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In This Issue

Will Code of Conduct Clean Up Security Contracting Field?

In November, more than 20 private security contractors (PSCs), along with representatives from various governmental and non-governmental organizations (NGOs) from around the world, will come together in Geneva, Switzerland, to sign the International Code of Conduct for Private Security Service Providers. The code aims to "set forth a commonly-agreed set of principles for PSCs and ... establish a foundation to translate those principles into related standards as well as governance and oversight mechanisms." Because the code's "oversight mechanisms" remain undetermined, questions linger about the effectiveness of another self-policing policy for the private security industry.

The code of conduct is a 17-page document crafted, according to the Geneva Centre for the Democratic Control of Armed Forces (DCAF) – a partner in the process – through "an inclusive, transparent multi stakeholder initiative launched in June 2009." The Swiss government, which created the DCAF in 2000 as a think tank on private security matters, along with the governments of the U.K. and the U.S., consulted on the creation of the code as well. "Companies that sign on to the industry-led effort," the *Wall Street Journal* recently wrote, "will promise to

respect human rights, properly screen security personnel and work to reduce civilian harm when working in conflict zones."

Critics of the effort, such as José Luis Gómez del Prado, head of the United Nations (UN) Working Group on the Use of Mercenaries, acknowledge that the code of conduct is a "good document" but claim the self-regulatory approach is just "window dressing" and that a "legally binding instrument" is needed as a real enforcement tool against PSCs. P.W. Singer, a senior fellow and director of the 21st Century Defense Initiative, recently told *Government Executive*, "It's a lot like the code of conduct at your neighborhood country club, but with even less bite," recognizing that the document lays out "good practices to aspire toward" but lacks "legal or economic" sanctions.

Human rights proponents and other groups have long advocated the need to regulate PSCs better, but the issue has only gained traction over the last few years. In 2005, the UN Commission on Human Rights, the predecessor of the UN Human Rights Council, set up Gómez del Prado's group to study the impact of PSCs throughout the world. The working group arrived at several startling conclusions:

> In the cluster of human rights violations allegedly perpetrated by employees of [private military and security companies] which the Working Group has examined one can find summary executions; acts of torture; cases of arbitrary detention; of trafficking of persons; serious health damages caused by their activities; as well as attempts against the right of self-determination. It also appears that [private military and security companies], in their search for profit, neglect security and do not provide their employees with their basic rights, and often put their staff in situations of danger and vulnerability.

The high-profile scandals that have erupted over the last few years in the U.S. wars in Iraq and Afghanistan only reinforce the working group's conclusions. The UN working group, along with the Parliamentary Assembly of the Council of Europe, has called for a legally binding instrument to hold PSCs accountable, which would resemble the "Stop Outsourcing Security Act," introduced earlier in 2010 by Sen. Bernie Sanders (I-VT) and Rep. Jan Schakowsky (D-IL).

Any arrangement to hold PSCs accountable modeled after the "SOS" Act, however, would circumscribe the private security industry's opportunities of employment, limiting them to roles that do not approach the delicate, gray area of tasks only government employees should perform. Not surprisingly, industry officials disagree with this approach and do not acknowledge that the kinds of tasks they perform have anything to do with the pernicious effects they can have on an environment in which they are engaged.

The private security industry insists that a self-policing effort, like the new international code of conduct, will be enough, as it will weed out the bad actors that many within the PSC community blame for their poor reputation. Speaking to *Government Executive*, Tara Lee, a partner with DLA Piper, a law firm associated with the security contracting community, claims the minimum standards will help because, "Right now, three guys with guns, a truck and a website have a

security company." However, most of the major scandals associated with the private security industry were perpetrated by large, professional organizations in good standing with the PSC community, such as Blackwater/Xe, ArmorGroup, and DynCorp.

Some good government advocates optimistically see the new International Code of Conduct for Private Security Service Providers as a first step. Professor Deborah Avant of the University of California, Irvine told the *Journal* that the code helps establish private security contractors as "a feature of the landscape in conflict zones," which will lead to better oversight. The key, though, will be enforcement of penalties against companies that violate the code and how the group will find violations. The DCAF and other advocates of the code of conduct point out that there will be independent auditing of member companies, but it will still be up to members to self-report serious incidents in the field, and it will be up to the group of organizations signed on to the code to decide consequences for noncompliance.

Contractors have a very poor record when it comes to self-reporting serious incidents that may show incompetence or neglect. At a hearing convened by the Commission on Wartime Contracting (CWC) this summer on the use of private security contractors in Iraq, self-reporting by companies was a main issue. Commission member Charles Tiefer, a law professor at the University of Baltimore, pointed out to several government officials testifying that no less than three different studies conducted by governmental and non-governmental entities found that private security contractors cannot be counted on to reliably report incidents involving grave issues such as civilian causalities and weapons discharges.

The studies included a report by Human Rights First, which reviewed 610 serious incident reports provided by private security contractors used by the U.S. government and found that just one report even suggests unwarranted weapons discharge. The second report, conducted by the inspector general of the U.S. Agency for International Development (USAID), examined 207 incident reports filed between 2006 and 2009 and found that contractors reported no persons other than employees of the company were killed or injured, and no property other than the companies' were destroyed. The report found "that subcontractors can censor or omit incident reports that might reflect on them poorly." The final study, done by the Special Inspector General for Iraq Reconstruction (SIGIR), reviewed 109 incidents that reported, as Professor Tiefer exclaimed, "no Iraqi civilians ... injured, let alone killed." A pattern of underreporting of civilian incidents is clearly reflected in these studies.

Even if private security companies do begin to self-report serious incidents on a consistent basis, there is no guarantee that the organization of members signed on to the proposed code of conduct will penalize them appropriately. Indeed, the private security industry has a self-policing code of conduct similar to the new international one. The IPOA, formerly known as the International Peace Operations Association, an industry trade group that boasts over fifty member companies, "seeks to ensure the ethical standards of IPOA member companies operating in conflict and post-conflict environments so that they may contribute their valuable services for the benefit of international peace and human security."

Last summer, though, when pictures of employees of IPOA member ArmorGroup surfaced that showed drunken orgy-like parties at a personnel compound near the Kabul embassy in Afghanistan, not one other member of the group stepped forward to complain about the incident. At a CWC hearing held to address the ArmorGroup scandal, Doug Brooks, head of the IPOA, admitted that over the course of 13 days, between the time the pictures and allegations emerged and the time of the hearing, no one – much less a member company – filed any sort of complaint. Brooks even conceded, "[M]ost of the complaints come from outside the association."

If governments are going to hold the private security industry accountable, a binding, international instrument will likely need to be adopted. As Gómez del Prado, the UN working group head, has remarked, "Voluntary codes of conducts for [private military and security companies] may be a useful mechanism. However ... they remain insufficient and should be combined with the elaboration and adoption of legally binding instruments at the national, regional and international level."

Commentary: In Case of Bailout, Break Glass for Transparency

With the unpopular bank bailout, the Troubled Asset Relief Program (TARP), coming to a close, policymakers should begin looking back at the program to glean lessons from its creation and execution. When TARP was created by an act of Congress in 2008, the imperative was speed, not transparency. Unfortunately, that lack of transparency and other problems plague the program nearly two years later.

Lesson 1: Create an explicitly independent inspector general.

Probably the easiest problem to fix, as far as future bailout legislation is concerned, is that TARP did not specifically state that its oversight body, the Special Inspector General for TARP (SIGTARP), would be independent from the Department of the Treasury (Treasury). While it is unclear if Treasury ever acted to control SIGTARP or curtail its independence, SIGTARP's relationship with Treasury was a contentious issue for several months in the summer of 2009, as SIGTARP was beginning its investigations. At best, TARP's silence on the issue distracted from both TARP's and SIGTARP's missions and hampered transparency. This problem would be easily fixed with a short section acknowledging any future oversight body's independence.

Lesson 2: Establish a recipient/participant reporting mechanism and clear disclosure requirements.

A second, more difficult problem that should be addressed in any future bailouts is a hot-button issue in the transparency community in general: recipient reporting. TARP specifies very little in the way of disclosure, instead leaving it up to the Treasury Secretary to decide how, what, and when to disclose. For instance, while the Secretary chose to identify TARP recipients by name, the TARP legislation merely requires that the Secretary publish a "description" of what is purchased. When compared to landmark federal transparency laws such as the Federal Funding

Accountability and Transparency Act (FFATA) and the Recovery Act, both of which outline specific data points to be collected, TARP falls tragically short.

Treasury should disclose the identities of anyone who receives federal support, whether in the form of loans, direct stock purchases, guarantees, or anything else of value, placing bailout transparency in line with other federal spending transparency measures. Additionally, bailout recipients should report on how they used their federal support. With both the Recovery Act and FFATA, we have learned that while it is important to know who received government support, it is equally important to know what they did with that support. Currently, Treasury surveys TARP recipients to see how they are using their funds, but the results are infrequent, aggregated, and anonymous. Short summaries of how each financial institution used their federal bailout funding would greatly increase transparency and increase public trust in deeply unpopular institutions.

Lesson 3: Carefully consider conflict of interest guidelines.

TARP similarly delegates the creation of conflict of interest guidelines to the Treasury Secretary. Most TARP programs did not create significant conflict of interest problems, but one, the Public-Private Investment Program (PPIP), did. PPIP basically invested in mortgage-backed securities using a mixture of TARP and private funds and were managed by private management firms. Clearly, with private firms managing public money, conflict of interest problems abound, especially when, thanks to the interconnected nature of Wall Street, any PPIP investment could easily benefit the private firms managing the funds. Treasury, after a lengthy delay, eventually released conflict of interest guidelines for PPIP, including so-called "firewalls" blocking off the PPIP managers from the rest of their companies. However, TARP itself still does not have adequate conflict of interest guidelines. Adding such guidelines to bailout legislation itself would ensure that adequate federal regulations are written by the implementing agency and could accelerate the process of rulemaking by federal workers trying desperately to save a faltering economy.

These are certainly not the only lessons that Congress should take from its actions in 2008. Indeed, other lessons learned from the financial crisis were incorporated into the financial reform bill, passed earlier in 2010. And although that bill reforms the structure of Wall Street in an effort to prevent future bailouts, it is just as important to prepare for future crises now, when cooler heads may prevail. Many of the transparency elements discussed here were eventually instituted by Treasury, but the key is to have them standardized and in place before any future bailout. These provisions are what are necessary for a baseline of bailout transparency, but this list is by no means an exhaustive accounting.

Transparency Survey Offers Mixed Results for Federal Government

A recent transparency survey of more than 5,000 Americans found that more than three-fourths gave the government low scores (59 or lower out of 100), and only seven percent rated the

government as highly transparent (a score of 80 or higher). The White House received the highest transparency score in the study, and Congress received the worst score among government entities. However, limitations of the study make any final judgment on the success or failure of the government's transparency efforts difficult.

The Government Transparency Study was conducted by ForeSee, a customer satisfaction survey company, and NextGov, a federal technology news website, to establish a baseline of public perceptions of transparency. The research was done in the context of the Obama administration's promise to be the most transparent in history and the launch of several high-profile policies such as the Open Government Directive and transparency websites such as Data.gov. The random online survey of 5,107 U.S. citizens from Aug. 25 to Sept. 4 inquired about participants' perception of transparency, satisfaction, and trust, of the White House, federal agencies, Congress, and four regulated industries (airlines, banking, health care, and oil and gas).

All entities scored relatively low on the hundred-point scale for transparency, with the White House leading the group with a score of 46 and the oil and gas industry scoring the lowest with a score of 30. Congress had the lowest government transparency score, 37, which placed it one point behind the airline industry.

As to the White House's leading score, the study acknowledged that "if these entities were graded on a curve, the White House would get an A." However, the study quickly dismisses this conclusion, stating that "given the fact that federal websites regularly achieve online transparency scores in the 60s, 70s, and 80s ... it's hard to give the White House too much credit for being the best of a sub-par group."

This study represents an inaugural effort; thus, there are no previous scores against which to compare these scores. It may be that the government scores, though low on the total scale, represent a significant recent increase in public perceptions from previous years. The survey did ask if people's trust in government had increased or decreased from a year ago. However, no similar question on the trend in transparency was asked. Such a question, though not enough to create a retroactive baseline, might have provided more context for the current scores.

Additionally, the authors note that the low scores may also relate to the purpose of the study, which was to obtain general perceptions of transparency in government, not assess web user satisfaction with particular agency transparency efforts. "Had we surveyed people who had specific interactions with these government entities, their transparency and other scores could very well be higher," the report notes. In fact, ForeSee also provides a quarterly Transparency Index, doing just that – tracking reactions to transparency in 30 federal agencies from those who interact with agency websites. The average transparency score of the measured websites during the third quarter of 2010 was 75.8, much higher than the public's general perception of government transparency shown in the ForeSee/NextGov report.

It should also be noted that the ForeSee/NextGov survey did not target those well informed about the government's transparency efforts. The only qualifying question asked of participants

was if they followed the news about the White House, government, etc. The study notes that "when people are asked about a broad experience or awareness rather than a specific one, transparency and satisfaction scores are typically lower." This calls into some question the study's comparison of high customer satisfaction scores for government websites with the lower general perception scores. If lower scores are typical on a general awareness survey, then it may be reasonable to view the scores on a curve.

Given the lack of particular awareness of transparency efforts in government, the results are also more vulnerable to measuring the wrong things. The study notes in the key findings that "Americans may be blaming the government for tough times." One-third of participants had lost a job or had a spouse lose a job in the last two years, a quarter had experienced large drops in investments, and almost 40 percent reported family or friends losing a home. These issues have nothing to do with government transparency, but they could influence people's perception of government overall. As a result, the unrelated issues could influence responses to any questions about satisfaction with government regardless of issue area.

Similarly, the study notes that the strongest correlation with transparency ratings comes with political affiliation, with conservative and Republican participants providing transparency scores in the low 30s and liberal and Democratic participants giving scores in the 50s. This correlation may indicate that respondents' answers are more a reflection of overall approval of government then genuinely held perceptions of transparency.

Based on ForeSee's customer satisfaction research, the study also notes a strong link between people's perception of government transparency and both satisfaction and trust with government. The study suggests that transparency drives citizen satisfaction, which in turn drives their trust in government. The study results appear to confirm a connection between the three concepts, as scores for each government entity (White House, agencies, Congress, and government overall) followed similar patterns. For each entity, the citizen satisfaction and trust scores were identical and lower (between 6 and 11 points) than the entity's transparency score.

Given the emphasis the Obama administration has given transparency and the fact that we are approaching the midpoint of the president's four-year term, it is likely that other evaluations of the progress made on transparency will be forthcoming. It will be interesting to see what approach those evaluations take and how the outcomes resemble and differ from this perception survey.

Commentary: Did OMB Block Worst-Case Estimates of Oil Spill?

A working paper by the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling has ignited a controversy about the role of the White House Office of Management and Budget (OMB) in controlling information about the spill. The working paper alleges that, soon after the April 20 explosion of BP's Deepwater Horizon rig, OMB blocked plans to disclose the government's worst-case models of the spill. The administration's response

to the allegations leaves several key questions without clear answers, which can only be resolved by disclosing the drafts and feedback through which these critical documents were developed.

To aid in the spill response, the National Oceanic and Atmospheric Administration (NOAA) prepared worst-case models of where the spilling oil might go. Unnamed government officials informed the commission that NOAA wanted to release the models to the public in late April or early May, but that OMB denied permission to release the models. The allegations have prompted charges of censorship by OMB.

OMB and NOAA acknowledged reviewing the models and providing feedback to ensure they "reflected the best known information at the time." According to OMB and NOAA, the feedback was incorporated, and the models were eventually released in July, representing an "improved analysis."

However, the commission contended that the models released in July were different from those prepared in late April or early May and were based on information that was not available until June.

In its responses to the controversy, the administration has left some ambiguities; to rebuild the public's trust, these should be clarified.

First and perhaps foremost, the administration vigorously denied claims that OMB blocked release of the estimates. At the same time, it acknowledged that OMB provided comments that influenced the report. White House press secretary Robert Gibbs declared that "no information was altered. No information was withheld." But he stated that "OMB sent the report back to NOAA to include" additional information in the modeling because NOAA's draft "wasn't an accurate representation." At the same time, he claimed that "none of the science in any of the report was changed."

This distinction is echoed throughout the administration's carefully worded statements and replies on this issue, prompting the questions: What was the precise nature of OMB's "feedback"? If OMB did not deny NOAA's request to release the estimates, did it require that they be amended before being released? Was this “feedback” from OMB, or was it passed along by OMB from scientists in other agencies?

In addition, the administration has not disputed the working paper's timeline, which states that NOAA submitted the estimates for release in late April or early May. However, the administration has not publicly confirmed the timeline, either. In a letter to the commission, NOAA did acknowledge a delay in clearing the models for release, which it attributed to the models' complexity, the desire to be current in reflecting changes in the spill and response, and the challenges of clearly and accurately communicating to the public. The question remains: What was the exact timeline, from submission to feedback to public release?

Finally, the administration has stated that OMB's feedback was intended to improve the modeling and that there was nothing improper about this process. In a letter to the commission,

NOAA director Jane Lubchenco states, "I believe the end product was consistent with the highest professional standards and best available scientific data." However, the administration has provided only its assertions to evidence this claim. Particularly, the administration has not released the draft that NOAA submitted for OMB approval, which would permit independent analysis of its claim that the draft's models were flawed. Neither has the administration released intermediate drafts or correspondence relating to changes in the document, which would allow the public to judge whether the edits were scientific or political in nature.

These are not idle questions given criticisms of OMB interfering in agencies' scientific decisions during the previous administration. "If OMB censored NOAA by refusing to let the agency release its worst-case estimate – well, that would be extremely troubling," said Gary Bass, OMB Watch executive director, in a *Washington Post* article. "It would be reminiscent of the Bush II administration which often put politics above science. We have not seen that pattern during the Obama administration."

Additionally, these are not the first questions raised about the Obama administration's handling of information and access about the BP oil spill. For example, the commission's working paper also examined NOAA's Aug. 4 "oil budget" estimating what happened to the spilled oil and how much remains in the Gulf. The oil budget was criticized by several scientists as well as Reps. Ed Markey (D-MA) and Raul Grijalva (D-AZ) for painting too rosy a picture and for not disclosing its methodology. (As of this writing, the oil budget's methodology still has not been released.) Transparency failures unfortunately have been a recurring theme in the spill response, including a lack of transparency from BP and obstructions to media access to the spill site.

The administration's claims that it did not act improperly may well be truthful. However, the administration has not provided enough information about the process to allow the public to evaluate the claims. Instead, the opacity of agency interactions with OMB leaves little more than a "he said, she said" situation. This creates public uncertainty – and that uncertainty leads to distrust of our government.

Government insiders will argue against any peek into the interagency process, claiming that disclosure could chill dialogue in internal deliberations. However, this claim must be weighed against other criteria, such as the imperative of accountability. In some situations, the case for transparency is clear and striking: this is such a case. Given that President Obama called the BP spill "the worst environmental disaster America has ever faced," the public should demand a greater level of transparency than usual. Accordingly, OMB and NOAA should release all revisions to the long-term, worst-case scenario, as well as relevant communications and a timeline of changes.

When President Obama established the oil spill commission, he said, "[E]ven as we continue to hold BP accountable, we also need to hold Washington accountable.... I want to know what worked and what didn't work in our response to the disaster[.]" In that spirit, let's open the books and see what really happened between OMB and NOAA.

White House Sued over Delayed Scientific Integrity Policy

The nonprofit organization Public Employees for Environmental Responsibility (PEER) is suing the Obama administration over a long-delayed policy to limit interference in federal scientific research and to protect government scientists from censorship and harassment.

On Oct. 19, PEER filed a complaint in federal district court in the District of Columbia against the White House Office of Science and Technology Policy (OSTP), which alleges that the office is illegally withholding documents related to the development of a pending scientific integrity policy, including internal White House and interagency communications and draft recommendations for the policy.

PEER criticized the administration for failing to transparently develop a policy that itself rests upon the foundations of transparency, accountability, and integrity. "Why is the development of transparency policy cloaked in secrecy?" PEER Executive Director Jeff Ruch asked in a statement.

PEER's complaint was filed under the Freedom of Information Act (FOIA). The group filed a FOIA request on Aug. 11, but the White House did not provide the requested documents. PEER submitted its request in its role as an advocacy, research, and education organization "to learn how the scientific integrity policy is being developed and why it has been delayed," according to the complaint.

More specifically, PEER requested records related to communications OSTP received from other agencies regarding the draft policies, copies of draft recommendations, and documents providing reasons for the delay in publishing the new policies. According to the complaint, OSTP did not respond to PEER within 20 days as required by FOIA. PEER appealed to OSTP on Sept. 10 and OSTP responded on Sept. 20 that it acknowledged receipt of the request and the appeal. Through its letter and a subsequent phone call with PEER on Oct. 13, OSTP could not identify a date when it would fulfill the request because of the “extensive nature” of the request. PEER had not received any documents related to its request by the time it filed the complaint with the district court.

The development of new scientific integrity policy dates back to March 9, 2009, when President Obama issued a memo instructing OSTP to present him with recommendations for ensuring adequate independence for federal scientists and integrity of scientific information and its use. Obama said he will use the recommendations to take "Presidential action" as appropriate and set a deadline of 120 days for their submission. On April 23, 2009, OSTP invited public comments on development of the recommendations. However, OSTP has still not released the recommendations to the public.

The scientific community and good government groups had applauded Obama's March 2009 memo, hoping the effort would restore scientific integrity in government decision making. The Union of Concerned Scientists (UCS), another nonprofit organization advocating for the protection of scientists and their research, catalogued a litany of abuses during the Bush

administration, including the censorship of scientists researching public health and environmental issues such as climate change and the direct manipulation by non-scientists of scientific recommendations on contraception.

In its comments to OSTP, OMB Watch recognized the important role science plays in public policy and recommended 1) limitations on the White House's role in reviewing agency science; 2) additional disclosure of scientific research and draft conclusions with the goal of warding off scientific interference early in the policy development process; and 3) presidential instructions against the use of scientific uncertainty as an excuse to delay or avoid regulation.

In July, around the one-year anniversary of the recommendations' due date, groups renewed their support for strong recommendations from OSTP. PEER pointed to a continued need for better protections, citing the Obama administration's handling of the BP oil spill, specifically the lack of disclosure related to oil spill estimates and information on dispersants. UCS continues to collect instances of scientific abuse under the Obama administration.

In June, OSTP Director John Holdren acknowledged the hold-up of the recommendations but pledged their eventual release. In a blog post, Holdren wrote, "I am pleased to report here that the process, though slower than many (including myself) had hoped, has resulted in what I believe is a high-quality product that I anticipate finalizing and forwarding to the President in the next few weeks," implying that OSTP has completed the recommendations.

Scientific integrity advocates fear that the White House Office of Management and Budget (OMB) has contributed to the delay. NPR reported Oct. 7 that the draft recommendations "appear hung up" at OMB. OMB review of the recommendations before they are made public is a standard step in the development of many government-wide policies.

At least one federal agency, the Department of the Interior, has taken its own steps to protect the work of its scientific staff. On Sept. 29, Interior Secretary Ken Salazar issued a Secretarial Order that requires greater disclosure of scientific information, expands protection for whistleblowers, and "forbids the alteration of scientific findings in policy-making activities," among other things. The order applies to both career staff and political appointees.

The announcement of the order came less than a month after Interior released a draft policy that was criticized in comments by OMB Watch, UCS, and other public interest groups for its timidity in applying new protections to scientists and for failing to cover political appointees. The final order was praised by many of those groups.

In a statement, Interior said that the order is consistent with Obama's March 2009 memo and said "guidance and recommendations" from OSTP are "expected" in 2010.

On Nov. 4, Holdren will co-chair a meeting of the President's Council on Science and Technology. During the public hearing portion of the meeting, advocates are expected to reinforce support for enhanced scientific integrity protections and call on the office to release

recommendations as quickly as possible.

Chinese Drywall Manufacturer Agrees to Help Rebuild Homes

One of the Chinese companies that manufactured drywall used to rebuild homes around the Gulf Coast after Hurricane Katrina has agreed to help pay for the repair of 300 homes. The legal agreement, which establishes a pilot program in four states, results from claims that the drywall emitted substances that corroded and destroyed pipes, wiring, and alarm systems.

Hurricane Katrina struck several Gulf Coast states on Aug. 29, 2005. According to the National Hurricane Center, Katrina was the most economically devastating hurricane to hit the U.S., costing more than $81 billion. There was a massive rebuilding effort in the states most directly impacted by Katrina – Louisiana, Mississippi, Alabama, and Florida.

Many homeowners who rebuilt during this time have reported problems with extensive corrosion of heating and cooling, electrical, and plumbing systems. In some cases, the corrosion problems were so severe that residents experienced health problems, and rebuilt homes had to be extensively renovated or abandoned. Investigations into the causes of the corrosion have highlighted problems with Chinese-made drywall imported to meet the demands of rebuilding after Katrina.

According to the Consumer Product Safety Commission's (CPSC) monthly report for August, as of Aug. 20, 2010, there had been approximately 6,300 complaints about drywall problems; 3,526 of those complaints from 38 states were filed with CPSC. About 90 percent of those complaints have come from five states, four of which are those states most directly impacted by Katrina. CPSC's investigation into the drywall problems has been the largest investigation in the agency's history, costing more than $5 million.

In May, CPSC released the results of tests it had commissioned on drywall samples emitting high levels of hydrogen sulfide. (Sulfur compounds can corrode metal.) Of the ten most highly emitting samples, all were made in China. "Some of the Chinese drywall had emission rates of hydrogen sulfide 100 times greater than non-Chinese drywall samples," according to the report.

The manufacturing company that topped CPSC's most-emitting list was Knauf Plasterboard, the company that has agreed to pay for repairing the homes in the newly created pilot program. According to an Oct. 14 Associated Press (AP) article, Knauf, building suppliers, builders, and insurance companies have agreed to fix 300 homes in Louisiana, Mississippi, Alabama, and Florida that had been damaged by the corrosion. An attorney for a Louisiana building materials supplier said that his client and multiple insurance companies and builders will pay for the repairs. Knauf will help select which homes are repaired, according to the AP article.

Although there are thousands of drywall claims against Chinese manufacturers, this is the first settlement reached. The pilot program could start the process of helping to resolve almost 3,000 claims against Knauf if the program is extended.

The Chinese manufacturers of the defective drywall are not subject to U.S. courts. U.S. and Chinese officials have held high-level diplomatic meetings to help involve Chinese manufacturers in the process of repairing damaged homes, according to CPSC's press release announcing the May drywall test results. Knauf is the only manufacturer to submit to the court's proceedings.

The judge overseeing the consolidated claims, U.S. District Judge Eldon Fallon, has already made awards to families with homes ruined by defective drywall. The AP reports that these claims deal only with property damage. Medical claims will be taken up by the court in separate cases.

Related bad news for homeowners has hit as insurance companies have refused to pay claims and have canceled insurance policies, according an Oct.17 *Washington Post* article. As homeowners have learned that their homes contain defective drywall, they have filed claims with their insurance companies, only to have those claims denied and their policies either not renewed or canceled. Lawyers have begun to tell their clients not to make claims with insurance companies for fear that the homeowners will lose their insurance and possibly their homes.

According to the *Post*, "Robert Hartwig, president of the Insurance Information Institute, said that homeowners policies were never meant to cover 'faulty, inadequate or defective' workmanship, construction or materials." Not telling insurance companies of problems, however, may not protect the homeowner in future claims if the insurer learns the home was built with Chinese drywall, according to a lawyer quoted in the *Post* article. In other words, the insurance companies are not bound to cover problems resulting from the defective materials, but they can use the defective materials as an excuse to deny coverage for claims.