



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, DC 20590

April 4, 2011

The Honorable John D. Rockefeller IV
Chairman, Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

The Honorable Mark L. Pryor
Chairman, Subcommittee on Consumer Protection,
Product Safety, and Insurance
United States Senate
Washington, DC 20510

Dear Chairmen Rockefeller and Pryor:

Thank you for your letter of February 23, 2010, in which you requested that we conduct a review of former National Highway Traffic Safety Administration (NHTSA) officials employed or under contract with automakers. Since NHTSA oversees this industry, you asked that we determine whether these individuals are in a position to exert undue influence on NHTSA's safety defect investigations.

To address your request, we identified 63 employees who have either left NHTSA for employment in the auto industry or left the auto industry for employment with NHTSA since 1984 (see enclosure 1). We also reviewed 65 safety defect investigation cases involving, or potentially involving, these 63 employees and interviewed selected staff from those cases. Additionally, we assessed NHTSA's ethics program by reviewing NHTSA's employee ethics training and financial disclosures from current employees who previously worked for automakers. Finally, we determined whether former employees received counseling on post-employment restrictions (see enclosure 2 for complete details on our methodology).

As you requested, our office is also reviewing industry-wide complaints of sudden unintended acceleration in vehicles with electronic throttle and braking control systems and examining how NHTSA's Office of Defects Investigations (ODI) investigates these complaints. We will report on these efforts later this year.

Overall, we found no evidence suggesting undue influence or pressure on NHTSA's employees conducting safety defect investigations, and NHTSA had adequate controls in place to ensure employees' compliance with ethics requirements. Additionally, NHTSA officials complied with U.S. Office of Government Ethics (OGE) rules for employee training, financial disclosure reviews, and "cooling-off" periods for current employees who previously worked for automakers. NHTSA also provided post-employment counseling to employees who left the Agency to work in the auto industry. Finally, NHTSA's ethics policies and procedures on employee training, financial disclosure, and pre- and post-employment restrictions were similar to those for other Department of Transportation (DOT) Operating Administrations with safety oversight and enforcement programs.¹

We briefed your staff on our findings on January 19, 2011. The detailed results of our review are discussed below.

We Found No Evidence Suggesting Undue Pressure or Influence on ODI Staff Decisions

Our review of six² current ODI employees who joined NHTSA from the auto industry, who had also worked on cases involving their former employers,³ showed no evidence of undue pressure or influence on these staff. Specifically, we reviewed all 19 investigation cases for these 6 employees and examined all documentation available in the ODI database, Artemis,⁴ as well as investigators' records. We found no evidence that the former employers influenced the ODI employees in deciding whether to upgrade or close the cases.

Further, either the automakers or NHTSA took action in disposing of many of those cases, and we found no statistical differences in the way cases were disposed.⁵ Specifically, of the 19 cases we reviewed:

- 10 ended in recalls or with the manufacturers taking some form of action, such as conducting customer service campaigns or issuing technical service bulletins;
- 2 were upgraded for further review before being closed;

¹ There are four other DOT Operating Administrations with safety oversight and enforcement programs: Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration, Federal Railroad Administration, and Pipeline and Hazardous Materials Safety Administration. NHTSA's ethics policies and procedures were similar to those of these Operating Administrations with the exception of FAA, which operates under more stringent policies.

² In the last 11 years, of the 23 employees who joined NHTSA from the auto industry, 15 are assigned to the Office of Defects Investigation (ODI) and 8 are assigned to the Office of Vehicle Safety Compliance. Only six employees had worked on cases involving their former employer at the time of our review.

³ Auto manufacturers include Chrysler, Ford, Honda, and Kia.

⁴ The Advanced Retrieval of Tire, Equipment, and Motor Vehicle Information System, or Artemis, is ODI's primary database for storing data used to identify and address potential safety defects.

⁵ The proportion of disposed cases is consistent with the results of a broader statistical sample we conducted as part of our other ongoing NHTSA audit effort. That is, we found no statistically significant differences in the way investigators disposed of cases.

- 5 were closed based on reasonable documentation, such as field investigations of vehicles involved, low vehicle failure rates, or no reported failures in the 12 months before NHTSA closed the investigations; and
- 2 are still active.

Likewise, our review of cases involving former NHTSA employees who now work for automakers also showed no evidence of external undue pressure or influence on NHTSA's ODI staff. We identified 40 employees who left NHTSA for the industry over the last 26 years (15 of them left in the last 10 years). The majority of those employees now work for automakers or law firms that represent the auto industry, including Toyota, Honda, Nissan, and Volkswagen. We then reviewed 46 investigation cases where 6 of those 40 former NHTSA employees had either held high-level positions⁶ or directly participated in the cases involving these 4 automakers.

In 6 of the 46 cases, we found that the former NHTSA employees were involved in the investigation through either correspondence or meetings with NHTSA officials. However, there was no evidence that these former employees influenced NHTSA ODI staff decisions on whether to upgrade or close those cases. As with the cases of former industry employees now working for NHTSA, we also found no statistical differences in the disposition of these cases. Specifically, we found that for the 46 cases we reviewed, either the automakers or NHTSA took the following actions:

- 24 cases ended in recalls or with the manufacturers taking some form of action, such as issuing technical service bulletins.
- 14 cases were upgraded for further review before being closed.
- 7 cases were closed after an initial review of documentation, such as the results of ODI's inspections or tests of the vehicles in question that found no safety defect.

For the remaining case, NHTSA could not find documentation to explain why it denied a petition involving sudden acceleration in 1984 Hondas. The case opened in 1987 before NHTSA's implementation of Artemis, and NHTSA did not transfer the case investigation information into the system.

We also interviewed 18 current ODI employees with a range of specialties and backgrounds to determine if they had any concerns regarding undue pressure or influence from former employers or former NHTSA employees. In separate interviews with each of these employees, we asked them about their interactions with former employers, their experiences with internal and external parties, any barriers they encountered in conducting their investigations, and their observations about NHTSA overall safety culture. None could recount any instances of internal or

⁶ Those positions included Deputy Administrator, Chief Counsel, Associate Administrator for Enforcement, and investigators in the Office of Defects Investigation.

external undue pressure or influence that swayed their decision on whether to pursue a safety defect issue.

NHTSA Complied With OGE Ethics Rules

For the 23 employees who joined NHTSA from the auto industry over the last 11 years, we found that 15 of them received the required ethics training during their first 2 years of NHTSA employment. OGE requires agencies to retain ethics records for only 6 years after training is completed.⁷ Therefore, we could not verify annual ethics training for the remaining eight employees as their training records were no longer available for review. For the same 23 employees, NHTSA's review of their financial disclosure reports—which require disclosure of assets, liabilities, outside positions, agreements or arrangements such as pensions, and gifts or travel reimbursements—revealed no conflicts of interest. Our independent assessment showed that NHTSA reviewed financial disclosures appropriately.

In addition, NHTSA generally followed the 1-year “cooling-off” period provision when hiring former industry employees to serve within ODI.⁸ Specifically, our review of the 23 former auto industry employees found that 21 had not worked on cases involving their former employer during their 1-year cooling off period. We did find, however, that two employees had worked on cases involving their former employers during their cooling off periods, one in 1999 and the other in 2003 (cases did not involve Toyota). NHTSA's current ethics official, whom NHTSA hired in June 2003, had no knowledge of how or why the two employees were assigned to the cases. Since June 2003, NHTSA has hired 14 former auto industry employees, and we found no evidence of violations of the cooling-off period for these employees.

We also found that former NHTSA employees received the OGE ethics training, as required, and post-employment counseling.⁹ In the last 26 years (from 1984 to 2010), 40 employees have left NHTSA for work in the auto industry or related fields. Out of the 40, we reviewed 15 who left NHTSA between April 2000 and March 2010. We found that 10 of the 15 received annual ethics training during their last 2 years of employment with NHTSA and post-employment counseling when they left.

However, we could not verify required ethics training and post-employment counseling for the remaining five employees because, in keeping with the OGE's 6-year record retention requirement, NHTSA no longer maintained their records.¹⁰

⁷ Governmentwide System of Records OGE/GOVT-1, “Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.”

⁸ Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE, unless authorized by an agency ethics official, Federal employees are subject to a 1-year cooling off period in connection with particular matters involving specific parties that could have a direct and predictable effect on the financial interests of “[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee” where a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter (5 C.F.R. § 2635.502(b)(1)(iv)).

⁹ It is not mandatory under OGE's ethics rules that employees leaving government service receive post-employment counseling.

¹⁰ This included the records for one key individual involved in the Toyota safety defect investigations.

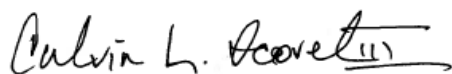
NHTSA's Ethics Policies and Procedures Are Similar to Those of Other Department Operating Administrations

We found that NHTSA's ethics policies and procedures are similar to those of other Operating Administrations within the Department of Transportation. OGE sets the standards of ethical conduct for employees within the Executive Branch, and the Department's Operating Administrations must follow these standards at a minimum. We compared NHTSA's ethics policies and procedures for employee ethics training, financial disclosure reporting, cooling-off period requirements, and post-employment counseling to four other Operating Administrations with safety oversight and enforcement programs. Out of the five agencies, four followed similar policies and procedures; the Federal Aviation Administration is an exception since its cooling-off period policies are even more stringent than the other Operating Administrations.¹¹

Regarding post-employment counseling policies, all five Operating Administrations followed similar policies. Generally, counseling involves explaining to the employee various restrictions when seeking post-employment. These restrictions, which include criminal penalties, prohibit former Executive Branch employees from "switching sides" on matters such as safety investigations after leaving Federal employment. The post-employment restrictions also include cooling-off periods for highly compensated Federal employees (see enclosure 3 for further details).

Based on our findings, we are not making any recommendations regarding NHTSA's ethics policies, procedures, and practices at this time. We continue to review NHTSA's processes for investigating industry-wide complaints of sudden unintended acceleration and brake failure. We expect to report on our results later this year. Thank you again for your attention to this important issue. If you have any questions regarding this review, please contact me at (202) 366-1959 or Joseph W. Comé, Assistant Inspector General for Highway and Transit Audits, at (202) 366-5630.

Sincerely,



Calvin L. Scovel III
Inspector General

Enclosure (3)

cc: NHTSA Administrator

¹¹ FAA's Flight Standards Service has implemented a policy that contains a 2-year period for newly employed aviation safety inspectors, while the other Operating Administrations have a 1-year period, as required by OGE regulations. The Flight Standards Service policy prohibits inspectors from having certificate management responsibilities for their former aviation employer, such as airlines.

**Listing of the Number, by Position, of Former Auto Industry
Employees Now Working for NHTSA and Former NHTSA Employees
Now Working for the Auto Industry**

Office/Position	Employees to NHTSA From Industry	Employees From NHTSA to Industry	Office Description*
Office of Defects Investigation			
Safety Defects Engineer	7	1	Provides the testing, inspection, and investigation necessary for correction and identification of safety defects.
Supervisory General Engineer	0	1	
Supervisory Safety Defects Specialist	1	0	
Supervisory Safety Defects Engineer	1	0	
General Engineer	2	0	
Safety Standards Engineer	0	1	
Director	0	1	
Safety Defects Specialist	1	0	
Safety Recall Specialist	1	0	
Safety Defects Analyst	1	0	
Consumer Safety Officer	1	0	
Subtotal	15	4	
Office of Vehicle Safety and Compliance			
General Engineer	7	2	Provides the testing, inspection, and investigation necessary to ensure compliance by foreign and domestic manufacturers.
Director	1	1	
Safety Compliance Engineer	0	1	
Subtotal	8	4	
Office of the Administrator			
Administrator	0	4	Represents DOT and advises the Secretary on all matters related to motor vehicle functions with respect to drivers and vehicles.
Deputy Administrator	0	2	
Executive Director	0	2	
Subtotal	0	8	

Office/Position	Employees to NHTSA From Industry	Employees From NHTSA to Industry	Office Description*
Office of Research and Development			
Associate Administrator	0	3	Develops, recommends, and conducts applied and advanced research and test programs related to vehicle safety, crash avoidance, and related technologies.
Policy Advisor	0	1	
Subtotal	0	4	
Office of Chief Counsel			
Trial Attorney	0	1	Provides legal services and representation relating to all aspects of program activities, including liaison and assistance to the General Counsel.
Chief Counsel	0	2	
Attorney Advisor	0	1	
Subtotal	0	4	
Office of Public Affairs			
Supervisor of Public Affairs	0	1	Serves as contact point for news media inquiries.
Director of Office of Public Affairs	0	1	
Director of External Affairs	0	1	
Director of Government Affairs	0	1	
Subtotal	0	4	
Traffic Safety Programs			
Associate Administrator	0	2	Plans and develops traffic safety and injury prevention and control programs for improving public health and safety.
Subtotal	0	2	
Office of Applied Safety Research			
Director	0	1	
Subtotal	0	1	
Office of Crash Avoidance Standards			
Director	0	1	
Subtotal	0	1	
Office of Enforcement			
Associate Administrator	0	1	
Subtotal	0	1	
Office of Crashworthiness			
Office Director	0	1	
Subtotal	0	1	
Rulemaking			
Supervisor	0	1	

Office/Position	Employees to NHTSA From Industry	Employees From NHTSA to Industry	Office Description*
Subtotal	0	1	
Safety Performance Standards			
Associate Administrator	0	1	
Subtotal	0	1	
Vehicle Research and Test Center			
Research Engineer	0	1	
Subtotal	0	1	
Heavy Vehicle Research			
Director	0	1	
Subtotal	0	1	
National Driver Register			
Program Manager	0	1	
Subtotal	0	1	
National Center of Statistics and Analysis			
Supervisory Program Analyst	0	1	
Subtotal	0	1	
Total	23	40	
*Office descriptions were provided only for those offices with a total of two or more gains or losses.			

Scope and Methodology

We conducted this audit between February 2010 and February 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We reviewed NHTSA policies and procedures for each phase in the safety defect investigation process. We also met with key NHTSA officials responsible for processing, reviewing, and evaluating the ODI safety defect cases. We reviewed and analyzed Artemis data in support of the review. We also met with *Safety Research Strategies*, an industry association that specializes in motor vehicle safety matters, to obtain its views of ODI's safety defect investigation process.

To determine whether there was any undue pressure or influence between NHTSA and industry, we reviewed all 19 cases conducted by 6 current NHTSA employees. Specifically, we reviewed only cases where the six employees worked investigations of their former auto industry employer. For each case, we reviewed all documentation available in Artemis. We also reviewed the investigators' records to assess how the cases were resolved, whether there was any evidence that the former employer influenced the six employees in their decisions to upgrade or close the cases, or whether investigators showed any bias or favoritism toward their former employer. We compared these 19 cases to an OIG statistical sample of 60 of 297 cases to determine whether there were significant differences between how former auto industry employees disposed of cases involving their former employers versus other NHTSA investigators who had no employment relationships with the industry. In addition, we randomly selected and reviewed 46 of 59 cases based on 4 auto manufacturers that currently employ or are represented by 6 former NHTSA employees (3 former high level officials now working for law firms representing either Honda or Nissan and 3 former ODI investigators now working for either Toyota or Volkswagen). For each case, we looked at all documentation in the defect investigation management database system to determine whether former employers influenced their former employees' decisions to upgrade or close a case or whether investigators showed any bias or favoritism toward their former NHTSA colleagues.

In addition to our review of case documentation, we interviewed 18 current ODI employees representing all 7 divisions to solicit any concerns they had regarding undue pressure or influence.¹ Our interviews focused on employees' interactions with former employers, employees' experience with internal and external pressures, barriers

¹ (1) Correspondence Research Division, (2) Defects Assessment Division, (3) Early Warning Division, (4) Medium and Heavy Duty Vehicle Division, (5) Recall Management Division, (6) Vehicle Control Division, and (7) Vehicle Integrity Division.

employees encountered in pursuit of agency goals, and the overall safety culture of NHTSA. Included among the 18 were all available ODI employees from all 7 ODI Divisions, who were formerly employed by industry, as well as employees who had worked on cases involving auto industry companies where former NHTSA employees are now employed. Of the 18 employees interviewed, 10 had worked on cases involving a former auto industry employer, although only 1 interacted with former auto industry co-workers as part of an investigation.

To determine whether NHTSA complied with OGE rules, policies, and procedures, we reviewed all pertinent statutes and OGE regulations relating to Federal employer and employee ethics training and other responsibilities, as well as NHTSA's internal ethics policies. We also reviewed OGE's July 2010 review of NHTSA's ethics program, specifically as it relates to compliance with financial disclosure reporting requirements. We examined NHTSA's ethics policies in comparison to DOT's other Operating Administrations with safety oversight and enforcement programs. We also examined all available records on OGE's ethics training requirement and NHTSA's post-employment counseling policy.

Our assessment of NHTSA's compliance with OGE rules, policies, and procedures also examined the actions of NHTSA's current and former employees who had prior industry connections. We reviewed the files for the 23 former auto industry employees NHTSA hired between July 1998 and March 2010. We examined their annual ethics training and cooling-off period requirements, as well as their OGE 450 confidential financial disclosures. To determine whether NHTSA complied with OGE rules, policies, and procedures, as well as its own post-employment counseling policy, we reviewed the documentation for all 15 former NHTSA employees that left NHTSA between April 2000 and March 2010.

Federal Post-Employment Prohibitions

Post-Employment Criminal Penalties. The primary post-employment statute that applies to former Federal employees is 18 U.S.C. § 207, “Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.” This statute generally prevents former Executive Branch employees from making appearances before and communicating with the Federal Government on particular matters on which they worked as Federal employees. The relevant post-employment restrictions in this review include the following.

- Lifetime Ban (18 U.S.C. § 207(a)(1)) – An Executive Branch employee is permanently prohibited after leaving his Federal position from knowingly making, with the intent to influence, any communication to or appearance before any Federal employee or agency on behalf of any other person in connection with a particular matter:
 - (A) In which the United States is party or has a direct and substantial interest,
 - (B) In which the person participated personally and substantially as a Federal officer or employee, and
 - (C) Which involved a specific party or specific parties at the time of such participation.

- 2-Year Ban (18 U.S.C. § 207(a)(2)) – An Executive Branch employee is prohibited for 2 years after leaving his Federal position from knowingly making, with the intent to influence, any communication to or appearance before any Federal employee or agency on behalf of any other person in connection with a particular matter:
 - (A) In which the United States is party or has a direct and substantial interest,
 - (B) Which such person knows or reasonably should know was actually pending under his or her official responsibility¹ as a Federal officer or employee within a period of 1 year before the termination of his or her service with the United States, and
 - (C) Which involved a specific party or specific parties at the time it was so pending.

- 1-Year Ban (18 U.S.C. § 207(c)) – In addition to the restrictions cited above, a “senior employee”² of the Executive Branch is prohibited for 1 year after ending his employment from knowingly making, with the intent to influence, any

¹ For the purposes of 18 U.S.C. § 207, the term “official responsibility” means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

² A senior official includes executive level officials and any individual who is paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for Level II of the Executive Schedule, which is \$155,441, as of January 2011. Therefore, SES officials whose pay is at least \$155,441 and senior level or other employees whose basic pay is at least \$155,441, excluding locality pay, are senior employees, and are covered by this 1-year restriction (18 U.S.C. § 207(c)).

communication or appearance before any office or employee of his former agency on behalf of any other person in connection with any matter on which the person seeks official action.

We also note that FAA, which has post-employment policies similar to those of all other Operating Administrations (outlined above), has taken steps to strengthen post-employment restrictions on FAA Flight Standards Service aviation safety inspectors (ASI). On November 20, 2009, FAA issued a Notice of Proposed Rulemaking proposing a prohibition on certificate holders hiring or contracting with former ASIs (or their managers) under certain circumstances.³ Certificate holders include Part 121⁴ and Part 135⁵ air carriers, repair stations, flight schools, and other entities. Indirectly, this regulation acts as a post-employment restriction on former ASIs and their managers. FAA's proposed rule is in response to a recommendation in our 2008 report⁶ that FAA implement post-employment guidance that includes a cooling-off period (e.g., 2 years) that prohibits an FAA inspector hired at an air carrier he or she previously inspected from acting in any type of liaison capacity between FAA and the carrier.

³ This rulemaking would prohibit a certificate holder from employing or contracting with an ASI or other person with certificate holder oversight responsibilities to act as an agent or to represent that certificate holder in any matter before the FAA. This restriction would apply if the person, in the preceding 2-year period has (a) served as, or was responsible for oversight of, a Flight Standards Service ASI and (b) had the responsibility to inspect, or oversee the inspection of, the operations of the certificate holder.

⁴ 14 C.F.R. Part 121, Operating Requirements: Domestic, Flag, and Supplemental Operations.

⁵ 14 C.F.R. Part 135, On-Demand, Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons On Board Such Aircraft.

⁶ OIG Report Number AV-2008-057, "Review of FAA's Safety Oversight and Use of Regulatory Partnership Programs," June 30, 2008. OIG reports are available on our website: www.oig.dot.gov.