole reliance on numbers of accidents presents statutory problems. The Act's purpose is preventive. The agency would be violating that goal if in every case it waited for evidence of a significant number of accidents, injuries or deaths to accumulate. In addition, the Act specifies several ways of finding safety defects: testing, inspection, investigation, research, examination of communications, or "otherwise". The Act thus directs the Secretary to use any means available, not just accident information, to discover safety defects. The industry's recommended approach would significantly undermine the statutory purpose and effectiveness.

For these reasons, the agency, while using accident data where it is available and relevant, is now seeking to prove the existence of safety defects in simpler, clearer and less costly ways. The agency, in the currently developing case law, is offering to the courts a *per se* theory. In each of the cases now pending, the critical question is not whether a

defect exists but whether the defect relates to motor vehicle safety.

The per se theory applied to this question would establish certain broad and simple principles: If a defect causes failure of a critical vehicle component or of a major vehicle control system, it is safety related. If a defect causes vehicle fire, it is safety related. If a defect suddenly moves the driver away from steering, accelerator and brake controls, it is safety related. The agency has tested the viability and scope of this theory in four cases. (The agency at one time was testing the theory in five cases but the fifth case, Engine Mounts, which involved loss of speed control, was settled before trial with a recall and a civil penalty.) Each case, and its alleged hazard, is listed below. A more detailed description of the cases discussed in this memorandum appears in the attached appendix.

1. Defect causes failure of major vehicle control system
 - a. Pitman Arms - loss of steering system
2. Defect causes failure of critical vehicle component
 - a. Windshield Wipers - wipers fall off in rain and snow
3. Defect causes fire
 - a. Quadrajets-Carburetor - carburetor plug leaks fuel, causing fire in engine compartment.
4. Defect causes sudden removal of driver from vehicle control instruments
 - a. Seat Back - seat collapses sideways and rearward, throwing driver off balance and away from steering wheel, brakes and accelerator pedal

United States v. General Motors (Pitman Arms)

This case was appealed from an adverse district court ruling which involved the question of whether a low speed (less than 10 mph) failure of a critical safety system (steering) creates an unreasonable risks of accident occurrence. While high speed failures are admittedly dangerous, the manufacturer contended successfully in the district court that the Government had not met its burden to show that such failures did indeed occur at high speeds. During the course of the trial, however, the Government did show that a large number of failures had occurred. The court found that the large number of replacement part sales, some 26,000, for a vehicle population of some 234,000 1959 and 1960 Cadillacs, was a strong indication of a large number of failures. What the trial court held, however, was that the Government failed in its burden of proof to establish that these failures imposed an unreasonable risk of accident, death or injuries.

On appeal the Government contended that low speed failures do present such hazards, relying, in part, on accident statistics which indicated that a significant proportion of all accidents, injuries, and deaths do occur at low speeds. The Government also sought to have the lower court's apparent reliance on a quantitative "risk analysis" overruled on the grounds that any such analysis is unreliable and is, in addition, irrelevant.

On June 28, 1977 the Court of Appeals for the District of Columbia ruled in the Government's favor and indorsed the agency's per se theory:

"The evidence is uncontradicted that General Motors sold six times as many pitman arm replacements for the 1959-60 Cadillac models as for adjacent years; that steering pitman arm failures have occurred while these models were being driven; and that when the steering pitman arm fails, the driver loses control of the car. We hold that, under the statute these uncontradicted facts demonstrate an 'unreasonable risk of accidents' stemming from the defect."

The Supreme Court denied review.

United States v General Motors (Carburetors)

The Government sued GM contending that about 175,000 1965-1966 Chevrolets and Buicks contained a safety related defect arising from faulty carburetor plugs. As a result of the defect, fires occur in the engine compartments of these vehicles. These fires can and have spread to the passenger compartment as well.

General Motors admitted that there had been at least 665 reported incidents of engine compartment fires in vehicles equipped with the Rochester Quadrajec Carburetor. The Government asserted that GM received reports of 947 to 1306 carburetor failures and at least 958 fires in the vehicles in question. The Government also claimed that there were high sales of replacement parts and that a single manufacturer of these plugs supplied the distribution system with an average of 1950 replacement plugs per month during a six month period.

The Government won in the District Court on a motion for summary judgment and was awarded a \$400,000 civil penalty. GM appealed and applied for a stay of the recall order. The stay was denied. GM then recalled the vehicles.

On appeal, General Motors contended that the Court ignored General Motor's risk analysis which attempted to quantify and minimize the future occurrence of failures and resultant accidents and injuries. The Government, of course, argued primarily that the estimate of future failures, accidents, injuries and deaths is irrelevant under the per se theory.

The Court of Appeals for the District of Columbia again accepted the Government's per se theory of defect law:

"In our view, where a defect -- a term used in the sense of an 'error of mistake' -- has been established in a motor vehicle, and where this defect results in hazards as potentially dangerous as a sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future, then the defect must be viewed as one 'related to motor vehicle safety,' and the Act's basic purpose of protecting the public requires that notification be provided.

United States v. Ford (Brackets)

The Government sued Ford contending that over one-half million 1968 and 1969 Mustangs and Cougars contain a defect related to motor vehicle safety in the front bucket seats. The seats fail suddenly when the inboard seat back hinge pin-pivot arm bracket snaps, allowing the seat back to fall rearwards in a clockwise direction. Failure can throw the driver backward and sideways, causing impairment of visibility, loss of steering, brake and accelerator control, and injury (even when an accident does not occur). During the course of the District Court litigation, Ford admitted that between 135,000 and 170,000 seat bracket failures had occurred.

The District Court granted the Government's motion for summary judgment. Ford appealed and applied for a stay of the District Court order. Unable to obtain a satisfactory stay, Ford finally recalled the vehicles.

The Court of Appeals rejected Ford's appeal.

United States v. Ford (Wipers)

Here the Government contended that sudden and unforewarned failure of the windshield wipers installed on some 189,000 1971-1973 Capris can result in immediate impairment of driver visibility during adverse weather conditions thereby increasing the risk of accident occurrence. As evidenced by replacement part sales, there is a 40% failure rate.

Several important principles were in issue in this litigation. The first is that in order to demonstrate the safety effect of a particular component failure, it is not necessary to produce evidence solely limited to failures which have occurred on the vehicles which are the subject of litigation. Thus, evidence of a wiper failure on a Plymouth would be admissible to show the likely effect of wiper failure on a Capri. The second is that although the NHTSA may focus on its *de novo* enforcement litigation it may establish other modes of failure involving the same component in order to establish that a defect exists. Thus, while the NHTSA investigation focused on wiper failure resulting from inadequate linkages in the wiper system, during the litigation the Government may additionally establish that failure resulted from faulty wiper motors as well. The third is that the Government may rely on comparative warranty and replacement part sales data in order to prove the existence of a defect. The fourth is that courts should not rely on quantified "risk analyses" of a particular component failure but should instead rely on the demonstrable effects of such failure on driver performance. The fifth is that a component which is universally recognized as providing an added margin of safety under specialized driving conditions, i.e., adverse weather, presents a *per se* unreasonable risk to the motoring public when it fails under those conditions. The sixth is that any defect which disables a vehicle causing it to park along the roadside presents an unreasonable risk to safety because of the hazards attendant to such parked vehicles.

After the trial the court ruled in favor of the Government.

Ms. GILLAN. Thank you very much.
Senator McCASKILL. Thank you all very much.
[Whereupon, at 5:07 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL TO DAVID J. FRIEDMAN

Question 1. The Moving Ahead for Progress in the 21st Century Act (MAP-21) required the agency to issue a number of new safety regulations, many of which are far behind schedule and have missed statutory deadlines. Attachments included with Ms. Gillan’s testimony on behalf of Advocates for Highway and Auto Safety detail these mandates (“NHTSA Overdue & At-Risk Safety Regulations” on page 23 and “MAP-21 Motorcoach Safety Action Items and Schedule” on pages 24–26).

For each regulation outlined in Ms. Gillan’s testimony, please provide a status update, including an anticipated date of completion.

Answer. At NHTSA, the safety of the motoring public is our top priority, and we work to allocate our resources strategically to ensure the maximum focus on saving lives. NHTSA is working diligently to implement the various motor vehicle and highway safety improvements contained in MAP-21, as well as other rulemaking, enforcement, vehicle research, and highway safety activities that significantly reduce highway injuries and deaths. For example, in 2013, NHTSA issued two final rules that fulfill MAP-21 mandates to improve motor vehicle safety. One rule requires seatbelts on motorcoaches, and the other requires all major automakers and motorcycle manufacturers to provide consumers with online access to vehicle recall information that is searchable by the vehicle identification number. NHTSA also recently issued two notices of proposed rulemaking in response to MAP-21 mandates. One notice proposes to establish improved roof and roof support standards for motorcoaches to prevent injuries in rollover crashes, and the other notice proposes upgrades to the Federal motor vehicle safety standard for child-restraint systems to ensure child passengers are protected in side crashes. In addition to the rulemaking activities responsive to MAP-21, NHTSA has also completed several important activities in the past two years. Just a few examples of these include releasing guidelines to minimize in-vehicle distractions, proposing new minimum sound requirements for hybrid and electric vehicles, and completing a rule to significantly reduce the risk of fatalities and serious injuries caused by backover accidents by requiring rear visibility technology in all new passenger vehicles. Finally, NHTSA continues to look towards the future. Earlier this year we announced the decision to move forward with vehicle-to-vehicle communication technology for passenger vehicles followed by the publication of an Advance Notice of Proposed Rulemaking in August. The following table provides the status of the MAP-21 requirements outlined in Ms. Gillan’s testimony:

MAP-21 Section	Requirement	Status
31203 Civil penalties	Final rule by 1 year after date of enactment (10/1/2013). Date extended to 1/31/2015.	In a February 6th letter, Secretary Foxx informed Congress that we would not meet the deadline for this final rule and established a new deadline of January 31, 2015 as provided by MAP-21 Section 31505. Currently, NHTSA is working towards issuing a Notice of Proposed Rulemaking (NPRM) in 2015 and plans to notify Congress of a new deadline for the final rule as soon as possible. Note: This rule concerns penalty assessment criteria. MAP-21 allowed the agency to employ the new maximum civil penalty amounts after one year even if this rulemaking was not complete. We have exercised that authority and imposed the maximum allowable \$35 million dollar fine as appropriate.

MAP-21 Section	Requirement	Status
31402 Electronic systems performance	Complete an examination of the need for safety standards by 2 years after date of enactment (10/1/2014). Upon completion of the examination, including public comment, the Secretary shall submit a report to Congress.	On October 7th, NHTSA published a Request for Comments on automotive electronic control systems safety and security in the Federal Register. The Request for Comments presents the agency's progress in conducting the examination. We illustrate how we conducted the examination in each of the areas in section 31402 and seek public comment on that examination. We intend to incorporate the comments received in our report to Congress identifying the need for safety standards. We expect to submit the report to Congress in 2015.
31502 Child restraint anchorage systems	Initiate rulemaking by 1 year after date of enactment (10/1/2013). Final rule or Report to Congress describing why the Secretary is not issuing a final rule by 3 years after date of enactment (10/1/2015).	NHTSA expects to issue an NPRM in early 2015. NHTSA will determine a schedule for the final rule after publishing the NPRM and reviewing public comments on the proposal.
32703(a) Safety belts	Final rule by 1 year after date of enactment (10/1/2013).	Complete. Final rule requiring seatbelts on motorcoaches issued in November 2013.
32703(b)(1) Roof strength and crush resistance	Final rule by 2 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2014).	On July 30, NHTSA issued an NPRM to set requirements for motorcoach structural integrity during rollovers. The comment period for this proposal ended October 6, and NHTSA will set a schedule for the final rule after analyzing the public comments.
32703(b)(2) Anti-ejection safety countermeasures	Final rule by 2 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2014).	NHTSA is currently drafting a proposal and expects to issue an NPRM in 2015.
32703(b)(3) Rollover crash avoidance	Final rule by 2 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2014).	NHTSA issued an NPRM in 2012. NHTSA is working on the final rule and expects to publish the final rule in early 2015.
32703(c) Commercial motor vehicle tire pressure monitoring systems	Final rule by 3 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2015).	NHTSA is currently determining the most appropriate next steps.
32703(d) Tire performance standard	Final rule or Report to Congress describing why the Secretary is not issuing a final rule by 3 years after date of enactment (10/1/2015).	In 2013, NHTSA issued a supplemental NPRM to upgrade the safety standard for new pneumatic tires for motor vehicles with a Gross Vehicle Weight Rating of over 10,000 pounds, such as motorcoaches, and we intend to meet the statutory deadline.
32703(e)(2) Retrofit for existing motorcoaches	Report to Congress by 2 years after date of enactment (10/1/2014).	NHTSA expects to submit a report to Congress on seatbelt retrofit in 2015. The report to Congress on anti-ejection safety countermeasure retrofits is contingent upon completion of the final rule under Section 32703(b)(2) above.
32704 Fire prevention and mitigation	Final rule by 3 years after date of enactment of this Act if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2015).	NHTSA expects to complete the research by the end of this year and will then determine appropriate next steps.

MAP-21 Section	Requirement	Status
32705 Occupant protection, collision avoidance, fire causation and fire extinguisher research & testing	Complete research and testing by 3 years after date of enactment (10/1/2015). Final rule by 2 years after completion of each research and testing initiative if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act.	NHTSA research is ongoing, and we will determine appropriate agency actions upon the completion of the required research and testing.

ATTACHMENT—ITEMS FOR THE RECORD

David J. Friedman, Deputy Administrator
National Highway Traffic Safety Administration
U.S. Department of Transportation

1. Subpoena power

Senator MCCASKILL. How many times have you been to court for someone to answer a question?

Mr. FRIEDMAN. I don't know that we've done that in the last—certainly 20 or 30 years, because we haven't had to, and I think that's the power of what we do. We put the companies in a position where they understand, if they fail to answer those questions, there will be consequences, and so they provide us with the answers. I consider that a very important tool that we're able to get those answers, rather than have to be tied up in court before they will give them to us.

RESPONSE: NHTSA's authority to compel manufacturers to provide information is provided in 49 U.S.C. § 30166. NHTSA routinely compels manufacturers to answer questions under penalty of law. While NHTSA has not issued a demand styled as a "subpoena" to a manufacturer in a defect investigation in the last twenty years, NHTSA regularly invokes 49 U.S.C. § 30166(e) by issuing "information requests." NHTSA also invokes 49 U.S.C. § 30166(g)(1) to issue a special order to compel witnesses or entities to appear or produce answers or records regardless of whether the recipient may have violated the Motor Vehicle Safety Act. A manufacturer is subject to substantial penalties if it fails to respond to the agency's requests for information or respond truthfully under 49 U.S.C. § 30166(e) and (g)(1). See 49 U.S.C. § 30165(a)(3) and (a)(4). Since the 1990s and without having to go to court, NHTSA has in fact obtained civil penalties from the following manufacturers for failing to respond completely and truthfully to NHTSA's information requests:

- GM in 2014: \$441,000;
- Piaggio in 2009: \$100,000;
- Grote Manufacturing in 1999: \$32,000;
- Ford in 1999: \$425,000;
- Mack Truck in 1990: \$1,000.

Information requests or special orders provide the agency with broader authority than subpoenas as they can compel manufacturers to provide answers to written questions in addition to compelling appearance or providing documents, records, or things.

2. TSB deadline

Senator BLUMENTHAL. . . . MAP-21 required NHTSA to make those bulletins available on its website searchable by the public by 2013. As of May, they're still not on the website. Can you tell me why, and can you commit to me when NHTSA will meet that deadline—it's already missed the deadline—when it will have them available? Well, can you commit to me when you will complete that task? You've missed the deadline. When will it be done?

Mr. FRIEDMAN. We're working to target, I believe, in the next six months to try to get that information up there, but I can get you a more solid date.

Senator BLUMENTHAL. Well, I would like a more solid date.

RESPONSE: MAP-21 Section 31303 requires a manufacturer to give copies of communications with dealers and owners about a defect or noncompliance with a motor vehicle safety standard and an index of those communications to NHTSA.

MAP-21 also requires NHTSA to make these available on a publicly accessible Internet website. While MAP-21 does not specify a deadline for these requirements, NHTSA is preparing to compel the indexes from manufacturers, and intends to make sure this information is searchable from those indexes and available to the public within 6 months.

3. NYT article inaccuracies

Senator BLUMENTHAL. . . . I'd also appreciate any contention in detail that you have disputing the *New York Times* story. You said it was wrong in numerous respects, but I'd like something in writing from you that we can put in the record if you feel, in fact, it was in error in any way.

Mr. FRIEDMAN. I'd be happy to do so.

RESPONSE: The *New York Times* article, "Regulator Slow to Respond to Deadly Vehicle Defects" (September 15, 2014), inaccurately discussed the following issues:

- *NCAP*

The *New York Times* article falsely characterizes the New Car Assessment Program (NCAP) as a misuse of agency resources. The *New York Times* article shows little knowledge and understanding of the origins and evolution of NCAP. NCAP is an effective program for generating and providing information that enables consumers to identify top performing products and thereby inducing the manufacturers of those products to compete with one another in improving their safety performance to meet consumer demand.

NHTSA established NCAP in response to Congress' enactment of the Motor Vehicle Information and Cost Savings Act of 1972. Title II of the Cost Savings Act requires the Secretary to

maintain a program for developing the following information on passenger motor vehicles:

. . .

(2) crashworthiness, crash avoidance, and any other areas the Secretary determines will improve the safety of passenger motor vehicles.

and to provide that information to consumers.

The rationale for generating and disclosing product information was well described by former OIRA Administrator Cass Sunstein in a June 18, 2010 memorandum to the heads of executive departments and agencies:

Sometimes Congress requires or authorizes agencies to impose disclosure requirements instead of, or in addition to, mandates, subsidies, or bans. For example, automobile companies are required by law to disclose miles per gallon (MPG) ratings for new vehicles, and a standardized Nutrition Facts panel must be included on most food packages. The goal of disclosing such information is to provide members of the public with relevant information at the right moment in time, usually when a decision is made.

Administrator Sunstein amplified his comments in a September 8, 2011 memorandum entitled "Informing Consumers by Smart Disclosure."

Under the leadership of then NHTSA Administrator Joan Claybrook, model year 1979 vehicles were the first vehicles tested and rated for NCAP. After the Senate and Conference Appropriations Reports for Fiscal Year 1992 requested that NHTSA improve its methods of informing consumers about NCAP results, the agency established the five-star rating system, which was first used for MY 1994 vehicles.

To ensure that consumers shopping for new motor vehicles have easy access to the safety ratings, Congress enacted legislation ("Stars on Cars") in 2005 amending the Automobile Information Disclosure Act to require that motor vehicle manufacturers place the safety ratings on the "Monroney" price sticker on each new vehicle.

Other countries and regions have followed NHTSA's example. There are now NCAP programs in Latin America, the European Union, China, Japan, Korea, the ASEAN countries and Australia. In addition, the Insurance Institute for Highway Safety began its program for generating and disseminating safety ratings in the mid-1990s.

The article also incorrectly implies that the ratings from the NCAP program are not useful indicators of safety, but rather that the ratings are only a marketing tool for manufacturers.

In actuality, the NCAP ratings have enabled consumers to push automakers to improve vehicle safety features. NHTSA periodically updates NCAP, pushing the bar for high ratings even higher most recently in model year 2011. The agency made frontal and side crash ratings criteria more stringent by upgrading test dummies, establishing new injury criteria, adding a new side pole crash test, and creating a single overall vehicle score that reflects a vehicle's combined frontal crash, side crash, and rollover ratings. The MY 2011 upgrade also added recommended crash avoidance technologies to the NCAP program. This upgrade indicates to consumers which vehicles have recommended advanced technology features and which do not so they can more easily find vehicles with the increased levels of safety they prefer. This year NHTSA has added rear visibility cameras as a recommended advanced technology.

In the first year of the more stringent program, fewer than 20 percent of vehicles received the top level of 5 stars in the overall safety rating. By MY 2014, over 60 percent of vehicles received 5 stars in the overall safety rating. In other words, manufacturers have quickly improved their vehicle designs in response to the more stringent tests, providing extra margins of safety beyond what is required in several important areas. Along with NHTSA's Federal Motor Vehicle Safety Standards and efforts to reduce dangerous driving behaviors, these consumer-information-driven vehicle safety improvements have helped the motor vehicle fatality rate in the United States to reach record lows.

Finally, the article incorrectly claims that "the agency spend[s] about as much money rating new cars—a favorite marketing tool for automakers—as it does investigating potentially deadly manufacturing defects".

NHTSA's Office of Defects Investigation (ODI) has a budget of \$17 million—nearly 60 percent higher than the NCAP budget of \$10.6 million when all resources are accounted for (*i.e.*, both the contract dollars and the money to pay staff). Human capital is key to NHTSA's success and ODI has 10 times the staff as NCAP—51 employees in ODI but only five employees in NCAP. The NCAP budget is primarily used to purchase and test new vehicles to help push automakers to produce vehicles that provide better protection in a crash.

- *Defects Investigation Budget*

The article says that "[t]he agency's budget for safety defects investigation has hovered around 1 percent of its total budget for each of the last 6 years." This statement is very misleading.

The relevant number is seven (7) percent. Of NHTSA's \$819 million budget in Fiscal Year 2014, by statute, \$561.5 million of funds is provided directly to states as grants for their own highway safety programs. Of the remaining \$257.5 million, which is under the direct control of NHTSA, the safety defects budget stands at seven (7) percent, including both safety defects program expenses as well as defects investigation staff salaries and benefits.

- *Stalling*

Throughout the *New York Times* article, stalling issues and complaints of stalling issues are depicted as being a direct result of ignition switch problems. ("... the agency had received more than 5,000 complaints about the ignition problems, including more than 2,000 about unexpected stalling . . .")

A gross count, such as the one employed by the *New York Times*, misleads readers to believe that all 5,000 ignition complaints were related to unintended key rotation and 2,000 complaints were related to stalling as a result of unintended ignition key rotation.

An analysis of over 470,000 consumer complaints from calendar year 2003—2013 shows considerably smaller numbers than those cited by the *New York Times*. Our review, when focused on the vehicles recalled by GM for the ignition switch defect, identified approximately 135 consumer complaints of stalling from 2003 to 2013 where the consumer stated that the ignition switch was involved in the incident and where the vehicles were subsequently recalled by GM. These 135 complaints were received in an 11-year period. In any one of those years, NHTSA received no more than five complaints for any one of the recalled models for any single model year. *The New York Times* failed to consider the full scope of relevant information in its article.

NHTSA was aggressively pursuing stalling complaints during this same time period. From 2003 to 2013, NHTSA opened 10 investigations of stalling in GM vehicles that led to eight recalls of almost 800,000 vehicles and 44 stalling investigations overall, leading to recalls of approximately 5.1 million vehicles.

We note that there are many reasons for vehicle stalling. Vehicles may stall from lack of maintenance. They may also stall from contaminated fuel. Failures or intermittent faults in engine sensors, engine management computers, fuel systems and onboard vapor recovery systems can all cause stalling. Software in the various computers and network issues within a vehicle may also cause a stall. Many of the broader stalling complaints received by NHTSA appear to relate to such issues that are unrelated to the ignition switch issue that led to the air bag safety risk in affected GM vehicles.

- *Jeep Grand Cherokee and Liberty Fuel Tank Recalls*

The New York Times article also falsely claims that the recent Jeep Grand Cherokee/Jeep Liberty recall illustrated NHTSA's failure to act with vigor. The article claims that the agency "scaled back" its recall request after Chrysler "balked" at recalling all the vehicles encompassed by the agency's recall request letter. The Times also stated that NHTSA "agreed to Chrysler's demand that the automaker not be required to say the vehicles had a safety defect;" and that the agency agreed to "Mr. Marchionne's demand that it stop describing the vehicles as defective."

This information is false and inconsistent with public record. After NHTSA issued a recall request letter to Chrysler, the company took the unprecedented step of immediately issuing a public refusal to perform a recall. However, NHTSA continued to demand a recall of Jeep vehicles that posed an unreasonable risk to safety. Because of Chrysler's resistance to NHTSA active pursuit of the vehicles with safety defects, it appeared that resolution of the dispute would require years of protracted litigation, during which no vehicles would either be recalled or remedied.

Engagement by NHTSA with Sergio Marchionne, the CEO of Chrysler's parent corporation, Fiat, opened the door to a safety recall of all vehicles that posed an unreasonable risk to safety. As a result, a settlement was reached. Under this settlement, the defective vehicles, those at risk for fuel tank fires in low to moderate speed impacts were recalled and remedied. Additionally, some newer Grand Cherokee models were not part of the recall because data did not demonstrate an unreasonable risk to safety in the same low to moderate speed impacts. Despite that fact, NHTSA was able to get Chrysler to agree to inspect these vehicles as part of a service campaign.

The New York Times article also inaccurately states that NHTSA agreed to a demand by Chrysler to stop describing the recalled vehicles as defective. This is simply not true. NHTSA classifies this issue as a safety defect and required Chrysler to use the term safety defect in its owner notification letters. (See owner letter <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM462519/RCONL-13V252-6248.pdf>).

The agency's defect investigation of the affected Chrysler vehicles is not closed, and we will continue to monitor these vehicles for defects.

- *Open Investigations from the 90s*

The article states that, "33 investigations from the 1990s remain open."

This information is inaccurate. NHTSA's public records show a closed date for all 34 (not 33) investigations opened during the 1990s. We believe the *New York Times* made this error partly because of a database issue. The agency deployed a new database system in late 2002. The migration from the legacy system to the new system inadvertently created a database update error that listed the investigation status field as "open" even though the closed date was properly set to a valid date. Had the *New York Times* examined the actual case files in the public database they would have seen that these investigations were closed. We are working to correct the database error.

- *Invoking Legal Authority*

The New York Times article claims that "[i]t has been 35 years since the regulator has invoked its legal authority to order a company to recall cars."

That is incorrect. In June 1996, NHTSA ordered Chrysler to recall certain Chrysler Cirrus and Dodge Stratus vehicles for noncompliance with the safety standard for seat belt anchorages. The United States subsequently filed suit in Federal court in D.C. to enforce NHTSA's order.

More recently, in 2012, NHTSA issued orders to two three-wheeled motorcycle manufacturers, finding their recalls inadequate and requiring them to take

specified steps to carry out effective recalls. The United States sued both of these manufacturers to compel them to comply with the agency's orders.

More importantly, the need to explicitly exercise legal authority to order a recall is a poor and misleading measure of NHTSA's effectiveness in getting safety defects quickly addressed by manufacturers. In the very many cases where NHTSA "influences" a recall, the agency regularly pressures reluctant manufacturers to recall vehicles by invoking its legal authority to order a recall. It is quicker, and better protects the American public, to pressure the manufacturer to conduct a recall than it is to go through the formal process of a written determination of a defect, holding a public hearing, and issuing a final determination that can be challenged and tied up in court.

- *IG Audit*

The New York Times article omits the fact that the Inspector General's (IG) audit was conducted at the Department's own request, and supplements an internal due diligence effort started by NHTSA and called for by the Secretary. The Secretary officially requested the audit soon after GM recalled the subject vehicles. NHTSA's due diligence is focused on understanding past events and implementing improvements going forward.

4. Contractor bonus for workforce assessment

Senator MCCASKILL. Ten recommendations. And the one that's outstanding—and we were told back in April that it would be done in May—in your internal look at whether or not you've got the right resources. I'm worried that the programming money for this Agency has been flatlined for a decade. In light of all the technological advances, that just doesn't compute with me. So where is the workforce assessment that is so necessary for us to evaluate whether or not you are properly supported and whether we need to do a much better job to supporting you?

Mr. FRIEDMAN. We have had some delays in that effort, in part because the quality of some of the work from a contractor, where we were trying to make sure to use a contractor to help leverage our resources and use the dollars that we had, there were some fundamental problems with the product that was delivered from that, and as a result—

Senator MCCASKILL. How much did you pay for that?

Mr. FRIEDMAN. I don't know that number, but we can get it to you.

Senator MCCASKILL. Have we paid them a bonus yet?

RESPONSE: The contractor was not and will not be paid a bonus for the work. NHTSA paid \$400,000 for services associated with the ODI workforce assessment. NHTSA determined that the work met the minimum contract requirements, but nonetheless required considerable refinement. NHTSA is currently finalizing the assessment and will complete the workforce assessment by mid-November.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
DAVID J. FRIEDMAN

Issue: Whether NHTSA has adequate resources

Question 1. The administration requested \$851 million for NHTSA in its budget request for fiscal 2015. Of that amount, \$20 million is for enforcement. But only about half of that amount—\$10.6 million—is targeted for defects investigations. In Fiscal Year 2014, NHTSA spent about the same amount, or \$10.6 million, for investigations of safety defects. The president's budget request would keep NHTSA's level of investigators at roughly 50—despite the growing safety defects issues that come to light every day. Does the administration's budget request accurately reflect the oversight mission that NHTSA is tasked with carrying out?

Question 1a. Would \$10 million and 50 investigators really allow your agency to address the growing challenges that continue to arise in auto safety?

Answer. We appreciate the opportunity to discuss the budget request for the safety defects investigation program. In the President's Fiscal Year (FY) 2015 Budget, NHTSA requested \$10.6 million for the safety defects investigations program, which is consistent with the FY 2014 request. However, this request is for program costs and does not include salaries and benefits for Office of Defects Investigation (ODI) employees. While NHTSA did not ask for additional program dollars in the FY 2015 request, the Agency requested six additional positions for ODI. And in the President's FY 2014 Budget, the Agency requested four additional positions for ODI. The

“Consolidated Appropriations Act, 2014” and “Consolidated and Further Continuing Appropriations Act, 2015” did not provide NHTSA with the full level of funding in its budget proposals to support the additional personnel requested in its FY 2014 and FY 2015 budgets.

ODI’s work is important to all highway users, as is evident from the recent recalls of Toyota and General Motors vehicles and vehicles with defective Takata air bags. To increase the effectiveness of ODI’s work, we believe that the following steps are necessary: enhance ODI’s ability to use the latest technology to help identify possible safety defects; increase the public’s awareness of reporting safety problems with their vehicles or vehicle equipment to NHTSA; and provide ODI with the personnel resources to address potential safety risks.

Looking ahead, areas of new opportunities for safety defect investigations could include an advanced data mining and analytical tool, incorporation of business intelligence to enhance the ability of defect screeners and investigators to identify new defect trends. On another front, in the future NHTSA may wish to undertake a consumer awareness and outreach campaign as a large portion of the data received about defects comes from consumers.

Having a sufficient number of qualified staff is critical to an effective safety defects investigation program. ODI currently has eight defect screeners and four Early Warning data analysts to identify potential safety defects, and 16 investigators to conduct formal investigations. The over 250 million registered vehicles in the U.S. creates tremendous data collection and analysis demands on ODI staff that will only continue to grow due to a significant increase in the number of consumer complaints received and the number of recalls.

We look forward to working with Congress on the FY2016 Budget to ensure that NHTSA has the additional resources it needs to be adequately funded to fulfill its safety responsibilities and respond effectively to emerging safety issues through these and other activities.

Issue: Whether NHTSA is adequately addressing the problem of “hot cars”

Question 2. In recent years, we’ve begun witnessing a growing phenomenon during summer months: the death of children in so-called “hot cars” succumbing to hyperthermia or heat stroke. This is also a problem during spring and fall months, too. About thirty children die a year in these tragedies, including many in Connecticut, where we’ve seen a number of heartbreaking incidents in recent months. The 2012 surface transportation reauthorization law, MAP-21, gave DOT and NHTSA the authority to “initiate research into effective ways to minimize” this problem, including the use of technology and public awareness campaigns. What efforts has NHTSA taken to address this problem since MAP-21 was enacted over two years ago?

Answer. NHTSA has led the nationwide efforts to address childhood heatstroke for the past 6 years. NHTSA has been actively working to educate the public over that time on the dangers of leaving a child unattended in a car and has also been engaged on technologies that could supplement such educational activities to prevent these tragic incidents. Since 2012, we have issued public safety advisories during warmer months to alert parents and caregivers of the safety risks involved, and we work closely with State and Federal partners to spread the word.

In April 2012, the Department launched “Where’s Baby? Look Before You Lock,” the first-ever national campaign to draw public attention to this issue and has continued the campaign in each subsequent year. Since the campaign started, “Where’s Baby?” has been supported by a total of \$4.6 million media campaign focused on radio and Internet programming that runs from early May to late September. We have since carried the message to communities across the country, including Connecticut, through more than a dozen in-person events, television and radio interviews across the country, social media messaging, and through our many partners in this cause. Our ad buy includes ads that are being heard on stations covering Connecticut. The Connecticut State Highway Safety Office is using NHTSA grant funds to support a “Look Before You Lock” Campaign with the Connecticut Children’s Medical Center. In addition, we have developed public awareness tools that our partners can use in their communities, businesses, day care centers, parking lots, and other places that reach a large audience. We have also partnered with the Department of Health and Human Services to increase outreach to day care centers.

As discussed in response to question 2b, we have also been conducting research to evaluate the effectiveness of and establish standard performance tests for technological solutions to the tragic risk of children left in cars unattended.

Question 2a. What technological solutions are available to address this problem? If technology can let us know when we need to buckle a seat belt, can’t it let us know that there’s a child in a back seat?

Answer. On the technology side, we sponsored a research project in 2012 that surveyed the marketplace and evaluated products intended to provide reminders to prevent children from being left behind in parked vehicles. The research determined that these devices were not sufficiently reliable and could provide a false sense of security to the caregiver using them. Since 2012, we have been cataloguing newer devices on the market, as well as monitoring design concepts, and are developing test procedures to evaluate the performance of these devices objectively. We expect to finish that work in 2015. Once finalized, it will help accelerate the development of effective systems by making clear to developers how they can design for and demonstrate a system that could warn of a child that is unintentionally left in a vehicle.

Such systems could help with about one-half of the fatalities associated with childhood heatstroke in a vehicle—cases where children were unintentionally left in cars. Another 20 percent were intentionally left in a vehicle and 30 percent gained access to an unlocked vehicle.

The technology used for seat belt reminders is based upon pressure on the seat and provides a warning to the driver while the vehicle is in motion. Such technology is likely not appropriate for identifying children in hot vehicles. The technology to address children in hot vehicles would need to differentiate between children alone in a vehicle versus an unoccupied child seat or other items frequently placed on a back seat and would need to reliably provide an alert to adults who are outside of the vehicle. NHTSA has catalogued several proposed technological solutions involving child seats and various aftermarket devices, but at this point we are not aware of any that are sufficiently reliable or effectively address the problem.

Question 2b. Is legislation needed to prevent children from dying in hot cars?

Answer. At this time, given the practical and technological challenges that exist, NHTSA does not believe that legislation requiring technological solutions would effectively address the problem yet and recommends continued support for NHTSA's public education, technology evaluation, and test procedure development efforts.

Issue: Whether NHTSA is moving swiftly to promulgate regulations on speed limiters for commercial trucks

Question 3. Devices known as “speed limiters” can restrict a truck’s speed to a pre-programmed maximum level. Research has shown that these devices may significantly reduce the number of crashes involving heavy duty commercial trucks. NHTSA has been working for several years to implement a rule that mandates these devices for certain vehicles, but a rule has not yet been released. Safety advocates and members of the trucking industry have voiced their support for such a mandate, and just recently a representative of the American Trucking Associations testified before the Senate Commerce Committee’s Surface Transportation Subcommittee advocating for a speed limiter rulemaking. What is the status of the proposed rule?

Answer. In response to a petition from the American Trucking Associations and Road Safe America to initiate rulemaking to require manufacturers to limit the speed of heavy vehicles, NHTSA published a notice on January 3, 2011, granting the petition and announcing that the agency would initiate the rulemaking process with a notice of proposed rulemaking. Because this rulemaking would apply to many commercial vehicles that are regulated by the Federal Motor Carrier Safety Administration (FMCSA), NHTSA and FMCSA decided that the most effective approach to improve roadway safety would be to issue a joint rulemaking proposal that will include both a Federal motor vehicle safety standard and a Federal motor carrier safety regulation. Although developing a joint rulemaking has required additional time and coordination, FMCSA’s involvement will help ensure effective enforcement. A proposed rule is currently under Departmental review, and we expect to issue this proposal for public comment in the near future. http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=2100&Image58.x=26&Image58.y=10

Question 3a. When will a final rule be issued?

Answer. The expected date for the final rule will be determined after analyzing public comments on the proposal.

Question 3b. What vehicles will be governed by the final rule? Will it apply to new vehicles or existing ones as well?

Answer. After analyzing public comments on the proposal, NHTSA will determine what vehicles will be included in the final rule.

Issue: Whether NHTSA is moving swiftly to promulgate regulations on motorcoach safety

Question 4. MAP-21 included important vehicle and traffic safety provisions directing agency action on key lifesaving measures, including many recommendations issued by the National Transportation Safety Board (NTSB) to improve occupant protection and operational safety in motorcoach travel. These issues languished for years until specific deadlines for agency action were included in the surface transportation bill. What is status of the rulemakings concerning motorcoach safety that were mandated in MAP-21?

Question 4a. When will NHTSA complete the issuance of final rules on the motorcoach safety provisions?

Answer. At NHTSA, the safety of the motoring public is our top priority, and we work to allocate our resources strategically to ensure the maximum focus on saving lives. NHTSA is working diligently to implement the various motor vehicle and highway safety improvements contained in MAP-21, as well as other rulemaking, enforcement, vehicle research, and highway safety activities that significantly reduce highway injuries and deaths. For example, in 2013, NHTSA issued two final rules that fulfill MAP-21 mandates to improve motor vehicle safety. One rule requires seatbelts on motorcoaches, and the other requires all major automakers and motorcycle manufacturers to provide consumers with online access to vehicle recall information that is searchable by the vehicle identification number. NHTSA also recently issued two notices of proposed rulemaking in response to MAP-21 mandates. One notice proposes to establish improved roof and roof support standards for motorcoaches to prevent injuries in rollover crashes, and the other notice proposes upgrades to the Federal motor vehicle safety standard for child restraint systems to ensure child passengers are protected in side crashes. In addition to the rulemaking activities responsive to MAP-21, NHTSA has also completed several important activities in the past two years, including releasing guidelines to minimize in-vehicle distractions, proposing new minimum sound requirements for hybrid and electric vehicles, and completing a rule requiring rear visibility technology in all new passenger vehicles, which will significantly reduce the risk of fatalities and serious injuries caused by backover accidents. Finally, NHTSA continues to look towards the future. Earlier this year we announced the decision to move forward with vehicle-to-vehicle communication technology for passenger vehicles followed by the publication of an Advance Notice of Proposed Rulemaking in August.

The following table provides the status of the MAP-21 motorcoach rulemakings. In many cases, the dates for final rules are not indicated because they will depend upon public comments received on proposals or because issuance of a final rule is dependent upon a determination of whether such rule would meet the requirements and considerations set forth in the Vehicle Safety Act.

MAP-21 Section	Requirement	Status
32703(a) Safety belts	Final rule by 1 year after date of enactment (10/1/2013).	Complete. Final rule requiring seatbelts on motorcoaches issued in November 2013.
32703(b)(1) Roof strength and crush resistance	Final rule by 2 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2014).	On July 30, NHTSA issued an NPRM to set requirements for motorcoach structural integrity during rollovers. The comment period for this proposal ended October 6, and NHTSA will set a schedule for the final rule after analyzing the public comments.
32703(b)(2) Anti-ejection safety countermeasures	Final rule by 2 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2014).	NHTSA is currently drafting a proposal and expects to issue an NPRM in 2015.
32703(b)(3) Rollover crash avoidance	Final rule by 2 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2014).	NHTSA issued an NPRM in 2012. NHTSA is working on the final rule and expects to publish the final rule in early 2015.

MAP-21 Section	Requirement	Status
32703(c) Commercial motor vehicle tire pressure monitoring systems	Final rule by 3 years after date of enactment if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2015).	NHTSA is currently determining the most appropriate next steps.
32703(d) Tire performance standard	Final rule or Report to Congress describing why the Secretary is not issuing a final rule by 3 years after date of enactment (10/1/2015).	In 2013, NHTSA issued a supplemental NPRM to upgrade the safety standard for new pneumatic tires for motor vehicles with a Gross Vehicle Weight Rating of over 10,000 pounds, such as motorcoaches, and we intend to meet the statutory deadline.
32704 Fire prevention and mitigation	Final rule by 3 years after date of enactment of this Act if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act (10/1/2015).	NHTSA expects to complete the research by the end of this year and will then determine appropriate next steps.
32705 Occupant protection, collision avoidance, fire causation and fire extinguisher research & testing	Complete research and testing by 3 years after date of enactment (10/1/2015). Final rule by 2 years after completion of each research and testing initiative if the Secretary determines that such standards meet the requirements and considerations set forth in the Vehicle Safety Act.	NHTSA research is ongoing, and we will determine appropriate agency actions upon the completion of the required research and testing.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. EDWARD MARKEY TO
DAVID J. FRIEDMAN

Question 1. According to the Valukas report, in 2004, GM and NHTSA had a secret meeting in which the attendees inexplicably agreed that cars stalled all by themselves, but that this was not necessarily a safety problem. During the hearing, I asked you whether you believed NHTSA erred in 2004. In response to this and other related questions, you said “Senator, in this GM case, the ignition switch and the stall was linked to airbags not deploying, and that is clearly a safety issue,” that “There’s no doubt that stalling can be a serious safety issue” but also that “If a consumer can safely pull their vehicle over to the side of the road and restart that vehicle, then that’s a situation where the consumer can be safe, but obviously, the car company does need to address any stalling issue that represents a safety risk” and that stalling “hasn’t always posed an unreasonable safety risk.”

Some of the victims who were killed after their GM vehicles stalled were driving in cars that were, at the time of the stall, i) traveling at high speeds, or ii) in the middle of making a turn at an intersection before being struck by another car traveling in another direction. Is it NHTSA’s position that drivers should be able to pull a car that stalls in such circumstances over to the side of the road and restart it so that “the consumer can be safe”?

Answer. No. Stalls represent an unreasonable risk to safety depending on when, where and how often they occur. NHTSA’s numerous stalling investigations and the stalling recalls influenced by these investigations demonstrate that NHTSA would consider stalling to be a safety issue under the conditions you describe. While the Valukas report discusses communications between NHTSA and GM about stalling on pages 74 and 75, the report finds that there is “no documentary evidence” of any agreement between NHTSA and GM regarding stalling, and the evidence showed that the agency rejected the approach adopted by GM toward stalls as a safety problem.

Question 1a. Given your statement that it was only the linkage between the ignition switch defect and the airbags not deploying that was “clearly a safety issue,” is it NHTSA’s position that the GM ignition switch defect would not have posed a safety problem as long as a consumer could either “safely pull their vehicle over to the side of the road and restart the vehicle” or be assured that the airbags would have deployed as designed?

Answer. As the record shows, NHTSA did not open an investigation on stalling for these vehicles, so we have not performed the evaluation that would be needed

to take a position on your question. Note, however, that subsequent examination of the available complaint data does not demonstrate that the recalled GM vehicles exhibited high rates of stalling compared to peer vehicles.

Question 1b. Does NHTSA believe that passengers sitting in the back seats of the recalled vehicles hit by other cars traveling at high speeds would be protected by airbags, even if the airbags did deploy as designed?

Answer. Frontal airbags do not provide a safety benefit to rear seat occupants in frontal crashes.

Question 1c. If the response to either a, b or c is no, then why can't you state simply that in 2004, NHTSA should not have agreed with GM that cars stalling all by themselves did not necessarily pose a safety problem?

Answer. There was no "agreement" between GM and NHTSA on stalling. The Valukas report does not conclude that such agreement existed, and in fact, supports the conclusion that such an "agreement" did not exist.

Question 1d. Does NHTSA today believe that a defect that causes cars to stall on their own is a safety problem, irrespective of whether there are actions drivers can take to avoid a fatal accident and whether the airbags deploy in the event the accident occurs?

Answer. NHTSA does not believe that all stalls represent a safety problem. The Safety Act requires the recall and remedy of safety-related defects when such defects present an unreasonable risk of death or injury in an accident. Stalls create an unreasonable safety risk depending on where, when and how often the stalls occur.

Question 2. In 2007, NHTSA asked for and received a secret document from GM related to the death of two Wisconsin teenagers. That document was first made public by me at our May 7 hearing, and it is referenced repeatedly in Mr. Valukas's report. This response to NHTSA's Death Inquiry included a report by the Wisconsin State Patrol Academy that said that the ignition switch defect prevented the airbags from deploying. It also found other examples of the same problem happening in other cars and identified a 2005 GM warning to dealers about the issue. In short, it *correctly identified* the safety defect. During the hearing you seemed to confuse this document that NHTSA requested and received with a different Special Crash Investigation document, stating that "Well, Senator, the special crash investigation report that included these same assertions was a public document, and no one brought that issue to our attention." In fact, the document I was referring to was NOT a public document. That document, which NHTSA obtained in 2007 but kept secret until it provided it to me in 2014, was DI07-044, requested by NHTSA upon its review of the Early Warning Report submitted by GM on the Wisconsin accident. The 2007 report established the very linkage between the ignition switch defect and airbag non-deployment that you have claimed repeatedly that NHTSA lacked—but would have taken action to address if only it had had access to such linkage—until early 2014. Do you acknowledge that NHTSA requested and received this document in 2007 as part of a Death Inquiry, but neither took action on its contents nor made it publicly available?

Answer. NHTSA received the police accident report for the October 2006 Wisconsin incident as part of GM's responses to DI07-044 in June 2007. The Wisconsin report was reviewed by NHTSA staff. The agency considered the circumstances of the Wisconsin crash as part of its investigation of the issue, but did not believe that the position of the ignition switch would prevent airbags from deploying on reserve power. Because of privacy issues, the agency does not typically make DIs available to the public and did not make the Wisconsin police accident report available to the public. However, the Wisconsin police accident report is discussed in the Special Crash Investigations (SCI) report which was posted on NHTSA's public website. Furthermore, the Wisconsin police accident report could be obtained by the public from Wisconsin authorities.

Question 2a. Do you agree with me, GM CEO Mary Barra and others that if the public had been able to read this secret document and warned about its conclusions at the time, it is possible that some of the deaths and injuries caused by the ignition switch defect could have been avoided?

Answer. No. The Wisconsin police accident report could be obtained by the public from Wisconsin authorities and was directly referenced in the publicly released SCI report on April 2, 2008. The SCI report contains a full recitation of the facts based on observations made regarding the ignition switch issue described in the Wisconsin police accident report. Although it is possible that people or organizations outside of NHTSA could have brought greater attention to the issue by reviewing the SCI report and obtaining the Wisconsin police accident report from Wisconsin authori-

ties, the record indicates that did not happen and it is unclear that making the information available through a third venue would have altered the outcome.

Question 2b. During the hearing, in response to my question about whether documents such as this and other EWR information should be publicly released in the future, you stated that you “agree that making this kind of information, with privacy protections, public can be a positive and helpful thing. What I don’t agree with, though, is the—is putting the burden for making that information public with privacy protections should fall on NHTSA. I believe that burden should fall onto the industry who is causing these problems.” You also stated at many points during the hearing that GM “hid the ball,” encouraged a culture of “denial and delay that cost lives and endangered the American public” and that GM never provided key information to NHTSA. Why does NHTSA believe that automakers, rather than the agency that, according to its webpage, “is dedicated to achieving the highest standards of excellence in motor vehicle and highway safety”, would be in a better position and could be trusted to fully inform the public about potentially deadly automobile defects?

Answer. If an automaker were intent on hiding information that a law required them to make public, requiring NHTSA to make such information public would not help. If the automaker’s intent was to not fully inform the public and the law required NHTSA to make such information public, it is unclear why the automaker would not also fail to provide that information to NHTSA in its EWR submission. As a result, NHTSA would not have that information and therefore would not have it in order to make public. We share your concern about the potential for automakers to be less than forthright, which is why GROW AMERICA includes a provision to substantially increase maximum fines to \$300 million to increase NHTSA’s ability to deter such actions. In 2014 alone, NHTSA has aggressively used the limited financial penalties available to issue record fines of more than \$126 million in civil penalties, exceeding the total amount collected by the agency during its forty-three year history.

As a Federal agency, NHTSA is subject to a number of laws, such as the Freedom of Information Act and the Privacy Act, that limit the disclosure of personal information. To make such information public with privacy protected would create significant costs for taxpayers and a significant burden on NHTSA staff, diverting resources from other efforts, including pursuing enforcement activities that regularly save lives and prevent injuries. These GM recalls are a lesson learned not only for GM but for other automobile manufacturers—good corporate governance requires compliance with the law, especially with regard to the safety of the motoring public. With NHTSA oversight, requiring the manufacturers to disclose information publicly will be less expensive for taxpayers and would make it available to the public faster since it would eliminate the added step of NHTSA processing the information first.

Question 2c. Why couldn’t NHTSA require automakers to provide the additional information and documents required in S. 2151 in a form that redacted personally identifiable information or information properly classified as confidential business information to NHTSA, which would require the use of NHTSA resources only to validate the automakers’ redactions? In fact, NHTSA staff informed my office that this was the process NHTSA utilized when it publicly released the lengthy Valukas report after receiving it a few hours before posting it online.

Answer. The Privacy Act and the Freedom of Information Act require NHTSA to maintain the privacy of individuals and ensure that personal privacy information is not disclosed without consent. The additional documents required in S. 2151 such as court complaints and police accident reports are laden with personal privacy information. Accordingly, NHTSA would still have to devote significant resources to ensure that the information it receives pursuant to S. 2151 has all personal privacy information removed in order to make the information publicly available. In contrast, manufacturers bear the burden of protecting their confidential business information from public disclosure by submitting redacted copies of documents to NHTSA, as required by NHTSA’s regulation on confidential business information. Unlike privacy information, where potential liability for disclosure rests with the agency, manufacturers have a self-interest in ensuring the accuracy of their redactions of confidential business information.

Question 2d. For each of years 2010, 2011, 2012 and 2013, how many *fatality* reports were submitted to NHTSA’s Early Warning Reporting system?

Answer. See attached file that contains the count of fatality incidents and the sum of the numeric values reported in each incident submitted to NHTSA’s Early Warning Reporting system for each of the years specified above.

Question 3. A recent *Detroit News* article¹ referenced some 140,000 missing vehicles that GM could not account for at the time of publication. While it is possible that some of these vehicles are owned by a second or third owner and thus more difficult to track, it is also possible that some of the vehicles are in automotive recycling or salvage facilities. How specifically does NHTSA enable the identification of vehicles with safety recalls that are found in automotive recycling/salvage facilities so that they can be factored into the Agency's remedy rate calculations? How can one be assured that a recalled part from a vehicle found in a recycling or salvage facility is not used to repair another vehicle without the consumer's knowledge? In what manner are automakers expected to work with the owners of recycling and salvage facilities to ensure that such situations do not occur? Shouldn't any VIN database include the ability to track vehicles from cradle to grave, and if not, why not? Shouldn't automakers ensure that information that includes the recalled part numbers, remedy part numbers, and other data/direction that could be needed by recyclers or salvagers is provided in a usable format, and if not, why not?

Answer. Automakers should ensure that information about recalled part numbers, remedy part numbers, and such data that would help identify vehicles with safety defects is made available directly to recyclers and salvagers. NHTSA, however, does not collect, and does not have feasible means or resources to collect information on specific vehicles that may reside in scrap yards or other salvage facilities. Nevertheless, as part of their quarterly reporting on a recall, manufacturers are required to report the number of vehicles or items of equipment determined to be unreachable for inspection due to export, theft, scrapping, or other reasons. From this information, NHTSA adjusts the population of vehicles covered by a safety recall to more accurately reflect the numbers of vehicles potentially affected on U.S. roadways.

Sales of defective parts are strictly prohibited under the Vehicle Safety Act. See 49 U.S.C. § 31020(j). NHTSA can use its investigative and enforcement authorities to take actions against a person selling defective parts for installation on a motor vehicle if evidence is available to support such action.

NHTSA does not agree that its VIN look up tool should be expanded to include information concerning the life cycle of a vehicle. First, we believe the tool should be focused on the information for which it was originally intended—a quick and easy check for recalls that have not been completed on a vehicle. Second, this information would be redundant of other Federal and State resources for this information, namely the National Motor Vehicle Titling and Information System, as well as the State departments of motor vehicles. If NHTSA were to start engaging in tracking and disseminating this information, there is also a risk that an owner could obtain inconsistent and confusing results between systems due to incompatibilities and variances in data quality and data timing.

Question 4. The Tire Pressure Monitoring System provisions in the TREAD Act were added by me during House consideration of that bill. NHTSA's implementation of the TPMS provisions (FMVSS No. 138 is the implementing rule for the TPMS provision in TREAD) has been the subject of litigation and a court decision that the rule was arbitrary and capricious under the Administrative Procedure[] Act. Of particular concern in these court cases was the manner in which the rule addressed indirect TPMS technology.

In November 2012, NHTSA published a report entitled Evaluation of the Effectiveness of TPMS in Proper Tire Pressure Maintenance.² The study found that severe under-inflation of tires is 21 percent less common in vehicles equipped with direct systems than those equipped with indirect systems.³ Further, NHTSA stated in the study that the agency "did not collect sufficient data from post-FMVSS No. 138 indirect systems to evaluate their effectiveness."⁴ What has NHTSA done since this report was written to (i) collect the data it lacked in 2012 that would have enabled it to evaluate the post-FMVSS No. 138 indirect systems and (ii) consider a revision to FMVSS No. 138 to ensure that ineffective systems are no longer allowed? If no such efforts have been undertaken, why not?

Answer. NHTSA's 2012 report "Evaluation of the Effectiveness of TPMS in Proper Tire Pressure Maintenance" found that that the rate of severe tire under-inflation, defined as one or more tires with pressure 25 percent or more below the vehicle manufacturer's recommended value, was 12 percent for passenger vehicles with direct TPMS systems and 15 percent for vehicles with indirect TPMS systems. Given that the rate of severe under-inflation was 23 percent for vehicles without TPMS,

¹ <http://www.detroitnews.com/article/20140807/AUTO0103/308070116#ixzz3EFrvBSJm>

² <http://www-nrd.nhtsa.dot.gov/Pubs/811681.pdf>

³ <http://www-nrd.nhtsa.dot.gov/Pubs/811681.pdf> Page 20.

⁴ *Id.* at 3.

the report indicates that both systems are effective at reducing severe under-inflation.

All of the vehicles in the study with indirect TPMS were from model years prior to the requirements of FMVSS No. 138. The report hypothesizes that the performance of indirect TPMS systems that meet the requirements of FMVSS No. 138 may be as effective as direct systems because of changes made to the indirect systems to become compliant with the standard. However, our preliminary analysis indicates that there is not sufficient fleet penetration of FMVSS No. 138 compliant indirect systems to conduct a meaningful comparison of the real-world performance of the two systems at this point.

Question 4a. Please provide me with a list of all waivers from the requirements of FMVSS No. 138 that have been requested for TPMS systems, indicating for each such waiver i) which manufacturer requested the waiver, ii) whether the waiver was for indirect or direct TPMS, iii) whether the waiver was granted, rejected or is still pending and iv) for waivers that were granted, the safety basis NHTSA relied on to allow the non-compliant system to be used.

Answer. NHTSA has not received any requests pursuant to 49 U.S.C. §30113 to exempt any vehicle from any requirement of FMVSS No. 138. NHTSA has received the following FMVSS No. 138 petitions for inconsequential noncompliance:

NHTSA Docket No.	Manufacturer	TPMS Type	Status	If granted, safety basis for inconsequential decision
2009-0084	Honda	Direct	Granted	TPMS telltale required to activate at 27 psi for optional tire but not reset from 25 psi, optional tire able to support greater load.
2010-0095	Volkswagen	Indirect	Granted	Malfunction telltale not illuminated on 2nd start, vehicle speed 6-12.5 mph for 5 minutes or less
2012-0007	Mercedes	Direct	Rejected	NA
2012-0118	Mazda	Direct except 255 Indirect	Granted	Owner's manuals for vehicles delivered in Puerto Rico missing TPMS instructions in English but available on Mazda website
2012-0147	Honda	Direct	Pending	
2013-0139	Aston Martin	Direct	Pending	
2014-0034	Maserati	Direct	Pending	
2014-0035	McLaren	Direct	Pending	
2014-0077	Lamborghini	Direct	Pending	
2014-0094	Ferrari	Direct	Pending	
2014-0096	Tesla	Direct	Pending	

Question 4b. Has NHTSA obtained, produced or reviewed additional data on or reports of other potential incidences of non-compliance of indirect TPMS? Please list any such data or reports, along with any enforcement or regulatory determination NHTSA made following its review thereof. Does NHTSA plan on revising FMVSS No. 138 or the associated testing procedure, TP 138-03, in response to its review of any such data or reports? Has NHTSA conducted any testing of its own on vehicles that utilize indirect TPMS, and if so, please describe the nature of that testing, including the vehicle(s) that were tested and the results of the tests.

Answer. NHTSA's Office of Vehicle Safety Compliance (OVSC) tested four vehicles with indirect TPMS to FMVSS No. 138 as a part of the Model Year 2014 compliance program. The vehicles tested were a Volkswagen Beetle, a Honda CR-V, a Honda Accord, and a Mazda 6. The Volkswagen Beetle and the Honda CR-V passed all requirements. The Honda Accord passed all requirements except one test simulating a malfunction. We have informed Honda of the issue and plan to continue with our investigation. To date, NHTSA has received test results from Honda on the Honda Accord, Civic and CR-V showing that only the Accord failed the malfunction test.

NHTSA received test information from Schrader, a TPMS equipment manufacturer, identifying a potential safety issue with the Mazda 6's indirect TPMS using a test procedure that is not included in the current test procedure TP-138. OVSC conducted a similar test on all four vehicles. Although the Mazda 6 passed the TP-138 tests, it failed the additional test by not illuminating a telltale warning when

all four tires were gradually deflated below the required activation threshold of 25 percent below Mazda’s recommended inflation pressure. The other three vehicles correctly produced a low pressure telltale warning in the additional test. Mazda submitted test results confirming the failure of the Mazda 6. It also provided test data for the Mazda 3 and CX-5 showing passing results. On October 24, Mazda submitted a Part 573 noncompliance report to NHTSA. The test reports for all of these vehicles are currently being finalized. No decision has been made at this time regarding changes to the Standard or TP-138.

Question 4c. Indirect TPMS requires a calibration system to compare tires’ rotational speeds and from that, extrapolate their inflation levels. Currently, NHTSA’s TPMS testing protocol allows for a manual reset/recalibration button to be placed on the dashboard, which could result in the inadvertent recalibration of a TPMS system to set the baseline to be an unsafe tire pressure level if a driver hits the button by mistake. Has NHTSA obtained any consumer complaints, EWR submissions or other reports of such an occurrence? If so, please describe the quantity and nature of these complaints, submissions or reports. Please also describe any other efforts NHTSA has made to assess this risk.

Answer. NHTSA’s Office of Defects Investigation reviewed complaints for all vehicles where manufacturers indicated the models are equipped with the TPMS reset switches. There were no complaints indicating a failure resulting from inadvertent recalibration of the TPMS switch. A number of complaints against the 2014 Honda CR-V describe the TPMS light repeatedly coming on—the consumer checks the tire pressure, which is at the required pressure, and then resets the switch. No complaint describes recalibrating the TPMS setting to a lower tire pressure. NHTSA will continue to monitor the situation to determine whether a defect exists that presents an unreasonable risk to safety.

On July 24, 2014, OVSC sent information requests to 19 vehicle manufacturers to obtain data on manual reset/recalibration buttons. OVSC is in the process of reviewing the information and determining appropriate next steps.

ATTACHMENT

Reporting Category	CY2010		CY2011		CY2012		CY2013	
	Fatal Incidents	Total Fatalities	Fatal Incidents	Total Fatalities	Fatal Incidents	Total Fatalities	Fatal Incidents	Total Fatalities
Child Restraints	9	9	6	6	3	3	3	3
Equipment	12	12	7	8	18	20	5	11
Bus, Heavy	21	36	22	42	25	31	20	22
Light	437	527	304	368	228	265	200	261
Motorcycle	13	13	7	8	21	24	18	18
Tire	19	37	12	18	17	25	18	21
Trailer	2	2	6	8	3	6	8	15
Low Volume	8	12	4	10	2	2	0	0
Totals	521	648	368	468	317	376	272	351

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. EDWARD MARKEY TO ROBERT STRASSBURGER

Question 1. According to the Valukas report, in 2004, GM and NHTSA had a secret meeting in which the attendees inexplicably agreed that cars stalled all by themselves, and that this was not necessarily a safety problem. Do you disagree that many members of the public would probably have rejected this conclusion if they had known about it, and if so, why?

Answer. According to the Valukas report, in a meeting on June 3, 2004, GM officials described a number of factors that should be considered in assessing stalls, and NHTSA officials responded that the factors “should be considered but did not necessarily ‘immunize’ a manufacturer from conducting a safety recall” indicating that NHTSA believed that stalling could indicate a safety problem. (pg. 73)

Question 2. Mr. Valukas’s report describes warnings of accidents that GM was aware of involving their vehicles, but some of these warnings and reports were not publicly disclosed or acted on. Do you disagree that if the public knew about these

reports of cars stalling on their own at the time, it is possible that some of the deaths and injuries caused by this defect could have been avoided, and if so, why?

Answer. It is not clear which “warnings of accidents” the question refers to, but under the Early Warning Reporting (EWR) system, auto manufacturers are required by law to provide “all data necessary to assist in the identification of safety-related defects,” which includes notifying the agency of death and injury claims/notices involving its vehicles. Information about these reports is publicly available on NHTSA’s website.

In a March 26, 2014 letter to Acting Administrator David Friedman, Clarence Ditlow of the Center for Auto Safety alleged that NHTSA “turned a blind eye to the ignition switch defect,” because the agency did not act on information it possessed, ranging “[f]rom *consumer complaints* to *Technical Service Bulletins* to *Special Crash Investigations* to *Early Warning Reporting death claims*” (emphasis added). Notably, all of the information cited by Mr. Ditlow is publicly available on NHTSA’s website.

Question 3. In 2006 and 2007, NHTSA received investigative reports from its contractors relating to two fatal crashes involving GM Cobalts. Both of these reports described airbags that did not deploy in cars because ignition switches had turned off. Do you disagree that if NHTSA had reviewed these reports and informed the public about the safety defect, it is possible that some of the deaths and injuries caused by the defect could have been avoided, and if so, why?

Answer. NHTSA officials testified that the agency reviewed the investigative reports from its contractors; however, it does not appear that the agency concluded that the reports identified a safety defect. Had NHTSA concluded that the reports identified a safety defect, it presumably would have conveyed this finding to the company; if the company did not initiate a recall, NHTSA would have used its existing broad authority to compel the company to do so.

Question 4. In 2007, NHTSA asked for and received a document from GM related to the death of two Wisconsin teenagers. That document was first made public by me at our May 7 hearing, and it is referenced repeatedly in Mr. Valukas’s report. It included a report by the Wisconsin State Patrol Academy that said that the ignition switch defect prevented the airbags from deploying. It also found other examples of the same problem happening in other cars and identified a 2005 GM warning to dealers about the issue. In short, it *correctly identified* the safety defect. Do you disagree that if the public had been told about this document and warned about its conclusions at the time, it is possible that some of the deaths and injuries caused by this defect could have been avoided, and if so, why?

Answer. According to the Valukas report, GM provided State Trooper Young’s report to NHTSA as part of its quarterly EWR submission. (pg. 117–8) In his report, Trooper Young cited consumer complaints and 2005 and 2006 Technical Service Bulletins related to Cobalt ignition switches. Trooper Young found these documents on NHTSA’s publicly available EWR website. (pg. 115)