

United States Senate

WASHINGTON, DC 20510

December 6, 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 write in regard to concerning reports about asbestos, lead-based paint, and mold in military housing and DoD's implementation of the formal dispute resolution process available to tenants in privatized military housing. We seek further information regarding steps that the Department of Defense ("DoD" or "the Department") are taking to address asbestos, lead-based paint, and mold in military housing units, establish a public complaint database for privatized military housing, and improve implementation of the formal dispute resolution process.

DoD is Failing to Implement Housing Reforms

Concerns about the quality of military housing for service members - including concerns about "toxic mold, maintenance issues, and safety concerns" date back decades and continue to endanger service members and their families.¹ *Reuters* investigations have revealed substandard living conditions at military housing facilities run by private contractors, including resident complaints of "leaks, mold, rodents, and cockroaches."² This past summer, a military spouse at Joint Base Lewis-McChord in Washington state reported that there was mold throughout their home and that her two children and husband developed significant health issues as a result.³

A 2019 investigation by Senators Warren and Tillis revealed systemic accountability problems with private military housing providers that are making large profits while taking minimal risks, and are even receiving sizeable incentive fees when they provide substandard housing.⁴ These investigations helped drive the creation of the Tenant Bill of Rights and efforts to enhance oversight of the Military Privatized Housing Initiative.⁵ The fiscal year (FY) 2020 National Defense Authorization Act (NDAA), took several steps to hold these companies accountable,

¹ Blue Star Families, "Military Family Lifestyle Survey 2022 Comprehensive Report," Spring 2023, p. 68, https://bluestarfam.org/wp-content/uploads/2023/03/BSF_MFLS_Spring23_Full_Report_Digital.pdf.

² Reuters, "U.S. Air Force's new housing dogged by construction flaws, imperiling tenants," M.B. Pell and Deborah Nelson, December 21, 2018, <https://www.reuters.com/investigates/special-report/usa-military-construction/>.

³ Kitsap Sun, "Military families battling mold, more at Joint Base Lewis-McChord housing," Kaylee Tornay, June 14, June 2023, <https://www.kitsapsun.com/story/news/local/2023/06/14/joint-base-lewis-mcchord-tacoma-washington-mold-liberty-military-housing/70315642007/>.

⁴ Letter from Senator Elizabeth Warren to the Honorable James M. Inhofe and the Honorable Jack Reed, April 30, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.04.30%20Military%20Housing%20Letter%20to%20SASC%20Chair%20and%20Ranking%20Member.pdf>.

⁵ Blue Star Families, "Military Family Lifestyle Survey 2022 Comprehensive Report," Spring 2023, p. 68, https://bluestarfam.org/wp-content/uploads/2023/03/BSF_MFLS_Spring23_Full_Report_Digital.pdf.

including establishing a formal dispute resolution process for service members in substandard housing,⁶ and a requirement that Senator Warren secured that requires the Department to create a publicly available complaint database for privatized military housing.⁷ Approximately one-third of military families live in on-base housing, including about 100,000 children under the age of five.⁸ It is unacceptable for these families, especially children, to endure dangerous housing conditions while simultaneously serving their country. The privatized housing complaint database will help improve housing conditions and increase accountability by finally providing military families with the information they need about the quality of their housing and the records of the companies that run the housing facilities where they live.⁹ It will also permit tenants to submit complaints, including the name of their installation and the name of the landlord responsible, significantly increasing the ability for DoD and Congress to conduct proper oversight.¹⁰

These reforms are meant to increase accountability for these companies and restore military families' confidence that DoD has their back. It is crucial for DoD to take additional actions to increase oversight of privatized housing and ensure that service members and their families have access to safe and comfortable housing on base. However, new information about the DoD's failure to properly implement these reforms freshly raises questions about the Department's commitment to supporting the health and safety of service members and their families.

The Army's Failure to Protect Military Families from Asbestos and Lead-Based Paint

We are deeply concerned by the Army's failure to adequately protect military families from the health risks of asbestos and lead-based paint. Although the Army updated its housing inspection program in 2020 to better address exposure to asbestos and lead-based paint, a 2023 Army Audit has revealed that it "failed to ensure that privatized on-base homes with lead-based paint or asbestos are 'safe for Army families.'"¹¹ Specifically the audit found 41 percent of homes "had no documented survey identifying the home's asbestos risk areas"¹² and 78 percent "had no documented lead-based paint visual inspection to identify areas of chipping or peeling lead paint

⁶ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Section 3022.

⁷ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Sec. 2894a; Office of Senator Elizabeth Warren, "Warren, Haaland Urge DoD to Model New Military Housing Quality Database After CFPB Consumer Complaint Database," press release, February 21, 2020, <https://www.warren.senate.gov/oversight/letters/warren-haaland-urge-dod-to-model-new-military-housing-quality-database-after-cfpb-consumer-complaint-database>.

⁸ U.S. Department of Housing and Urban Development Office of Policy Development and Research, "Insights into Housing and Community Development Policy," October 2015, p. 1, https://www.huduser.gov/portal/sites/default/files/pdf/insight_3.pdf; Reuters, "Special Report: Children poisoned by lead on U.S. Army bases as hazards ignored," Joshua Schneyer and Andrea Januta, August 16, 2018, <https://www.reuters.com/article/us-usa-military-housing-specialreport/special-report-children-poisoned-by-lead-on-us-army-bases-as-hazards-ignored-idUSKBN1L11IP/>.

⁹ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Sec. 2894a.

¹⁰ *Id.*

¹¹ ArmyTimes, "Army failing to ensure family housing 'safe' from lead paint, asbestos," Davis Winkie, September 21, 2023, <https://www.armytimes.com/news/your-army/2023/09/21/army-failing-to-ensure-family-housing-safe-from-lead-paint-asbestos/>.

¹² *Id.*

that could pose an immediate health risk to the home's next family."¹³ In the 14 homes where lead paint problems were noted, the auditors "couldn't verify action was taken."¹⁴ The audit concluded "[t]his occurred primarily because Army housing supervisors didn't provide effective oversight."¹⁵ We are highly alarmed by the consistent failure of the Army housing office inspectors to properly assess these homes and protect service members and their families from the hazards of asbestos and lead-based paint.

Military Families Continue to Suffer from Exposure to Mold

We are also alarmed by reports that military families continue to struggle with mold in their privatized military housing. According to the 2022 Blue Star Families (BSF) Military Family Lifestyle Survey, "nearly one-quarter of active-duty family respondents (22%) indicated their family had been exposed to environmental toxins in military housing on post/base and 8% reported exposure in military housing off post/base."¹⁶

Mold exposure can have significant effects on the health of military families. In the 2019 Military Family Advisory Network (MFAN) survey, one Army spouse reported that their daughter, "who was 3 months old at the time, was put on a nebulizer due to severe mold in the home" and "has continued issues due to it."¹⁷ A Navy spouse also stated that, "[a]ll three of my kids had chronic breathing problems, diagnosed with asthma, chronic sinus infections. They were in the doctors every other month. I myself was chronically ill, I was on antibiotics and steroids my entire 3rd pregnancy. They found mold growing in my sinuses."¹⁸ Most tragically a Navy spouse reported that, "[d]ealing with the mold every single day for 3 years, I ended up having a stillborn son at 8 months pregnancy due to toxic build up in my blood that caused my body to realize it could no longer support a pregnancy."¹⁹

Despite these highly concerning reports, military housing companies do not appear to be adequately responding to families concerns about mold exposure. In the 2021 MFAN survey, a respondent also complained that, "[i]t is almost as if the privatized housing office feels as though there will not be another large-scale inspection, so they just turn their blind eye to service members' complaints of black mold growing in their homes. Then, when they finally show up, the maintenance personnel claim that the mold is really rust and just paints over it."²⁰

Distrust and Confusion Surrounds DoD's Formal Dispute Resolution Process

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. Army Audit Agency, "Lead-Based Paint and Asbestos-Containing Material in Privatized Housing," August 2, 2023, p. 5, <https://www.documentcloud.org/documents/23986617-2023-lead-based-paint-and-asbestos-containing-material-in-privatized-housing>.

¹⁶ Blue Star Families, "Military Family Lifestyle Survey 2022 Comprehensive Report," Spring 2023, p. 68, https://bluestarfam.org/wp-content/uploads/2023/03/BSF_MFLS_Spring23_Full_Report_Digital.pdf.

¹⁷ Military Family Advisory Network, "Military Family Support Programming Survey 2019 Results," p. 99, <https://www.mfan.org/wp-content/uploads/2021/10/MFAN2019SurveyResults.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*, p. 101.

²⁰ Military Family Advisory Network, "Military Family Support Programming Survey 2021 Results," July 14, 2022, p. 50, <https://www.mfan.org/wp-content/uploads/2022/07/MFAN-Programming-Survey-Results.pdf>.

When faced with a dispute with a privatized military housing company, families may pursue informal or formal dispute resolution processes. In an informal dispute resolution process, “the service member communicates directly with the housing company to try to sort out the issue.”²¹ The FY 2020 NDAA established a formal dispute resolution process between landlords and tenants “to ensure the prompt and fair resolution of disputes that arise between landlords providing housing units and tenants residing in housing units.”²² The formal dispute resolution process gives military families an option to seek a third party—in this case, the installation or regional commander—to make a decision on the dispute instead.²³

However, military families have raised concerns about the confidentiality requirements of the process, how often decisions tend to favor of the private housing companies, and general confusion about how the process works.²⁴ In February 2021, DoD issued a template for a universal lease for privatized military housing,²⁵ which includes a confidentiality clause that “specifies that the process and any remedies or decisions made through it are confidential, cannot be used in court except under certain circumstances, and can be withheld from release through the Freedom of Information Act.”²⁶ Since this confidentiality clause is already in the lease, an investigation by the Project On Government Oversight found “service members end up agreeing to confidentiality before they even know whether they’ll need to use the formal dispute process in the future.”²⁷ Military housing advocates have also raised concerns that the formal dispute process “silences military families who participate in the process and tends to favor the interests of housing companies” and another explaining that, “nearly every time she’s observed the formal dispute process being used, it has been decided in the housing companies’ favor.”²⁸

Confidentiality clauses may be leading families to hesitate in using the formal dispute resolution process. For example, the Brewer family, who had mold in their home on Marine Corps Base in Hawaii, reported experiencing a variety of concerning health conditions, including hair loss, bluish-gray skin, heart palpitations, fatigue, worsening headaches, rashes, and stomach problems.²⁹ Their dogs also began displaying symptoms, with one “getting head tremors, [and] the other had rashes.”³⁰ Despite facing “persistent leaks and flooding, and [having] noticed

²¹ Project on Government Oversight, “Military Families Battle Rigged Housing Dispute Process,” René Kladzyk, October 23, 2023, <https://www.pogo.org/investigations/military-families-battle-rigged-housing-dispute-process>.

²² National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Section 3022.

²³ *Id.*

²⁴ Project on Government Oversight, “Military Families Battle Rigged Housing Dispute Process,” René Kladzyk, October 23, 2023, <https://www.pogo.org/investigations/military-families-battle-rigged-housing-dispute-process>; Government Accountability Office, “Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program,” April 19, 2023, pp. 13-17, <https://www.gao.gov/assets/gao-23-105377.pdf>.

²⁵ Government Accountability Office, “Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program,” April 19, 2023, p. 13, <https://www.gao.gov/assets/gao-23-105377.pdf>.

²⁶ Project on Government Oversight, “Military Families Battle Rigged Housing Dispute Process,” René Kladzyk, October 23, 2023, <https://www.pogo.org/investigations/military-families-battle-rigged-housing-dispute-process>; U.S. Department of Defense, “Universal Lease and Dispute Resolution Process for Privatized Housing,” February 21, 2021, pp. 30-31, https://home.army.mil/campbell/application/files/1616/2275/8859/Annex_A_to_OPORD_21-044_v2_1_Jun_2021.pdf.

²⁷ Project on Government Oversight, “Military Families Battle Rigged Housing Dispute Process,” René Kladzyk, October 23, 2023, <https://www.pogo.org/investigations/military-families-battle-rigged-housing-dispute-process>

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

recurrent discoloration,” the “maintenance staff would just clean and paint over it, telling them mold wasn’t a concern.”³¹ After moving out of their home, they received a move-out charge of over \$6,000 for “BIO HAZARD CLEANING,” which the housing company, Hunt Military Communities, attributed the damages to their pets. However, when the family’s “shipment of belongings arrived from Hawaii blanketed in mold, it was strangely validating... There had, in fact, been mold after all.”³²

Ultimately the Brewer family chose not to enter the formal dispute resolution process because “they believed it wouldn’t be decided fairly, would silence them, and could potentially do more harm than good.”³³ They were concerned about the confidentiality clause, with Captain Daniel Brewer explaining, “[i]f I can’t use my experience anymore and make it public, how is that going to change anything?”³⁴ His family also raised concerns about what “a supposed resolution of the issue would mean if their family’s health problems linked to mold exposure persisted or reemerged in the future.”³⁵ Many of us have previously raised bipartisan concerns about the unacceptability of silencing families who are forced to sign non-disclosure agreements to receive compensation for poor housing conditions or damages.³⁶ Prohibiting families from speaking about their experiences because they choose to engage in a formal dispute resolution process is likewise unacceptable.

Military families have also indicated their distrust and confusion about the formal dispute resolution process. The family with housing in Hawaii also raised concerns “that the supposed independent decision-maker in the process (often one of the higher-ups in the military installations’ command) wasn’t a true third party, since the military and housing companies are business partners.”³⁷ The Government Accountability Office (GAO) found a broader trend of confusion among both residents and military housing officials.³⁸ Military housing office officials at all five of the installations they interviewed provided “examples of residents’ confusion about the process as written in the lease or its limitations and benefits, and residents we met with reflected this confusion.”³⁹ For example, guidance from the military departments requires that residents first attempt to resolve their dispute informally, first directly with the housing company and then with the military housing office.⁴⁰ It is only after that—and an additional informal step to also engage the Garrison Commander under the Army’s requirements—that residents can

³¹ *Id.*

³² *Id.*

³³ Project on Government Oversight, “Military Families Battle Rigged Housing Dispute Process,” René Kladzyk, October 23, 2023, <https://www.pogo.org/investigations/military-families-battle-rigged-housing-dispute-process>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Letter from Senators Elizabeth Warren, Richard Blumenthal, Mazie Hirono, Sherrod Brown, and Tim Kaine to Secretary of Defense Lloyd J. Austin III, December 20, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.12.20%20Letter%20to%20DoD%20Re%20Military%20Housing%20Non-Disclosure%20Agreements.pdf>.

³⁷ Project on Government Oversight, “Military Families Battle Rigged Housing Dispute Process,” René Kladzyk, October 23, 2023, <https://www.pogo.org/investigations/military-families-battle-rigged-housing-dispute-process>.

³⁸ Government Accountability Office, “Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program,” April 19, 2023, p. 13, <https://www.gao.gov/assets/gao-23-105377.pdf>.

³⁹ *Id.*, p. 16.

⁴⁰ *Id.*, pp. 15-16.

actually request a formal dispute process.⁴¹ However, DoD reported that because of these additional steps, residents incorrectly “think they are in the formal dispute resolution process after first contacting the military housing office, when in fact they have initiated the informal dispute resolution process.”⁴²

Additionally, residents who wished to withhold their rent until the housing company addressed unresolved maintenance issues understood that they had the right to do so, but told GAO “that the military departments had not provided a method for doing so.”⁴³ However, the formal dispute resolution process does provide residents the option to withhold rent in cases such as this: residents “must first submit a dispute resolution request form to the military housing office and explicitly request all or part of rent payment be withheld.”⁴⁴ Despite the concerns that these residents were raising to GAO and their desire to use their right to withhold rent, GAO explained that instead, “[n]one of the residents we spoke with had used the dispute resolution process, and they told us they were not clear on how the process worked.”⁴⁵ Military officials themselves are also unsure about how the formal dispute resolution process works, with some interviewed stating that “they were unclear about which office was responsible for conducting the independent investigation of the dispute.”⁴⁶

The Air Force’s own after-action review of its first formal resolution dispute confirmed these deficiencies. It found “that at the installation where the formal dispute took place, in addition to residents lacking general knowledge of the formal dispute resolution process, Air Force leadership, military housing office officials, private housing company officials, and resident advocates also lacked this knowledge.”⁴⁷ The report acknowledged that “the overall lack of knowledge added a level of complexity and frustration to a non-intuitive process.”⁴⁸

Conclusion and Questions

We are concerned that as military families continue to experience exposure to lead, mold, and other health risks from unsafe housing conditions, the private companies that provide on-base housing are disregarding their concerns. The Department of Defense has a long way to go to fully implement reforms and restore military families’ confidence. Military families should not be forced into a confidentiality clause if they choose to use the formal dispute resolution process to address unsafe housing conditions, and the Department needs to take steps to improve this process and protect service members and their families.

⁴¹ *Id.*, p. 16.

⁴² *Id.*, pp. 15-16.

⁴³ Government Accountability Office, “Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program,” April 19, 2023, p. 16, <https://www.gao.gov/assets/gao-23-105377.pdf>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*, pp. 16-17.

⁴⁸ *Id.*, p. 17.

To learn more about the steps that DoD is taking to address the unsafe housing conditions military families face and the difficulties with implementing the formal dispute resolution process, we request answers to the following questions no later than January 2, 2024:

1. What information does DoD provide to residents about exposure to asbestos, lead-based paint, and mold, including symptoms, health risks, and signs of asbestos, lead-based paint, and mold in their housing units?
2. Does DoD require that the military housing companies track the number of complaints regarding asbestos, lead-based paint, and mold that they receive each year from residents?
3. Does DoD conduct surveys of service members to understand how often military families living in privatized military housing have encountered asbestos, lead-based paint, and mold in their homes?
 - a. If so, please provide a breakdown by year of how many families have complained of asbestos in their housing.
 - b. If so, please provide a breakdown by year of how many families have complained of lead-based paint in their housing.
 - c. If so, please provide a breakdown by year of how many families have complained of mold in their housing.
4. What actions has the Army taken to respond to the Army Audit report on “Lead-Based Paint and Asbestos-Containing Material in Privatized Housing?”⁴⁹
 - a. Has the Army completed the three recommendations of the Army Audit Agency?⁵⁰ If not, when does it expect to do so?
 - b. Have other service branches conducted audits to determine if they face similar problems?
5. What other audits or analyses have each of the services’ audit agencies conducted regarding military housing in the past five years?
 - a. Please provide copies of any reports or findings from these audits or analyses.
6. How many formal dispute resolution processes have been filed since the formal dispute resolution process began?
 - a. Please provide a breakdown by service branch, year, whether the dispute has been resolved or is ongoing, which military housing company the dispute was filed against, and how long the dispute resolution process took to complete.
 - b. Please provide a breakdown on whether the dispute was resolved in favor of the military housing company or the tenant.
7. Why does the Department force tenants to sign a lease that includes a confidentiality clause for a formal dispute resolution before tenants even know if they use such a process?
8. What guidance do each of the service branches provide to service members and their families on the formal dispute resolution process?
 - a. Please provide a copy of said guidance.
9. What other ways do each of the service branches engage with service members, their families, and military housing advocates to clarify the formal dispute resolution process?

⁴⁹ U.S. Army Audit Agency, “Lead-Based Paint and Asbestos-Containing Material in Privatized Housing,” August 2, 2023, <https://www.documentcloud.org/documents/23986617-2023-lead-based-paint-and-asbestos-containing-material-in-privatized-housing>.

⁵⁰ *Id.*, p. ii.

10. GAO found that military officials “were unclear about which office was responsible for conducting the independent investigation of the dispute.”⁵¹ What guidance do each of the service branches provide to the military housing offices on the formal dispute resolution process and about which office is responsible for investigating the dispute?
11. Air Force officials reported that lessons learned from the Air Force after-action review of its first formal dispute were “used to update and improve training and products.”⁵² What steps did the Air Force take to incorporate these lessons learned? What steps have the other service branches taken to look to it incorporate these lessons in their own implementation of the formal dispute resolution process?
12. Have the other service branches conducted other reviews of the formal dispute resolution process?
 - a. If so, please provide the results of these findings and what steps they have taken to address these concerns.
13. What is the status of Department of the Army, Air Force, and Navy’s progress in implementing the GAO recommendations to “clarify guidance for residents explaining how and when they can enter the formal dispute resolution process?”⁵³
 - a. When will each of the departments complete these recommendations?
14. What is the status of Department of the Army, Air Force, and Navy’s progress in implementing the GAO recommendations to “develop supplemental training and job aids to assist military housing office personnel in conducting dispute resolution processes?”⁵⁴
 - a. When will each of the departments complete these recommendations?
15. What has impeded DoD from the timely development and implementation of the public complaint database for privatized military housing required under Section 2894a of the FY 2020 NDAA?⁵⁵
 - a. When does DoD expect to complete the implementation of this database?

⁵¹ Government Accountability Office, “Military Housing: DOD Can Further Strengthen Oversight of Its Privatized Housing Program,” April 19, 2023, p. 16, <https://www.gao.gov/assets/gao-23-105377.pdf>.

⁵² *Id.*, p. 17.


⁵³ *Id.*, p. 41.

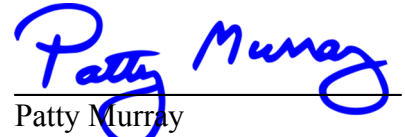
⁵⁴ *Id.*, p. 41.

⁵⁵ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Sec. 2894a.

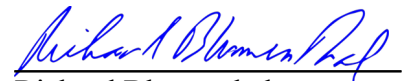
We also request a briefing on actions the Department is taking to address asbestos, lead-based paint, and mold in military housing and the implementation of the formal dispute resolution process.


Sincerely,

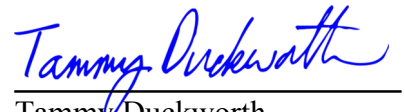

Elizabeth Warren
United States Senator


Patty Murray
United States Senator


Mazie K. Hirono
United States Senator


Richard Blumenthal
United States Senator


Tim Kaine
United States Senator


Tammy Duckworth
United States Senator