

# United States Senate

WASHINGTON, DC 20510

October 2, 2019

The Honorable Nicole R. Nason  
Administrator  
Federal Highway Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Administrator Nason,

We are writing to request a status update on your progress implementing the recommendations in GAO's report on *Highway Safety: More Robust DOT Oversight of Guardrails and Other Roadside Hardware Could Further Enhance Safety*.

As you know there have been several deaths in the United States that are attributed to malfunctioning guardrail end terminals and that several states including Virginia, Missouri, Tennessee and Maryland have all announced plans to replace these products with a new, safer model or have removed the item from their list of approved products.

GAO issued their report and accompanying recommendations in June 2016. Since then more people have died, including a Maryland resident in 2018. In May 2019, GAO updated its Recommendations for Executive Action to note that the FHWA still has three of the five recommendations unresolved. These three recommendations are:

1. The Secretary of Transportation should direct the Administrator of FHWA to provide additional guidance to crash test labs and accreditation bodies to ensure that labs have a clear separation between device development and testing in cases where lab employees test devices that were developed within their parent organization.

**GAO Comment:** As of May 2019, FHWA officials stated that the agency is working with state departments of transportation to establish a mechanism for third party verification of results from crash-test labs, along with an outside organization that would assume this responsibility. FHWA officials said it is their goal to have a third party verification regime in place by mid to late 2020. This new organization would also be responsible for developing guidelines with respect to lab independence and dealing with cases where a testing lab and a hardware developer are owned by the same parent company.

2. The Secretary of Transportation should direct the Administrator of FHWA to develop a process for third-party verification of results from crash-test labs.

**GAO Comment:** As of May 2019, FHWA officials stated that the agency is working with state departments of transportation to establish a mechanism for third party verification of results from crash-test labs, along with an outside organization that would

assume this responsibility. FHWA officials said it is their goal to have a third party verification regime in place by mid to late 2020.

3. The Secretary of Transportation should direct the Administrator of FHWA to support additional research and disseminate results on roadside safety hardware's in-service performance, either as part of future phases of FHWA's current pilot study on guardrail end terminals' performance or as part of FHWA's broader research portfolio.

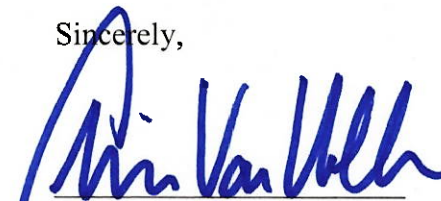
**GAO Comment:** As of May 2019, FHWA officials stated that the agency expects the pilot program report to be issued in December 2020, but it will not report results because the sample sizes were too small. In addition, officials told us that no further research into in-service performance evaluations are planned.


We are very concerned about the lack of urgency by your agency in responding to the GAO's recommendations to improve the process by which guardrails are approved for use on our nation's roads. As you know, the Senate Committee on Environment and Public Works Committee recently passed America's Transportation Infrastructure Act of 2019 which includes a directive to FHWA to implement these recommendations.

Please provide us with an update by October 11, 2019 on the progress you have made toward implementing the remaining three GAO recommendations by your own estimated time-frame of mid to late 2020. In addition, we would like to know more details about why you will not be reporting the results of the pilot study into the effectiveness of the guardrail end terminal and what additional resources you may need in order to obtain a sample size large enough to make a conclusion about the performance of these products.

We appreciate your review and response to these concerns.

Sincerely,

  
Chris Van Hollen  
United States Senator

  
Benjamin L. Cardin  
United States Senator