

**Governors Highway Safety Association Responses
To Senate Commerce Committee Questions**

Questions for Ms. Swanson

1. Ms. Swanson, the Administration's proposal provides increased flexibility for the states to move funds between certain Section 402 programs and highway safety construction. What do you think the impact of that might be?

The Administration allows all of the primary seat belt incentive funding, half of the performance incentive funding, and half of the seat belt use rate incentive funding to be flexed into the new core safety construction program. The flexing of primary seat belt incentive funding could only occur after the state enacts a primary belt law. The intent is to encourage state departments of transportation (DOT's) to be involved in state efforts to enact state primary belt laws.

While we support the intent of the primary belt primary seat belt flexibility provisions, it is very likely that the state highway safety offices (SHSO's) will do all the work to enact the law and then see little of the incentive funding once the primary bill is approved. That has been the experience of several states that have worked to enact .08 BAC laws. (Under TEA-21, states receive Section 163 funds if they enact .08 BAC laws. Eligible states can use the incentive funds for any purpose under Title 23, including highway construction.)

With tight state budgets and limits on the overall growth of the federal-aid highway program, state departments of transportation are looking at every possible avenue for new construction funding. Even though the flexible funding amounts in all three incentive grant programs would be small, they may still be attractive enough to the DOT's to warrant the transfer from the non-construction programs into the construction program.

Will it pit the interests of highway safety representatives against those of state engineers and highway administrators?

It certainly could. As noted in our testimony, the flexibility provisions sound persuasive on paper but would work with difficulty in reality. Nearly half of the SHSO's are located in a state DOT. Hence, if the head of the DOT decides to use the incentive funds for safety construction purposes, the director of the SHSO has no recourse except to agree with the request of his/her boss. More than twenty of the remaining SHSO's are located in departments of public safety. In those cases, the SHSO and the DOT could be pitted against each other in deciding how the flex funds should be used.

DOT's and SHSO's do not have equal influence and cannot negotiate as equals. DOTs are far bigger agencies with much bigger staffs and budgets. As a result, in many instances, the decisions about flexibility would be one-sided. Further, based upon our experiences with the Section 163 program and the two penalty transfer programs authorized under TEA-21, we know that joint decisions about the use of safety funding can be very difficult. For all of these reasons, GHSA is very apprehensive about the flexibility provisions.

We believe that the safety interests of the state DOTs and the SHSOs are similar but the methods of solving safety problems are different. We also realize that highway safety issues can't be solved by one agency alone. Every agency with a safety-related responsibility has to work together and jointly develop a strategic safety plan in which high priority problems are identified and existing funding is targeted to those problems. As part of that planning process, each agency needs to bring its federal safety resources to the table and apply those resources to safety problems in a smart and effective way. GHSA believes that this strategic approach to safety will be more beneficial than the flexible funding concept. Hence, we support the strategic planning part of the flexible funding proposal but not the flexibility itself.

In GHSA's proposal, an occupant protection incentive tier and an impaired driving incentive tier would be authorized. Eligible states would be required to use the occupant protection incentive funds for

occupant protection purposes only. Similar restrictions would be placed on the impaired driving incentive funds.

2. Ms. Swanson, you heard GAO's testimony, in which Mr. Guerrero discussed improvements that NHTSA can make in oversight of state programs. What has been your experiences with NHTSA field offices and the job they are doing in helping the states improve highway safety?

The state experience with NHTSA field staff has been mixed. In some regions, the staff work closely with the SHSO's to interpret federal guidance, review annual Highway Safety Plans, work with the media, etc. In those regions, the Regional Administrator (RA) works to facilitate and encourage state safety efforts. In other regions, the working relationship is more adversarial and the RA is more directive in his/her approach with the states. A lot depends upon the personality of the Regional Administrator. The technical capabilities of the regional staff also vary considerably. In some regions, the states have as much or more experience and technical capability than some of the regional staff.

The states have been concerned for many years about the inconsistencies in the way NHTSA regional offices are administered. That is why we concur with GAO that NHTSA's oversight should be applied on a more consistent basis and that explicit criteria should be developed for that oversight. NHTSA is developing performance criteria for that purpose. If a state fails to perform after a three-year period, than a program review would be triggered. GHSAs support this approach and is helping NHTSA identify the trigger performance criteria.

Questions for All Panelists

1. Considerable progress has been made over the last decades in reducing highway fatalities but this progress has slowed in the last few years. In fact, the numbers of fatalities has increased recently. What are the reasons for this spike?

There is no spike in fatalities. Fatalities have held steady for several years and are now beginning to inch upward. While there is cause for alarm about this recent trend, it's also important not to overstate the problem and keep everything in perspective.

It is difficult to say with any certainty what the reasons are for the increase. However, there are several theories about it. For one, the population (particularly the young and the old), vehicle miles of travel, licensed drivers and registered vehicles have all continued to increase. In the face of these increases, federal and state programs have been able to prevent the number of fatalities from growing much larger but have not been able to make fatalities decline significantly.

Federal funds have enabled states to reach those populations that are susceptible to behavioral change but not the hard-to-influence populations such as rural young, male drivers. In effect, federal funding has enabled states to attack the relatively easy targets – the low hanging fruit. It is likely to cost considerably more to convince the last 25 percent of the population to buckle up than it has to convince the first 75 percent. If Congress wants the states to be successful, it will have to make the financial commitment commensurate with the size and scope of the remaining problem.

Another possible reason is that the public has lost interest in some of the key safety issues and may assume that the highway safety battle has been won. This seems to be particularly the case with impaired driving. The media appears reluctant to cover impaired driving because there is nothing new to report from their perspective. Further, most of the impaired driving problems are caused by a small number of repeat offenders and the general public has a difficult time relating to that group.

Yet another potential cause of the problem may be attributable to other safety issues such as speed, aggressive driving, fatigue, and distracted driving. Ever since Congress eliminated the National Maximum Speed Limit, many (though not all) states experienced increases in speed-related fatalities. The public's attitude toward speed has consistently eroded over the years, and drivers appear to consider posted speed limits as guidelines rather than legal limits. Coupled with this is the fact that Americans are working more hours, have more competing demands on their free time, and live further outside central cities. It is probable that these trends have led to an increase in aggressive and fatigued

driving. Further, as cell phones and telematics appear in vehicles, drivers are more and more distracted. All of these may have been contributors to the increase in fatalities.

Yet another contributing factor may be the reduced focus of enforcement personnel on traffic safety. Since September 11, many law enforcement personnel have been detailed to security activities and are not expected to resume their normal enforcement responsibilities any time soon. At the same time, state highway patrols across the country are facing an unprecedented number of retirements as baby boom enforcement personnel reach retirement age. State budget cuts have also caused reductions in state and local law enforcement agencies, and the traffic enforcement divisions are typically the first to be cut. The remaining traffic enforcement personnel are being asked to do more and more, resulting in staff burnout. In many states, enforcement agencies aren't interested in traffic grants because they simply do not have the personnel to undertake grant activities. Hence, at a time when more emphasis has been placed on traffic enforcement and when the benefits of enforcement have been well documented, it has become more and more difficult to undertake enforcement efforts.

2. The lack of progress in reducing highway fatalities is especially frustrating in light of the billions of dollars that have been spent on highway safety and infrastructure improvements under TEA-21. As we move forward and reauthorize these programs, where should we make future safety investments to ensure sustained progress?

First, states have made considerable progress under TEA-21 and it's important not to lose sight of that. Under TEA-21, the fatality rate is the lowest on record, the safety belt use rate is the highest, the number of children in restraints is the highest, and impaired driving fatalities are well below levels of a decade ago. Yet there is much more to be done.

Second, in our view, the federal highway safety program needs to provide states with funding to address a range of behavioral issues while at the same time focusing on top priorities. As NHTSA has indicated repeatedly, the easiest, most effective way to protect people in a crash is to ensure that they buckle up. Hence, funds should focus on improving safety belt use and ensuring that children are in child restraints. Additionally, the focus should be on impaired drivers since impaired driving causes such a large percentage of all crashes.

GHSA's proposal would divide the consolidated safety grant program into thirds: approximately one-third for 402 grants which could be used to address any number of behavioral safety concerns, one-third to improve occupant protection and one-third to reduce impaired driving.

3. The Administration's proposal would consolidate some programs and give states greater flexibility on spending decisions by allowing the movement of funds between the Section 402 programs and highway safety construction programs. What are the advantages and disadvantages of this approach.

As noted in our testimony, GHSA strongly supports program consolidation. There are currently eight different grant programs and two penalty programs that must be administered by small highway safety offices. Each of these programs has different purposes, applications, and deadlines and the requirements of some programs (e.g. the Section 157 innovative grant program) change from one year to the next. Some grants are given out at the beginning of the fiscal year, others during the year, and three are not awarded until the very end of the year. At the beginning of a fiscal year, a state may be implementing grants in that fiscal year, evaluating grants from the previous fiscal year, and planning to expend carryover funds from grants that were awarded late in the fiscal year. Needless to say, administration of these myriad grants has been confusing and very difficult. A single grant program with incentive tiers would be far easier to administer. There would be one application deadline and one grant that could be awarded at the beginning of the federal fiscal year.

There are no disadvantages to program consolidation from our perspective. Some concerns have been expressed by others about losing the focus on impaired driving and occupant protection if there is program consolidation. In GHSA's proposal, there are separate incentive tiers for both, so the focus on high priority issues would continue within the context of a consolidated program.

With respect to funding flexibility, the main advantage is that states would be required to complete a statewide strategic highway safety plan before they could flex funds between categories. That would compel state agencies with safety responsibilities to work together – a goal that GHSA strongly supports.

The disadvantages of flexible funding were detailed in our previous responses. GHSA does not support the proposed flexible funding. We do, however, support the concept of strategic statewide safety planning efforts. We recommend that that strategic safety plan concept be retained but separated from the flexible funding concept.

4. As Congress seeks to encourage states to reduce their traffic-related fatalities through various programs, it can choose to provide incentive grants or it can choose to penalize states for not adopting highway safety laws. Which approach is more effective?

Both approaches can encourage states to enact critical safety legislation. Both have their advantages and disadvantages but, on balance, states support incentives over sanctions and penalties.

Incentives can successfully encourage states to enact specific legislation (such as graduated licensing laws) or take other desired actions (such as improving BAC testing). Just this year, for example, Illinois enacted a primary safety belt law in part because it believed that it would receive five times its FY 2003 402 apportionment, as proposed by the SAFETEA proposal. The 410 program also successfully encouraged states to improve their impaired driving programs while providing eligible states with the resources they needed to make further improvements.

Some incentive programs are less than successful because they are so small that they pale in comparison with what a state receives in highway construction funding. Hence, they are not large enough to convince a state legislature or other state agency to act appropriately. Some incentive programs are weakly constructed so that they reward poor behavior rather than encourage improved behavior. Others exacerbate the differences between “have” and “have not” states. A good incentive program has to be large, with a portion earmarked for states that are having difficulty and the remainder to reward states that improve performance or maintain a superior level of performance.

The advantage of sanctions is that they force all the states to enact specific legislation by a set time period. However, despite the rhetoric, sanctions and penalties are not uniformly effective. They can be effective where there is public support, as is the case with sanctions that focus on impaired driving or those that aim to protect young persons.

If there isn't public support, as was the case with the sanctions for motorcycle helmets and the National Maximum Speed Limit, the sanctions are completely ineffective. The lack of public support ultimately caused the repeal of both sanctions. Sanctions have also caused tremendous resentment on the part of state legislatures. They feel that sanctions are political coercion and pass only the bare bones legislation necessary to avoid the sanction. Then they fail to provide funding to ensure that the required laws are aggressively enforced. In the end, little has been accomplished.

Congress has increasingly relied on sanctions to force states to enact specific legislation. There are eighteen sanctions, seven of which are safety-related. Three of the seven penalties/sanctions have been enacted either in TEA-21 or thereafter. No other area of transportation is affected by sanctions and penalties like safety. The message that Congress is sending is that it wishes to address safety problems primarily by punishing states and forcing them to act in a top-down approach and a uniform, one-size-fits-all manner. Further, disputes over new sanctions tend to shift the focus of discussion from the merits of safety programs to the battle over safety sanctions. This is extremely discouraging and ultimately self-defeating.

Penalties have also caused problems. They pit the SHSO against the state DOT whose funds are being transferred into the behavioral highway safety program. SHSO's do not find this a helpful approach.

GHSA accepts existing penalties and sanctions but does not support the enactment of new ones. We have recommended some technical changes to the repeat offender penalties so that they are more effective.

5. What are the major items in SAFETEA that you like about the proposal and what, in your view, should be reconsidered? Are there aspects that the proposal does not address?

Under SAFETEA, the Department of Transportation has proposed a three-part consolidated behavioral highway safety grant program. The proposed program includes basic formula funds, performance incentive funds, and a strategic impaired driving program. The performance incentive funds will be further divided into three types of incentives. In addition, DOT has proposed a separate data grant program and a very small EMS grant program.

As noted in our testimony, GHSA is pleased about some aspects of the funding request but very disappointed about several others.

The Association is pleased that DOT supported the idea of grant consolidation. As noted previously, a single grant program with one application and one deadline should be much easier to administer. GHSA is also pleased that the Administration is proposing performance incentive grants and increased funding for states that enact primary safety belt laws. The Association also supports performance-based incentives, particularly for states that enact primary belt laws or improve their safety belt use rates above the national average and has incorporated those concept into its own proposal.

GHSA strongly supports the proposed DOT data incentive grant program. The program funding level, the eligibility criteria, and the proposed use of grant funds are identical to those recommended by the Association.

As noted previously, GHSA supports the requirement that states coordinate their highway safety construction, behavioral and motor carrier grant programs and develop comprehensive, strategic highway safety goals. Future improvements in highway safety are not as likely unless states coordinate the disparate aspects of their highway safety programs. We believe that these requirements should be maintained but unlinked with the flexible funding proposal.

GHSA supports the proposed funding for the crash causation study. As noted in our testimony, it has been about thirty years since such a study was conducted. If states are to improve driver and road user behavior, it is essential to know why crashes were caused. GHSA recommends, however, that the difference between the NHTSA crash causation study and the proposed FSHRP crash causation study need to be clarified and the studies coordinated.

GHSA also supports the proposed increased funding for the Section 403 program. However, it appears that most of the increase will be used for the crash causation study. Additional research resources must be directed to the NHTSA 403 program so that evaluation studies can be conducted on the effectiveness of various safety countermeasures.

GHSA is extremely disappointed in the overall funding level for the behavioral safety grant programs. Behavioral funding is level funded in FY 2004 and then it rises very gradually over the remaining five years of the reauthorization period. Total funding in FY 2009 is only 10 percent higher than in FY 2004. It will be extremely difficult for states to make further improvements in the behavior of drivers and other road users without sufficient funding. As noted previously, it will be costly to convince the hard-to-influence populations to change their driving behavior. Further, additional funds are needed to address emerging safety issues (such as aggressive, fatigued, and distracted driving, older drivers) and provide programs for minorities and ethnic populations, etc.

GHSA finds the impaired driving program totally unacceptable and urges that Congress reject the proposal. \$50 million is considerably less than has been spent on impaired driving under TEA-21 and far less than is needed to adequately address this growing problem. Further, the program is too narrowly focused on a few states where an intervention could, if it worked perfectly, eliminate a lot of fatalities. In a sense, it rewards states that have performed poorly by giving them additional funding to

the exclusion of all other states. Impaired driving is a problem in every state, yet the proposal would provide no funds for the remaining, “non-strategic” states.

GHSA particularly dislikes the fact that the proposed impaired driving program will be implemented in the same manner as the 157 innovative program. Under that program, NHTSA set very restrictive conditions on the grants and completely micro-managed the way eligible states expend funds. States have found the program very onerous and do not wish to repeat the experience under the proposed impaired driving program. GHSA believes that the proposed strategic impaired driving initiative is more appropriate as a Section 403 demonstration program than as a state incentive grant program.

The Administration is proposing funding for three types of incentives – for enacting primary belt laws, for improving safety belt use rates and for improving performance. Each of these incentives will have their own eligibility criteria and their own earmarked funding. We are concerned that the performance incentive program may be just as complex as the myriad of programs that are currently authorized under TEA-21. As noted in our testimony, GHSA urges that the goal in the next reauthorization should be simplicity and consolidation. In our proposal, we have combined the incentive for seat belt use rates with the one for enacting a primary safety belt law.

In the proposed primary belt law incentive grants, GHSA is very troubled by the distinction between states that enacted their primary belt laws during TEA-21 and those that will enact them under SAFETEA. The former states are eligible for only ½ of their FY 2003 402 apportionments over a two-year period. The latter are eligible for 5 times their FY 2003 402 apportionments.

GHSA believes that it is very difficult for states to adopt primary belt laws, no matter when they enact such laws, and that to make such a distinction is unfair and serves to pit one set of states against another. The Administration assumes that states with existing primary laws can tap into the flexible safety funds. However, any state with a primary belt law can flex the funds, assuming that the flex provisions are, in fact, authorized. There would be no advantage for those states with existing primary laws.

States that have primary belt laws should be rewarded for their superior performance and states wishing to enact such laws should be strongly encouraged to do so. If Congress were to treat all states with primary laws equally, it would have to either authorize a \$825 million program (five times the FY 2003 402 level) or reduce the incentive to all primary belt law states to 3.5 times their FY 2003 apportionment.

As noted previously, GHSA strongly opposes the flexible funding proposal and urges that it be rejected.