

United States Senate

WASHINGTON, DC 20510

October 5, 2023

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Austin,

We are writing to follow up on our March 10, 2021 letter¹ to request additional and updated information on the oversight mechanisms the Department of Defense (DoD) has to ensure that military families with disability-related needs receive appropriate housing. While we appreciate the DoD's response on February 28, 2022 we are concerned about the lack of data sharing in the military housing ecosystem, residents paying for their own housing accommodations, residents' health privacy, and the Air Force's *Five and Thrive* initiative to help tackle some of the challenges facing military families.

DoD's Exceptional Family Member Program (EFMP)² was created to provide support to U.S. military families who have a family member with "a physical, emotional, developmental, or intellectual disorder requiring specialized services."³ As of 2022, about 110,000 active-duty service members received this support.⁴ Each service "is responsible for administering its own EFMP,"⁵ which means the availability of services and support for EFMP families "varies widely for each branch"⁶ and may even vary by assignment location within the same service.⁷

¹ Letter from Senator Elizabeth Warren to DOD Secretary Lloyd Austin, March 10, 2021, <https://www.warren.senate.gov/imo/media/doc/2021.03.10%20Letter%20to%20DOD%20re%20Military%20Housing%20ADA%20Complaints.pdf>.

² U.S. National Archives, Code of Federal Regulations, Title 32, § 75.1, <https://www.ecfr.gov/current/title-32/subtitle-A/chapter-I/subchapter-D/part-75?toc=1>.

³ My Air Force Benefits, "Exceptional Family Member Program, Benefit Fact Sheet," August 17, 2023, [https://www.myairforcebenefits.us.af.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-\(EFMP\)?serv=26](https://www.myairforcebenefits.us.af.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-(EFMP)?serv=26).

⁴ U.S. Department of Defense, "DOD Launches Survey to Enhance the Exceptional Family Member Program," press release, November 14, 2022, <https://www.defense.gov/News/Releases/Release/Article/3221473/dod-launches-survey-to-enhance-the-exceptional-family-member-program/>.

⁵ *Id.*

⁶ U.S. Government Accountability Office, Report to Congressional Committees, "MILITARY PERSONNEL: DOD Should Improve Its Oversight of the Exceptional Family Member Program," May 2018, Executive Summary, <https://www.gao.gov/assets/700/691647.pdf>.

⁷ Congressional Research Service, "Defense Primer: Exceptional Family Member Program (EFMP)," Bryce H. P. Mendez, January 29, 2020, p. 2, <https://fas.org/sgp/crs/natsec/IF11049.pdf>.

Participation in the program is “mandatory”⁸ for families with special needs, but “is not portable and service members must register for the program when transferring to a new duty station.”⁹

The purpose of EFMP is to provide “comprehensive and coordinated community support, housing, educational, medical, and personnel services to Families with special needs.”¹⁰ But surveys and DoD data provided to our offices reveal inadequate housing for EFMP families. In July 2020, the Military Housing Advocacy Network (MHAN) released findings from a survey of military families that painted a troubling picture, uncovered that many military families are being denied access to accessible and adaptable housing.¹¹ In response to the challenges that military families face – including housing – the USAF announced a *Five & Thrive* initiative in December 2021, “to encourage, support, and build thriving military families by tackling these challenges and enhancing preventative measures through partnerships and sharing of best practices.”¹² DoD has also made progress with the creation of the Tenant Bill of Rights,¹³ increased frequency of housing inspections,¹⁴ changes in communication with residents through briefings that clarify all tenant rights and responsibilities before and after move-in,¹⁵ and improved project oversight from the Office of Secretary of Defense such as a universal lease template across the services and requiring quarterly program reviews of each departments housing projects.¹⁶ However, DoD must act to address remaining challenges,¹⁷ including ensuring that data collected by the private

⁸ Air Force Personnel Center, “Exceptional Family Member Program,” <https://www.afpc.af.mil/Airman-and-Family/Exceptional-Family-Member-Program/>.

⁹ Congressional Research Service, “Defense Primer: Exceptional Family Member Program (EFMP),” Bryce H. P. Mendez, January 29, 2020, <https://crsreports.congress.gov/product/pdf/IF/IF11049/9>.

¹⁰ My Army Benefits, “Exceptional Family Member Program, Benefit Fact Sheet,” July 27, 2022, [https://myarmybenefits.us.army.mil/benefit-library/federal-benefits/exceptional-family-member-program-\(efmp\)-?serv=122#:~:text=The%20Exceptional%20Family%20Member%20Program,to%20Families%20with%20special%20needs](https://myarmybenefits.us.army.mil/benefit-library/federal-benefits/exceptional-family-member-program-(efmp)-?serv=122#:~:text=The%20Exceptional%20Family%20Member%20Program,to%20Families%20with%20special%20needs).

¹¹ Military Housing Advocacy Network, “Accessibility of ADA Homes and Reasonable Accommodations for Disabled Individuals in Privatized Military Housing,” July 2020, <https://web.archive.org/web/20210416220641/http://militaryhousingadvocacynetwork.org/wp-content/uploads/2020/07/MHAN-Report-ADA-and-Accomodations.pdf>.

¹² United States Air Force, “CSAF Spouse announces Five & Thrive initiative,” December 17, 2021, <https://www.af.mil/News/Article-Display/Article/2877349/csaf-spouse-announces-five-thrive-initiative/>.

¹³ U.S. Department of Defense, “Military Housing Privatization Initiative Tenant Bill of Rights,” <https://download.militaryonesource.mil/12038/MOS/ResourceGuides/Military-Housing-Privatization-Initiative-Tenant-Bill-of-Rights.pdf>.

¹⁴ U.S. Government Accountability Office, “DOD Can Further Strengthen Oversight of Its Privatized Housing Program,” April 20, 2023, p. 27, <https://www.gao.gov/assets/gao-23-105377.pdf>.

¹⁵ Government Accountability Office, Before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, Committee on Appropriations, House of Representatives, “Privatized Military Housing: Update on DOD’s Efforts to Address Oversight Challenges”, March 2022, p. 9-10, <https://www.gao.gov/assets/gao-22-105866.pdf>.

¹⁶ Government Accountability Office, Before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, Committee on Appropriations, House of Representatives, “Privatized Military Housing: Update on DOD’s Efforts to Address Oversight Challenges”, March 2022, pp. 11-12, <https://www.gao.gov/assets/gao-22-105866.pdf>.

¹⁷ Government Accountability Office, Before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, Committee on Appropriations, House of Representatives, “Privatized Military Housing: Update on DOD’s Efforts to Address Oversight Challenges”, March 2022, p. 20-28, <https://www.gao.gov/assets/gao-22-105866.pdf>.

housing partners is accurate.¹⁸ Our review of the initial set of data from DoD revealed the following concerns:

- **Some EFMP-designated families are forced to pay out of their own pockets to make their housing meet the standards under the Americans with Disabilities Act (ADA).**¹⁹

Survey results from MHAN indicated that around 20 percent of respondents reported they were forced to use their own funds to pay for necessary ADA accommodations at on-base housing,²⁰ including drop-down rails and a ramp.²¹ Data DoD provided to our offices confirmed this information, revealing that several Army installations reported families funding ADA accommodations, including in one case in 2019, a tenant paid for the installation of a therapy pool, and was also required to pay for removal.²²

The Navy shared that “[e]ligible EFMP designated families or those with disabilities do not pay for configuration or reconfiguration for reasonable accommodations,” and the Marine Corps explained “MHOs indicated that no families were required to pay their own accommodations.”²³ The USAF, however, failed to collect this information, reporting that it had record of more than 130 installations with ‘Unknown’ or ‘Not Available’ responses to this question between 2018 and 2020.²⁴ Without this information the USAF cannot adequately oversee the EFMP and whether they are succeeding in maintaining “comprehensive support.”²⁵

- **DoD should centralize and standardize housing waitlists and wait times for families.**

DoD’s ability to track and maintain housing waitlists and wait times is necessary to ensure that military families are able to move in a timely manner and obtain appropriate housing, and to ensure Military Housing Privatization Initiative (MHPI) companies are complying with disability statutes. Each of the private military housing companies maintain a waitlist for families in need of accessible housing when none are available, and the number of families that have requested modifications to housing to meet ADA-compliance.²⁶ However, some of the on-base Military

¹⁸ Government Accountability Office, Before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, Committee on Appropriations, House of Representatives, “Privatized Military Housing: Update on DOD’s Efforts to Address Oversight Challenges,” March 2022, Appendix, p. 2, <https://www.gao.gov/assets/gao-22-105866.pdf>.

¹⁹ U.S. Department of Justice, ADA.gov, “Americans With Disabilities Act of 1990, As Amended,” <https://www.ada.gov/pubs/adastatute08.htm#12101b>.

²⁰ Military Times, “Military families with disabled members need more accessible homes, survey finds,” Karen Jowers, July 08, 2020, <https://www.militarytimes.com/pay-benefits/2020/07/08/military-families-with-disabled-members-need-more-accessible-homes-survey-finds/>.

²¹ Military Times, “Military families with disabled members need more accessible homes, survey finds,” Karen Jowers, July 08, 2020, <https://www.militarytimes.com/pay-benefits/2020/07/08/military-families-with-disabled-members-need-more-accessible-homes-survey-finds/>.

²² Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 7, Question 1.f.v., p. 11.

²³ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1.f.v., p. 10.

²⁴ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 7, Question 1.f.v., p. 14, 15.

²⁵ Air Force Personnel Center, “Exceptional Family Member Program,” <https://www.afpc.af.mil/Airman-and-Family/Exceptional-Family-Member-Program/>.

²⁶ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1.e., p.8.; Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1.e, p. 7, 9.

Housing Offices (MHOs) for the Army²⁷ and Marine Corps²⁸ reported that they did not have access to the companies' waitlist information. The Air Force shared that 28 out of 69 installations did not maintain waitlists, or the information was "Not Available", or "Unknown" in 2020.²⁹ The Army clearly states that EFMP enrollment allows a servicemember or their families need "can be considered in the military personnel assignment process."³⁰ However, information provided by DoD explains that the Army does not "pre-screen or track for unavailable housing prior to issuing assignment instructions."³¹ There were also occurrences where the average amount of time that a family spent on a waitlist, before being provided with adequate housing, was not tracked at all.³² This included four out of 55 installations for the Navy³³ and 49 out of 69 total installations for the Air Force responding 'Unknown' and 'Not Available' to questions about wait times and wait lists in 2020.³⁴ DoD has failed to centralize and streamline this program and require information sharing between all EFMP parties. As a result, not all on-base EFMP offices and MHOs do not have access to the private military housing companies' waitlist information.³⁵

The waitlist information that is reported is disturbing. Over 10 installations across the services reported wait times over 90 days in 2020,³⁶ and one Army installation reported wait times getting worse over time, averaging nine to 12 months in fiscal year 2020 compared six to nine months in fiscal year 2019, and two to six months in fiscal year 2018.³⁷

- **DoD must improve the accuracy of tracking the availability of ADA housing and housing-related complaints from servicemembers.**

DoD informed us the EFMP offices for the Army and the Air Force do not track request and complaint information at all.³⁸ Even the services that do collect the request information through EFMP do not do so consistently, with four installations reporting that they did not track this data.³⁹

²⁷ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.i., p. 1, 2.

²⁸ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1.e.i, part 2, p. 7.

²⁹ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.i, p. 3-4.

³⁰ My Army Benefits, "Exceptional Family Member Program, Benefit Fact Sheet," July 27, 2022, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-\(EFMP\)-?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-(EFMP)-?serv=122).

³¹ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.iv., p. 8.

³² Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.i.i.i., p. 5-8.

³³ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.i.i, p. 3.

³⁴ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.i.i.i., p. 8.

³⁵ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1.e.i., p. 7, 9.

³⁶ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.iii., p. 5-8.

³⁷ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 6, Question 1.e.iii., p. 5.

³⁸ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1a., part 2., p.1; Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1i., part 1, p. 12.

³⁹ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 2, Question 1a., p. 2.

Additionally, DoD reported that Navy’s “EFMP office does not track complaints for the Housing program.”⁴⁰ Similarly, the Army, Marine Corps, Air Force and Space Force do not track or centrally collect these complaints.⁴¹ The Navy and the Marine Corps EFMP offices collect request information but do not track complaint information.⁴² Without this information, DoD is unable to monitor if MHPI companies are ADA-compliant, and ensure servicemembers and their families receive the housing they deserve.

- **DoD processes raise concerns about individual privacy.**

MHAN revealed that survey respondents said the housing process is “outrageous” and entails an extensive amount of paperwork that requires “an uncomfortable amount of information” pertaining to their health status.⁴³ In response to our questions about this concern, DoD failed to address these concerns, explaining only that “documentation is needed to receive an ADA home or accommodation” and that “DoDI 1315.19, “The Exceptional Family Member Program,” April 19, 2017, Section 4.2, outlines the procedures for each Military Service.”⁴⁴

Conclusion

There is a clear need for additional actions by DoD as well as oversight from Congress in order to address concerns about the EFMP program raised by residents, surveys, Government Accountability Office reports, and Congressional investigations and testimony.⁴⁵ The incremental improvements and continued oversight challenges make the lives of servicemembers and their families difficult and raise questions about morale and readiness which also impact retention. Consequently, we ask that you provide the following information in a publicly releasable form by October 19, 2023:

1. Please provide the following information for calendar years 2019, 2020, 2021, and 2022:
 - a. How many and what percentage of all families are EFMP-eligible?
 - i. Of all EFMP-eligible families, how many and what percentage are EFMP-enrolled?
 - b. On average, how many and what percentage of ADA-compliant units are available at each installation?

⁴⁰ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1i., part 1, p. 12.

⁴¹ *Id.*

⁴² Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 2, Question 1a., p. 1-3; Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 1i., part 1, p. 12.

⁴³ Letter from Senator Warren to U.S. Department of Defense Secretary Austin, March 10, 2021, <https://www.warren.senate.gov/imo/media/doc/2021.03.10%20Letter%20to%20DOD%20re%20Military%20Housing%20ADA%20Complaints.pdf>

⁴⁴ Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 3.a.b., p.17.

⁴⁵ Government Accountability Office, Before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, Committee on Appropriations, House of Representatives, “Privatized Military Housing: Update on DOD’s Efforts to Address Oversight Challenges,” March 2022, <https://www.gao.gov/assets/gao-22-105866.pdf>; U.S. House of Representatives, Committee on House Armed Services, Subcommittee on House Armed Services Subcommittee on Military Personnel, “Exceptional Family Member Program – Are the Military Services Really Taking Care of Family Members?,” February 5, 2020, <https://www.congress.gov/event/116th-congress/house-event/110469>.


- i. How many and what percentage of ADA-compliant units are occupied by families with disability-related needs?
 - ii. How many and what percentage of ADA-compliant units are occupied by families without disability-related needs?
 - iii. What is the average length of time between ADA accommodation request, approval, and move-in?
 - iv. What is the average wait time among the 10 percent of facilities that have the longest wait times?
 - v. Which three installations for each service have the longest wait times? How long were the wait times?
 - c. How many complaints were received from EFMP-eligible families?
 - i. How many and what percentage of complaints were resolved?
 1. What is the average time it took to resolve them?
 - ii. What percentage of complaints have been resolved for the 10 percentiles of facilities that have the lowest resolution rates?
 - iii. What is the average wait time for resolution for the 10 percentiles of facilities that have the lowest resolution rates?
2. How many families have had to pay for accommodations or modifications in the EFMP program across DoD within the last 10 years?
 - a. How many families have had to pay to undo these changes once they move out of their housing in the EFMP program across DoD within the last 10 years?
3. If accommodations are not available when requested, what remedies are available to families?
 - a. How is this communicated with residents?
4. Does DoD have a standard process across the services to identify disability-accommodation needs? If so, what is it?
5. The MHAN survey highlighted that MHPI companies are private and not affiliated with DoD enrollment into EFMP, and raises the concern that “requiring multiple doctors’ notes, command documentation, and DoD forms ‘is a violation of the disabled individuals’ rights.”⁴⁶ Given these concerns, what is DoD doing to protect families’ privacy in the EFMP process?⁴⁷
6. What is DoD doing to ensure that medical and accommodation information is shared between installations, housing companies, and military departments?
7. Please describe the role of DoD, MHPI, EFMP, MHO, the Office of Special Needs, and other personnel in the EFMP process.
 - a. How does DoD, MHPI, EFMP, MHO, the Office of Special Needs, and other personnel interact and collaborate in order to ensure that the accommodation needs are met?
 - b. What are DoD, MHPI, EFMP, MHO, the Office of Special Needs, and other personnel doing to share data and provide support to EFMP families?

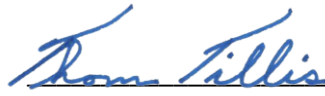
⁴⁶ *Id.*, p. 7.; Military Times, “Military families with disabled members need more accessible homes, survey finds,” Karen Jowers, July 8, 2020, <https://www.militarytimes.com/pay-benefits/2020/07/08/military-families-with-disabled-members-need-more-accessible-homes-survey-finds/>.

⁴⁷ Military Housing Advocacy Network, “Accessibility of ADA Homes and Reasonable Accommodations for Disabled Individuals in Privatized Military Housing,” July 2020, <https://web.archive.org/web/20210416220641/http://militaryhousingadvocacynetwork.org/wp-content/uploads/2020/07/MHAN-Report-ADA-and-Accomodations.pdf>.

8. Is DoD working to standardize the EFMP across departments, locations, and installations?
9. The FY21 NDAA mandated that all EFMP functions be centralized in a headquarters office for each service and at each installation. DoD previously shared this does not include housing. Given that housing is included in the mission of services' EFMP program,⁴⁸ why is this function not included in the services centralized EFMP functions?
10. What is the process for ensuring MHPI companies are providing ADA-compliant housing?
 - a. What penalties do companies face for not providing ADA housing?
 - i. When does this occur?
 - ii. How is this communicated in the contracts?
 - iii. How many penalties has DoD imposed in the last five years?
 - b. What remedies do servicemembers and their families receive?
 - i. When does this occur?
 - ii. How is this communicated with residents?
11. Several laws under the Department of Housing and Urban Development (HUD)'s purview provide broad protections for individuals with disabilities, including the ADA,⁴⁹ Fair Housing Act,⁵⁰ and Section 504 of the Rehabilitation Act.⁵¹ The MHAN survey revealed that many families report long waitlists or are denied ADA-compliant housing. DoD shared that waitlist and other information is not shared with HUD.⁵² Are there any statutory restriction limiting the sharing of information to HUD? If not, will DoD commit to share military housing information with HUD moving forward?

Sincerely,


 Elizabeth Warren
 United States Senator


 Thomas Tillis
 United States Senator

⁴⁸ Military One Source, “Brand Support Services,” <https://www.militaryonesource.mil/leaders-service-providers/efmp-special-needs/branch-support-services/>; My Army Benefits, “Exceptional Family Member Program, Benefit Fact Sheet,” July 27, 2022, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-\(EFMP\)-?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-(EFMP)-?serv=122); My Navy HR, “Exceptional Family Member Program,” <https://www.mynavyhr.navy.mil/Support-Services/Exceptional-Family-Member/>; My Air Force Benefits, “Exceptional Family Member Program, Benefit Fact Sheet,” August 17, 2023, [https://www.myairforcebenefits.us.af.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-\(EFMP\)?serv=26](https://www.myairforcebenefits.us.af.mil/Benefit-Library/Federal-Benefits/Exceptional-Family-Member-Program-(EFMP)?serv=26); U.S. Marine Corps, “EFMP,” <https://www.usmc-mccs.org/marine-family-support/military-family-life/exceptional-family-member-program#>.

⁴⁹ 42 U.S.C. 12101.

⁵⁰ 42 U.S.C. 3601.

⁵¹ 29 U.S.C. 794.

⁵² Information provided by DoD to Senators Elizabeth Warren and Thom Tillis, Enclosure 1, Question 4.d., p. 23.