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# Military Privatized Housing: Status of Legislative Reforms

## Background

Congress enacted the Military Housing Privatization Initiative (MHPI) in 1996 (P.L. 104-106) to improve the quality of housing for servicemembers and their families. The MHPI program established new authorities that allowed the military services to issue 50-year leases to private-sector housing companies, conveying ownership of existing housing located on leased parcels of military installation land to those entities. The housing companies, in exchange for building, upgrading, and maintaining housing facilities, collect revenue in the form of rent payments from the Department of Defense (DOD) on par with the standard Basic Allowance for Housing (BAH) that servicemembers traditionally receive for living in homes outside a military base. MHPI companies operate about 99% of military family housing in the United States.

**Table 1. Military Housing Privatization Initiative Projects as of March 2022**

U.S. Army	U.S. Navy and Marine Corps	U.S. Air and Space Force
34	13	31

**Source:** Government Accountability Office, March 2022.

**Notes:** 14 private housing companies operate 78 housing projects across the military services.

In the program’s early years, many military officials and families lauded the program as a success following investment in new construction and renovations. As the program entered its third decade, Congress heard complaints from some military families about substandard housing and other issues such as black mold, rodents, insect infestations, lead paint, damaged plumbing, and ineffective HVAC units. In 2019, concerns about DOD’s oversight of the private housing companies prompted Congress to enact a series of reforms and new requirements.

## Department of Defense Reforms

Among those reforms was the “Tenant Bill of Rights” included in the FY2020 National Defense Authorization Act (NDAA, P.L. 116-92). MHPI reform continued in the FY2021 NDAA; between both pieces of legislation Congress imposed more than 30 new requirements on the MHPI program. DOD has implemented many of them, including the creation of a new “Chief Housing Officer” position to lead oversight efforts; a standardized lease for all privatized housing landlords; and a requirement for local military housing office officials to conduct physical inspections of vacant homes when families move in or out. DOD also made changes to the metrics used to determine the performance incentive fees it provides to the landlords. DOD has implemented many of the congressionally directed reforms, yet the DOD Inspector General (DOD IG)

has assessed DOD has not been able to implement all of them.

## Tenant Bill of Rights

DOD has taken steps to enforce the “Tenant Bill of Rights,” mandated under 10 U.S.C. §2890, in order to strengthen protections for servicemembers and their families. Many of the 18 rights are written broadly, such as the right to “reside in a housing unit...that meets applicable health and environmental standards” and the right to “prompt and professional maintenance and repair.” Whether DOD or individual installations are meeting those requirements may be open to interpretation.

Full implementation of more specific requirements in the Tenant Bill of Rights arguably has been slowed by DOD’s lack of authority to make unilateral changes to existing, legally binding business agreements with MHPI companies. Instead, DOD officials have asked each company to incorporate the FY2020 NDAA provisions into existing legal agreements voluntarily. Nine of the 14 MHPI companies have complied with DOD’s request. At the same time, five companies, all of which maintain MHPI projects for the Air Force, have declined to implement all of the provisions. The elements of the Tenant Bill of Rights that some housing companies have declined to implement include providing tenants with:

- Access to a home’s seven-year maintenance history prior to signing a lease;
- The right to enter into a formal dispute resolution process; and
- The right to have housing rent payments withheld from a landlord in an escrow account pending completion of the dispute resolution process.

In late 2022, the DOD IG reported that more than 10,000 military families at five Air Force installations were not fully protected the by the Tenant Bill of Rights. DOD officials have indicated that they are continuing to seek agreement at these five installations. The details of the legal agreements between the DOD and MHPI companies – including any voluntary agreements to adhere to new statutes – are not disclosed publicly.

## Dispute Resolution Process

At installations where housing companies have voluntarily agreed to comply with the Tenant Bill of Rights and related requirements under 10 U.S.C. §2894, tenants have the right to request a formal dispute resolution process, which will be ultimately adjudicated by an installation or regional commander in charge of overseeing housing units. Tenants can request to have their rent payments placed in an escrow account and not paid to the privatized housing company pending completion of the dispute resolution process.

### Commanders' Authority

At most military bases, installation or regional commanders are empowered to determine the outcome of a formal housing dispute and take actions that may include:

- Direct the property manager or owner to take action to remediate the premises of a home;
- Direct the property manager or owner to fund relocation of a tenant per existing tenant displacement guidelines;
- Direct the property manager, owner, or tenant to reimburse the payment of any fees, charges, or move-out damage assessments determined to be due; and/or
- Direct the distribution of any segregated rent payments to the property manager, owner or tenants as appropriate.

Certain types of non-disclosure agreements (NDAs) may limit public information about specific instances of housing problems. While a provision in 10 U.S.C. § 2890(f) prohibits certain types of NDAs that might limit military families' ability to speak publicly about their issues in some situations, that provision does not preclude NDAs in all situations. In some cases, when military families seek payments from MHPI companies to settle disputes, the companies may ask them to sign NDAs.

### Information Technology (IT)

The DOD IG has found that the military services are facing problems implementing the information technology system known as the "enterprise Military Housing" system, or eMH, to track oversight activities. The Army and Air Force reported that they have not yet fully populated their eMH systems with the privatized housing inventory at some installations. Without accurate data about housing inventory, housing officials cannot execute specific activities required by law—for example, attaching a record of each inspection performed on individual housing units.

DOD also says it is facing other IT challenges related to MHPI oversight. 10 U.S.C. § 2894a requires the DOD to create a public database of complaints related to military housing. The statute, enacted as part of the FY2020 NDAA, requires the database to include a record of each complaint, along with the landlord responsible for the housing unit, a description of the complaint, and the landlord's response. More than two years after the law was enacted, a DOD spokesman said the database was not operational due to "budgetary, contract and Privacy Act issues."

### Investigations

The Department of Justice has supported DOD in enforcement efforts. In December 2021, one of the largest housing companies, Balfour Beatty Communities LLC (Balfour), was convicted in federal court of major fraud, and agreed to pay more than \$64 million in criminal fines and restitution. Specifically, the company admitted to manipulating and falsifying military housing work-order data and records so that Balfour could obtain incentive management fees (i.e., bonus payments for good performance) to which it was not entitled. For example, Balfour admitted to closing work orders early or marking

work "complete" prior to maintenance work actually being performed. In January 2022, a second MHPI company, Hunt Companies, Inc., agreed to a \$500,000 settlement with the government to resolve allegations of fraud at Dover Air Force Base. Hunt Companies made no admission of fault.

### Continued Concerns

Congress and DOD have addressed some concerns about privatized military housing on a statutory and policy level. Yet anecdotal reports about problems persist. The enforcement of broadly written standards and implementation of the dispute resolution process may vary across the military community, partly because each of the 78 privatized housing projects is a separate and distinct entity governed by its own set of legal agreements. Enforcement also may vary because individual commanders at each installation have wide discretion in handling housing matters. The Armed Forces Housing Advocates, a nonprofit group, reported in October 2022 that they continue to receive 15-20 complaints per week from military families about problems that include pervasive mold, leaks, window safety violations, and disability accommodation violations. One issue that has drawn intense public scrutiny is reports about homes contaminated with mold. While some forms of mold are believed to pose health risks, the scientific research is not definitive and there are no federal standards or recommendations for airborne concentrations of mold or mold spores. Disputes can hinge on different interpretations of inspection data.

### Legislative Issues for Congress

Members of Congress have discussed numerous legislative and oversight issues or options in recent years, including:

- Directing DOD to expand the privatized housing programs for unaccompanied and/or transient housing (that is, housing used by single servicemembers or those temporarily visiting an installation).
- Creation of a Military Housing Readiness Council comprised of DOD officials, service members, military families, and housing experts to ensure ongoing oversight of privatized military housing.
- Urging the DOD to make changes to the way BAH rates are used to calculate payments provided to the MHPI companies. This could include raising the BAH benefit to cover 100% of the median rental cost of adequate housing in a local area (the current benefit is calculated to cover about 95% of median rental housing costs). As BAH is the primary source of revenue for MHPI companies, such an increase may provide additional resources for housing services.
- Exploring ways to engage the five MHPI companies that have shown a reluctance to comply voluntarily with the Tenant Bill of Rights. Congress may consider additional measures, such as oversight hearings or legislation, to try to ensure that all servicemembers benefit from the reforms enacted into law.

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