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# MILITARY HOUSING

## Installations Need to Share Information on Their Section 801 On-Base Housing Contracts



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Highlights of [GAO-11-60](#), a report to congressional committees

## MILITARY HOUSING

### Installations Need to Share Information on Their Section 801 On-Base Housing Contracts

#### Why GAO Did This Study

In the Military Construction Authorization Act, 1984, Congress authorized the Section 801 housing program, which provided a means for improving and expanding military family housing through private developers' investment. Under this authority, the Department of Defense (DOD) awarded eight contracts for the construction of on-base housing that typically consisted of two phases: the in-lease (DOD leases all of the units from developers for up to 20 years whether housing is occupied or not) and the out-lease (under some contracts, developers may rent housing to the general public while leasing the land from DOD for up to 30 more years).

Based on a mandate in the National Defense Authorization Act for Fiscal Year 2010 conference report, GAO's objectives were to assess (1) the status of contracts for on-base Section 801 military housing, (2) the estimated costs to DOD and local communities that would result from the general public occupying this housing, and (3) the extent to which DOD and the services share information on modifications to the contracts and community interaction experiences. GAO visited five installations with on-base Section 801 housing, analyzed housing contracts, and interviewed relevant officials.

#### What GAO Recommends

GAO recommends that DOD develop a communications process among installations with Section 801 housing to share information regarding any contract changes. DOD concurred with GAO's recommendation.

View [GAO-11-60](#) or key components. For more information, contact Brian Lepore at (202) 512-4523 or [Leporeb@gao.gov](mailto:Leporeb@gao.gov).

#### What GAO Found

The status of contracts for on-base Section 801 military housing varies widely, ranging from continuing the in-lease phase of the contracts to demolishing unneeded units. Of the eight on-base Section 801 housing contracts, four remain in the in-lease phase (when housing is reserved for service members and their families), two are in the out-lease phase (when, depending on the terms of the contract, the installation may allow the developer to rent housing to the general public or reserve housing for service members), and two are in contract dispute or litigation—Eielson Air Force Base and Naval Weapons Station Earle. For the two contracts in the out-lease, Fort Wainwright converted its housing units to the general public's use, while Fort Hood renegotiated its contract to retain housing for military or DOD civilians' use.

The housing contracts generally require the developer to pay certain costs (potentially including roads construction, utilities, and demolition costs) to permit the Section 801 housing units' transition to the general public's use; however, no cost estimates existed during GAO's review. Also, GAO found potential transition costs for DOD and the communities linked to three installations: Naval Base Ventura County Port Hueneme, Ellsworth Air Force Base, and Hurlburt Field. The potential costs relate to security, education, transportation, and environmental considerations. GAO did not identify any potential benefits that might accrue from converting the leases to the out-lease phase because it was outside of the scope of our work.

GAO found that the services share information regarding their Section 801 housing contracts with other installations within the service; but DOD and the services do not share this information across the services. For example, Fort Hood renegotiated its contract to specify additional reasons for potential early termination of its lease, and retained priority use of the housing units for military personnel or DOD civilians; however, Air Force and Navy officials stated they were unfamiliar with these contract modifications. Additionally, GAO reported that most Section 801 contracts provide that DOD may terminate early in the event of national emergency or other limited circumstances, but none of the contracts specifically address potential liability in instances where DOD might terminate for other reasons such as reduced demand for housing or security concerns. GAO found that the services and DOD lack a communications process to share information from contract negotiations and community interaction—both of which can affect the efficient use of military housing resources. According to best practices for internal control in the federal government, program managers should communicate information within a time frame to management and others within the entity to meet goals for effective and efficient use of resources. Without a communications process to share installations' experiences with any major housing-contract changes and community interaction, DOD and the services cannot ensure that the four installations facing potential contract changes will have the timely information to better position the installations to negotiate the most cost-effective contract terms for the federal government.

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Washington, DC 20548

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## Congressional Committees

A number of Department of Defense (DOD) installations, starting in 1984, contracted with developers to privately finance the construction of millions of dollars worth of military family housing on base property, and obligated DOD for long-term lease payments. The Section 801 housing program was authorized by the Military Construction Authorization Act, 1984.<sup>1</sup> Section 801 provided a means for improving and expanding military family housing through private developers' investment at a time when the federal government wanted to refrain from federally financing construction. This program was a forerunner to the current Military Housing Privatization Initiative.<sup>2</sup>

The Section 801 on-base housing contracts between DOD<sup>3</sup> and developers generally consist of two phases: an in-lease period during which DOD rents all of the units from the developer for a period of up to 20 years whether the units are occupied or not by military families and an out-lease period during which developers may be permitted to lease units to the general public and pay DOD rent for the use of the land for a period ranging from 20 to 30 years.<sup>4</sup> The contracts between developers and the government outline the terms for the property status at the expiration of the out-lease. This typically involves a provision requiring the developer to remove improvements to the property and restore it to its prior condition, which potentially requires the developer to demolish the housing. With respect to many of the contracts entered into under the Section 801 program, the military services face a staggered timetable within the next 1

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<sup>1</sup> Pub. L. No. 98-115, § 801 (1983).

<sup>2</sup> For more information on DOD's Military Housing Privatization Initiative, see GAO, *Military Housing Privatization: DOD Faces New Challenges Due to Significant Growth at Some Installations and Recent Turmoil in the Financial Markets*, [GAO-09-352](#) (Washington, D.C.: May 15, 2009).

<sup>3</sup> Section 801 provided authority to the "Secretary of a military department" to enter into such contracts. For simplicity, we use the broader term "DOD" throughout this report, except where we are referring to a specific contract involving one of the military departments.

<sup>4</sup> The contracts in question generally cited both section 801 (then codified at 10 U.S.C. § 2828(g)) and 10 U.S.C. 2667. We use the term "Section 801 program" to refer to the common name for the collective exercise of these authorities.

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to 6 years to decide to either proceed with the contracts as written, and potentially permit developers to lease the housing to the general public, or attempt to renegotiate contracts to reflect evolving needs for military housing and security.

There are seven DOD installations that have or have had Section 801 military family housing units located on-base, including three Air Force installations (Eielson Air Force Base, Alaska; Ellsworth Air Force Base, South Dakota; and Hurlburt Field, Florida); two Army installations (Fort Hood, Texas, and Fort Wainwright, Alaska); and two Navy installations (Naval Base Ventura County Port Hueneme, California and Naval Weapons Station Earle, New Jersey).<sup>5</sup> Eielson Air Force Base is the only installation with two separate Section 801 contracts for military family housing complexes on-base. Following the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993, which replaced the Section 801 authority with a similar authority under which housing could only be built off-base,<sup>6</sup> DOD subsequently decided it would not pursue new on-base Section 801 housing projects starting in fiscal year 1992.

In the conference report accompanying the National Defense Authorization Act for Fiscal Year 2010, GAO was directed to review DOD plans for the privately owned rental housing on DOD land and issue a report to the congressional defense committees on the cost, potential security risks, and other impacts of transitioning use of Section 801 on-base military family housing to the general public's use.<sup>7</sup> This report focuses only on the on-base housing units and does not discuss the numerous housing units built off-base under the Section 801 program. In response to this direction, we examined (1) the status of contracts for on-base Section 801 military housing, including whether there is competition between multiple housing developers at a single installation and whether there are security risks if housing units are leased to the general public; (2) the estimated costs to DOD and local communities—including security, education, transportation, and environmental considerations—that would

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<sup>5</sup> There are several military installations that have had housing units built off-base under the Section 801 program; however our work only focuses on the seven installations with on-base Section 801 housing.

<sup>6</sup> Unlike Section 801, which authorized housing to be built "on or near a military installation," the new authority only authorized housing "near a military installation." Pub. L. No. 102-190, § 2806 (1991) (codified at 10 U.S.C. § 2835).

<sup>7</sup> H.R. Conf. Rep. No. 2647, at 899 (2009).

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result from proposed general public occupancy of on-base Section 801 military housing units, and (3) the extent to which DOD and the military services are sharing information regarding the transition of the housing to the general public's use, including details of contract term changes and interaction with communities.

To address the first objective, we obtained and reviewed contracts and other relevant documents for the seven installations with on-base Section 801 housing to report on the status of those contracts, including describing the current transition plans that are in place or being considered. We conducted site visits at five of the seven installations with on-base Section 801 housing and interviewed officials at all seven installations to discuss the current status of their on-base Section 801 housing and their plans for potentially transitioning the property from military to the general public's use. We also discussed with these officials the extent to which competition exists where there are multiple housing developers on an installation, and the impact the competition has on the occupancy rate of the on-base Section 801 housing units. Regarding security risks, we reviewed DOD's antiterrorism and force protection standards and discussed with the military service officials the extent to which each installation has considered and instituted DOD's standards in developing plans for providing the general public access to property on military land and described the actions taken to minimize or mitigate any related security risks or other concerns.

To address the second objective, we focused our work on the five installations with on-base Section 801 military housing that have not entered the second phase (out-lease) of their contracts: Eielson Air Force Base, Ellsworth Air Force Base, Hurlburt Field, Naval Base Ventura County Port Hueneme, and Naval Weapons Station Earle. We interviewed community officials on their views about the general public potentially leasing housing on these military installations and determined any potential cost impacts to the community. We identified cost impacts in four areas relating to security, education, environment, and transportation that DOD and these communities may experience because of the transition of Section 801 housing to the general public's use. However, we did not identify any potential benefits that might accrue from converting the leases to the out-lease phase because it was outside of the scope of our work.

To address the third objective, we reviewed the initial and subsequent Section 801 legislation and installations' contracts to determine the contractual obligations once the in-lease has expired, including any

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contract changes or termination liability. We also conducted site visits at five of the seven installations with Section 801 housing and interviewed officials at all seven installations to discuss the details and plans for transitioning from the in-lease to the out-lease phase of their on-base Section 801 contracts, including whether any relevant contract changes are being shared among the services and installations. We analyzed relevant documents—including 2005 Base Realignment and Closure legislation, the DOD Community Guide to Base Reuse, and Standards for Internal Control in the Federal Government. We also asked about whether the installations had developed a communication plan for any transition of housing units from government to the general public's use and the interaction with the community to ensure a smooth transition of the property.

We conducted this performance audit from January 2010 through October 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The Military Construction Authorization Act, 1984, established the Military Family Housing Leasing Program, commonly referred to as the Section 801 housing program.<sup>8</sup> This authority provided a mechanism for DOD to contract with private developers to build new rental housing on or near military installations. The Section 801 program is also referred to as a build-to-lease program. The program permitted contracts entered into under its authority to allocate responsibility for operating and maintaining the units to either the government or the contractor, and required that units be constructed to DOD standards, initial leases be for a period not in excess of 20 years (excluding construction), and, upon termination of the lease period, that the government have the right of first refusal to acquire the facilities constructed and leased under the contract. The Section 801 program was initially authorized as a pilot program for approximately two years, under which the number of housing units to be built could not exceed 300 per contract, with a maximum of two contracts per military department. Subsequent legislation renewed the program, expanded the

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<sup>8</sup> Pub. L. No. 98-115, § 801 (1983).



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number of units that could be constructed, and increased the number of contracts allowed by each service.<sup>9</sup> The housing constructed under the Section 801 housing program was available to all members of the armed forces who are eligible for assignment to military family housing. Between 1985 and 1996, under the Section 801 program, DOD awarded eight contracts to private developers to construct approximately 3,100 military family housing units—a combination of two-, three-, four-, and five-bedroom units—on seven military installations. Also, under the Section 801 authority, DOD built numerous housing units off-base, located near approximately 20 military installations.

While the Section 801 program authority allowed for flexibility in contracting for operating and maintaining the units, DOD later decided that the operations and maintenance responsibilities would reside with the services for future projects. Additionally, in the National Defense Authorization Act for Fiscal Years 1992 and 1993, Congress replaced the Section 801 authority with a similar authority under which housing could only be built off-base.<sup>10</sup> Finally, according to a DOD history of the Section 801 program, changes to federal budgeting and spending processes in 1990 resulted in Section 801 projects being less advantageous.<sup>11</sup> In light of these changes, DOD decided that it would no longer pursue new on-base Section 801 housing projects.

Since the establishment of the Section 801 program, DOD has leveraged private capital for developments on military land using several authorities approved by Congress. In 1996, Congress created a new military family housing program, called the Military Housing Privatization Initiative,<sup>12</sup> which provides DOD with authorities to attract investments from private

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<sup>9</sup> In addition, the Secretary of Transportation, with respect to the Coast Guard, was also subsequently authorized to enter into Section 801 contracts, but never exercised the authority. Pub. L. No. 100-180, § 2306 (1987).

<sup>10</sup> Pub. L. No. 102-190, § 2806 (1991) (codified at 10 U.S.C. § 2835).

<sup>11</sup> An Army Corps of Engineers history states that new budget “scoring” procedures initiated as a result of the Budget Enforcement Act of 1990 required the full cost of a 20- or 25-year lease to be “scored”, or charged against the federal budget, in the first year, instead of being spread over the life of the lease. Dr. William C. Baldwin, Office of History, U.S. Army Corps of Engineers, *Four Housing Privatization Programs: A History of the Wherry, Capehart, Section 801, and Section 802 Family Housing Programs in the Army*, (October 1996).

<sup>12</sup> National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2802 (1996) (codified as amended at 10 U.S.C. §§ 2871-2885).

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developers for the construction and improvement of military housing. Established by the National Defense Authorization Act of Fiscal Year 1996, the Military Housing Privatization Initiative provided DOD with a variety of authorities—including conveying existing properties to a developer, investing limited appropriated funds in a developer, and making direct loans to or loan guarantees for the developer for the acquisition or construction of housing units—to obtain private sector financing and expertise to repair, renovate, and construct military family housing. In a typical Military Housing Privatization Initiative project, the developer rents directly to the service member and gives the service members rental preference unless occupancy falls below a certain rate.<sup>13</sup> Additionally, unlike the Section 801 program where service members and their families forfeit their basic allowance for housing when they are assigned to the housing units, under the new housing program the service members must use their basic allowances for housing to pay, and in some cases, to offset their rent; and they are permitted to keep any portion of their basic allowance for housing not spent on rent. While the Air Force refers to its program as Military Housing Privatization, the Army refers to its program as Residential Communities Initiative; the Navy refers to its program as Public-Private Ventures.

In 2002, Congress expanded the Military Housing Privatization Initiative's authority to include transient housing or lodging facilities for military members on temporary duty.<sup>14</sup> Similar to the original 1996 act, this expanded authority provided DOD with a variety of authorities to obtain private sector financing and management to construct, operate and repair lodging facilities. In July 2010, we reported<sup>15</sup> that under this expanded authority, the Army entered into a lease to privatize its lodging facilities with a developer for a 50-year term, during which the Army retains ownership of the land but conveys ownership of the structures to the developer. At the end of the lease term, the structures, along with any improvements, return to the Army. Although the Navy, Marine Corps, and

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<sup>13</sup> DOD has established a tenant "waterfall" that privatization projects can use if occupancy falls below a certain rate. Generally, after military families are accommodated, the order of the tenant waterfall is unaccompanied military personnel, active National Guard and Reserve, military retirees, federal government civilians, and lastly unaffiliated civilians.

<sup>14</sup> Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314 §2803 (2002).

<sup>15</sup> GAO, *Defense Infrastructure: Army's Privatized Lodging Program Could Benefit from More Effective Planning*, [GAO-10-771](#) Washington, D.C.: July 30, 2010.

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Air Force are currently not planning to privatize their lodging facilities, officials from these three services said that they are observing the Army's efforts and might consider lodging privatization in the future.

Additionally, many land use authorities exist that permit the Secretary of Defense, the secretaries of the military departments or both to make more efficient use of underutilized real property under their control—such as authorities permitting outleasing or conveyance of DOD real property or the issuance of licenses, permits, or easements upon DOD real property controlled by DOD. In July 2008, we reported<sup>16</sup> that Section 2667 of Title 10 is the most frequently used land use authority throughout DOD for both traditional short-term leases, lasting no more than 5 years, as well as longer-term, more financially complex enhanced use leases which usually span more than 30 years and typically involve in-kind payments not less than the fair market value of the lease interest, such as new construction or maintenance of existing facilities.<sup>17</sup> Leases executed pursuant to this authority benefit the installation by leveraging underutilized land in exchange for rent money or in-kind consideration, and also benefit the developer and the community. According to the Army's draft Enhanced Use Leasing Handbook, the longer lease terms are more in line with private real estate development standards, and therefore help satisfy financial lending requirements and help make the development worthwhile to all enhanced use lease project stakeholders.

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<sup>16</sup> GAO, *Defense Infrastructure: Services' Use of Land Use Planning Authorities*, [GAO-08-850](#) (Washington, D.C.: July 23, 2008).

<sup>17</sup> Section 2667 of Title 10 does not use the term enhanced-use lease to differentiate leases executed pursuant to this authority that are longer than 30 years and involve in-kind payments.

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## The Status of On-Base Section 801 Housing Contracts Varies Widely among Military Installations

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### Four Contracts Are Still in Their In-Lease Phase

The status of contracts for on-base Section 801 military housing varies widely, ranging from continuing the in-lease phase of the contracts to demolishing unneeded units. There are eight on-base Section 801 housing contracts: four remain in the in-lease phase during which DOD rents all of the units from the developer for up to 20 years whether the units are occupied or not, two are in the out-lease phase during which developers may be permitted to lease units to the general public and pay DOD rent for the use of the land for another 20 to 30 years, and two are involved in contract disputes or litigation. Three of the four in-lease contracts involve Air Force installations—Eielson Air Force Base (Moose Lake and French Creek housing units),<sup>18</sup> Ellsworth Air Force Base, and Hurlburt Field—and the Air Force is reviewing options for transitioning all three from in-lease to out-lease. At the remaining installation in the in-lease phase, Naval Base Ventura County Port Hueneme, the Navy is using vacant family housing units to accommodate both military families and unaccompanied service members, and is conducting a study to evaluate options beyond the expiration of the in-lease. Generally, as contracts enter the out-lease period, the services must decide to either proceed with the contracts as written, and potentially permit developers to lease the housing to the general public, or attempt to renegotiate contracts with the developer to reflect evolving needs for military housing and security. Of the two contracts in the out-lease phase, one (Fort Wainwright) has completed its housing transition to the general public's use, while the other (Fort Hood) has renegotiated its contract to retain priority use of the housing units for military personnel or DOD civilians.

Finally, the two contracts in dispute or litigation are Eielson Air Force Base and Naval Weapons Station Earle.

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<sup>18</sup> Eielson Air Force Base has two on-base Section 801 housing contracts, the contract for the Sprucewood units and the contract for the Moose Lake and French Creek units.

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- Eielson Air Force Base: Sprucewood—The base is involved in litigation with the developer regarding potential rental payments and \$3.27 million in demolition costs. The Air Force has paid for the demolition costs but is seeking reimbursement. The original contract included a provision under which the developer was responsible, at the expiration of the lease, for vacating the property and restoring the land to the order and condition existing at the beginning of the lease term.
  - Naval Weapons Station Earle: Laurelwood—The Navy is involved in a dispute with a developer about the amount of compensation due to the developer as a result of the Navy’s decision first to suspend its Record of Decision to provide unimpeded access to housing units at Naval Weapons Station Earle and later the Navy’s decision to terminate its housing contract for the units. According to Navy officials, the Navy elected to suspend the Record of Decision and terminate the contract for the Section 801 housing units because of (1) difficulties in obtaining the required state permits for the construction of a new road that could have significantly delayed the Navy’s ability to provide unimpeded access to the units and (2) the challenges of resolving the Navy’s and the developer’s conflicting interpretations of their respective obligations under the contract. In April 2010, after the Navy suspended the contract, the developer submitted a certified claim to the Navy’s contracting officer under the Contract Disputes Act. At the time of our report, the Navy contracting officer was still determining the final resolution on the developer’s claim for compensation. If the developer disagrees with the decision, the developer has the right to appeal. If the developer disagrees with the decision, the developer has the right to appeal.

See Table 1 for the status of all installations.

**Table 1: Status of On-Base Section 801 Military Family Housing Contracts by Installation**

<b>Installation</b>	<b>Housing community (number of units)</b>	<b>In-lease start</b>	<b>In-lease end</b>	<b>Out-lease end</b>	<b>Contract status</b>
Eielson Air Force Base, Alaska	Sprucewood (300)	January 1985	January 2005	January 2007	Demolition began June 2010, developer and Air Force remain in litigation
	Moose Lake and French Creek (366)	October 1996	September 2016	September 2016	Renegotiated in-lease and out-lease to be complete in 2016; units will transfer to the Air Force's new Military Housing Privatization Initiative program
Ellsworth Air Force Base, South Dakota	Centennial Estates (828)	December 1991	July 2011	December 2030	In-lease, current plans are to transition units to the general public's use at the end of the in-lease
Fort Hood, Texas	Liberty Village (300)	August 1988	July 2008	May 2029	Renegotiated out-lease to retain units for military or DOD civilian use
Fort Wainwright, Alaska	Birchwood (400)	November 1987	May 2007	June 2018	Out-lease, transitioned to general public use, occupied by the general public and military members
Hurlburt Field, Florida	Commando Village (300)	June 1992	June 2012	January 2031	In-lease, current plans are to transition units to the general public's use at the end of the in-lease
Naval Base Ventura County Port Hueneme, California	Pearl Court and Midway Estates (300)	March 1994	February 2014	September 2033	In-lease, Navy conducting a study of options following the end of the in-lease
Naval Weapons Station Earle, New Jersey	Laurelwood (300)	September 1988	April 2010	August 2040	Navy terminated contract; a claim is pending

Source: GAO analysis of DOD data.

Additionally, while some Section 801 contracts provide that DOD may terminate early in the event of a national emergency or other specific circumstances, such as when the developer fails to perform or violates certain contractual requirements, none of the original contracts specifically address potential liability in instances where DOD might terminate for reasons such as reduced demand for housing due to base realignment and closure, or security concerns with permitting the general

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public to occupy on-base housing.<sup>19</sup> According to Fort Hood officials, the developer may expect that the government would take measures to mitigate the financial impact of such a termination decision. The decision to terminate the Section 801 contract for off-base housing units at March Air Force Base in California, which is now closed because of a base realignment and closure action, is an example of the potential government liability that can result from early termination of a Section 801 housing contract. According to the developer who previously owned these off-base housing units, in 1998 when March Air Force Base closed, the Air Force bought out the remaining terms of his contract and issued him a check for \$3.5 million. The developer stated that he unsuccessfully appealed the amount of the payment, and eventually accepted the payment. This developer is also the owner of the on-base Section 801 housing units on Naval Base Ventura County Port Hueneme. For further details on the current status and next milestones for each installation, see Appendix I.

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### Potential Competition Exists among On-Base Housing Programs at Two Military Installations

Competition can occur at any installation with housing units operated by different developers and where there are differences in the age, size, or rental rates for housing. However, we only found two installations with on-base Section 801 housing—Fort Hood and Naval Base Ventura County Port Hueneme—that are experiencing competition. These two installations have both an on-base Section 801 housing developer and another developer that either constructed new housing or renovated existing housing under DOD’s Military Housing Privatization Initiative. For example, while the potential for competition exists at Fort Hood between the Section 801 developer and Residential Communities Initiative housing privatization partner, Fort Hood and both developers found the competition to be negligible because both programs have an insufficient inventory of two-bedroom units to meet the installation’s demand. By comparison, competition between the on-base Section 801 housing units and the other privatized housing units at Naval Base Ventura County Port Hueneme has resulted in less demand and reduced occupancy of the Section 801 housing units because service members are choosing to live in other privatized military housing units on or off base or to utilize the local rental housing market. The on-base Section 801 housing at Naval Base Ventura County Port Hueneme had an occupancy rate of 16 percent when

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<sup>19</sup> Each contract does, however, include a provision stating that the contract is subject to the Contract Disputes Act, and outlines a process for resolving disputes arising under the contract.

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units were used solely for family housing prior to 2009, although the Navy leases all of the units during the in-lease phase. In contrast, Naval Base Ventura County Port Hueneme experienced a 98 percent occupancy rate for newer family housing units under the Navy's Public-Private Ventures housing privatization initiative, where the Navy has no lease obligation. Under subsequent legislation in 2008,<sup>20</sup> during the in-lease period, the services were authorized to rent the Section 801 units to unaccompanied members in addition to military families. At Naval Base Ventura County Port Hueneme, the Navy exercised this new authority and increased the occupancy rate of its Section 801 housing units to 38 percent. According to Naval Base Ventura County Port Hueneme officials, if their out-lease with the developer is renegotiated to give the service members priority when renting the housing units, as is done under the Navy's Public-Private Ventures housing privatization initiative, then the developer could adjust the rental rates for the Section 801 housing to be more competitive with other housing developments on and off-base, thereby increasing the occupancy rate for these units. While the out-lease, as written, does not preclude the developer from renting units directly to service members, it does not provide rental priority to them either.

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### Potential Need for Additional Security Measures Limited to One Installation That May Transition Housing to the General Public's Use

We found that DOD, under specific conditions, may need to implement security-related measures to comply with DOD's antiterrorism and force protection standards<sup>21</sup> at one military installation with Section 801 housing, Naval Base Ventura County Port Hueneme. The conditions involve whether the use of housing units changes from military family housing to another purpose, and whether there is an increase in the occupancy of those units (i.e. bachelor housing,<sup>22</sup> the general public's use,

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<sup>20</sup>Pub. L. No. 110-417, § 2803 (2008) (codified at 10 U.S.C. § 2835a). Exercising this authority requires a finding by the Secretary concerned that the housing in question is not needed to house members of the armed forces eligible for assignment to military family housing.

<sup>21</sup> Unified Facilities Criteria (UFC) 4-010-01, *DOD Minimum Antiterrorism Standards For Buildings*, (October 8, 2003, including change 1, January 22, 2007), and DOD Instruction 2000.16, *DOD Antiterrorism (AT) Standards*, (Oct. 2, 2006, incorporating through change 2, Dec. 8, 2006).

<sup>22</sup> According to Navy officials, DOD antiterrorism and force protection standards would apply when 11 or more service members are housed in a single building, and if the Navy elects to place more than one sailor in two-bedroom housing units. However, Naval Base Ventura County Port Hueneme officials stated that if they use the Section 801 units as bachelor housing they intend to place only one sailor in each unit—so antiterrorism standards would not apply.



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or any other use). Specifically, Naval Base Ventura County Port Hueneme officials stated that they would likely need to take measures—such as stand-off distance between fencing and structures—to securely separate the housing from the main base in order to avoid potential security risks. These standards require a range of 33 feet to 82 feet between the fence line and any DOD structures. Ellsworth Air Force Base and Hurlburt Field—two other installations that may convert their on-base Section 801 housing to the general public’s use—have no apparent need for additional security measures beyond installing a fence around the Section 801 housing areas which are located along the periphery of the installations.

The security challenge at Naval Base Ventura County Port Hueneme is that the on-base Section 801 housing units are adjacent to mission-critical or service support facilities, which could require mitigating measures to continue meeting antiterrorism and force protection standards and to allow access to the facilities. However, this security challenge was not a factor at Fort Wainwright because its on-base Section 801 housing is located along the installation’s periphery and was easily separated to meet the anti-terrorism and force protection standards. Similarly, the housing at Ellsworth Air Force Base and Hurlburt Field is located on each installation’s periphery and allows easy separation, which, according to Air Force officials, does not create additional security concerns. Also, there is no security concern at Eielson Air Force Base and Fort Hood because these installations are planning to maintain the on-base Section 801 housing as military family or DOD civilian housing. Additionally, Fort Hood’s Section 801 housing units are located along the periphery and, if necessary, can be easily separated.

At another base, Naval Weapons Station Earle, the local community expressed concerns regarding security risks associated with the general public potentially living on the installation in Section 801 housing. Community officials stated that they were concerned that opening the housing to the general public would potentially attract high-risk residents. Navy officials stated that they disagreed with the community’s concerns because all anti-terrorism and force protection standards would have been met. However, the community’s concern was eliminated once the Navy decided to suspend and then terminate its Section 801 contract, rather than allow the general public to occupy its housing because of extensive delays in providing the developer with unimpeded access to the units and

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challenges in resolving conflicting interpretations of the Navy's and the developer's obligations under the out-lease.<sup>23</sup>

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## Some DOD Installations or Communities Would Face Transition Costs If Housing Units Are Converted to the General Public's Use

We found there would be transition costs for DOD and communities at three of the four installations remaining in the in-lease phase of their contracts—the period in which DOD rents all of the units from the developer for a period of up to 20 years whether the units are occupied or not—if the on-base Section 801 housing units were to transition to the out-lease (the general public's use). The transition costs include security, education, transportation and environmental considerations. The three affected sites are: Naval Base Ventura County Port Hueneme, Ellsworth Air Force Base, and Hurlburt Field. Eielson Air Force Base, the fourth installation with a housing contract, is in the in-lease phase and is not expected to have any transition costs because the contract no longer includes an out-lease phase during which the developer may be permitted to lease units to the general public and pay DOD rent for the use of the land; also, the Air Force is planning to convey the units to its Military Housing Privatization developer to meet its housing requirements. At the remaining installations that are currently in their out-lease or in contract dispute, we found no likely costs for DOD or the communities related to the transition of on-base Section 801 housing to the general public's use. For example, at Naval Weapon Station Earle, the Navy decided to terminate the out-lease of its Section 801 housing contract, so there was no longer a need to build a cost estimate for transferring the on-base housing units to the general public's use.

Developers may be required to cover transition costs associated with constructing required public access roads, erecting fencing to separate the housing from the installation, realigning utility services, maintaining the housing units, and demolishing them at the expiration of the contract. However, the terms of the Section 801 contracts generally determine which party (i.e. the developer, the community or DOD) ultimately pays certain transition costs. Education costs are not covered within Section 801 contracts, and the community would typically be responsible for the entire cost of any new enrollments in the school systems as a result of converting the housing to the general public's use. According to the education officials we interviewed from the various school systems, if the

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<sup>23</sup> The Navy's decision to terminate its Section 801 contract could potentially cause the government to incur contract termination costs.

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occupancy of these units were to increase, they would have the capacity to educate the children who may occupy these housing units. Furthermore, according to officials from the various school systems, along with representatives from the Department of Education's Impact Aid Program, the Impact Aid Program provides federal assistance to local educational agencies that are financially burdened by federal activities, including basic support payments for federally connected children (e.g. children residing on federal property). However, according to these education officials, this aid could decrease if units were converted from military to the general public's use since the civilian children residing on federal property would carry less weight in the calculations used to compute impact aid.

Although the developer may be responsible for certain transition costs, we found there would be costs for DOD and the communities related to security, transportation or environmental considerations at one or more installations; however, there were no estimates of most of the expected costs before we completed our review in July 2010. Because many of these projects are in their preliminary stages, we were not provided detailed information in these three areas on the costs and benefits of the projects.

The potential cost areas that we identified:

- Ellsworth Air Force Base—If the on-base Section 801 housing units transition to the general public's use in 2011, the community expects to upgrade roadways between the housing and the town of Box Elder, but there were no estimated costs at the time of our review. The town of Box Elder completed a traffic impact analysis to assess the potential traffic impact when the Section 801 housing units transition to the general public's use and concluded that more than 300 vehicles per hour would use the affected roads. The upgrades—aimed at improving the traffic flow—could involve building a two-lane road from the housing to existing off-base roads, installing a traffic signal, and posting school speed limit signs as needed. Additionally, the community of Box Elder is planning to pay for three potential water system projects to serve the housing units; according to community officials, cost estimates were solicited, and an initial bid was received for \$4.3 million for the three water system projects to benefit the housing residents.
- Naval Base Ventura County Port Hueneme—If the on-base Section 801 housing units transition to the general public's use in 2014, the community expects to incur transportation costs for constructing a road to intersect a planned access road to some of the housing units and adding traffic signals to reduce congestion on the roadways. Also,

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the Navy may incur costs for building the new intersecting-access road, erecting a fence to separate the housing from the Navy base, increasing security patrols, relocating adjacent Navy facilities, and demolition expenses. The Navy estimates that if demolition is needed to meet DOD anti-terrorism standards for open space on both sides of a perimeter fence, it may have to demolish 17 of the developer's structures including 120 housing units, which would equal 40 percent of the developer's inventory. If this occurs, the Navy—depending on the outcome of any negotiations—may have to compensate the developer for demolishing the units. No cost estimate was available at the time of our review.

- Hurlburt Field—The Section 801 housing units are behind a security fence with controlled entry and routine patrols by Air Force security forces. If the housing units transition to the general public's use in 2012, these security services will no longer be available unless the developer or the community decides to pay for them. However, if the majority of residents remain service members, the base commander may decide to continue providing these services. At the time of our review there was no final decision on security plans, and no cost estimates were available.

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## Contract Changes at Individual Bases Have Potential Application to Other Bases Transitioning to the Out-Lease Phase

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### Installations Are Not Sharing Information on Contract Changes with All Services

We found that the Air Force shares information regarding its Section 801 housing contracts within the service through the Air Force Real Property Agency, an office with oversight over all Air Force installations with on-base Section 801 housing. To facilitate information sharing, this Air Force agency maintains an on-line community of practice for its Section 801 program, which includes a lessons-learned forum. The Army and Navy do not have a single source for obtaining such data, and they share information only on a limited basis within each service. However, DOD and the services do not have a process for sharing military housing-related

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information across the services to ensure that the three installations that may transition their on-base Section 801 units have all available information that could assist in planning any lease modifications prior to potential general public occupancy of on-base housing or lease terminations. We found, for example, that Fort Hood renegotiated its on-base Section 801 contract to contractually agree to the terms of any potential early termination of its lease and retain priority use of the housing units for future military or DOD civilians. However, in our interviews with housing officials at five installations, Air Force and Navy officials stated they were unfamiliar with Fort Hood's Section 801 housing contract modifications or any contract changes at other installation with Section 801 contracts. These officials stated they were unfamiliar with these contract modifications because they did not have a communication system for sharing such information as they began planning for the transition into the out-lease phase of their contracts. After learning of the contract changes at Fort Hood, Naval Base Ventura County Port Hueneme officials stated that this information would help them broaden their options for negotiating the terms of the out-lease with the installation's Section 801 developer.

According to federal best practices for sharing information to ensure efficient use of resources,<sup>24</sup> program managers should communicate information within a time frame to management and others within the entity to meet goals for effective and efficient use of resources. The military services and DOD lack a communications process that would enable them to share information on Section 801 contract changes as installations begin to transition into the out-lease phase of their contracts. Specifically, our review found two installations completed housing contract negotiations and another installation interacted with its local community to discuss upcoming changes in the use of on-base housing and the potential impact on the community, and these detailed developments were not shared with all installations with Section 801 housing. Without a communications process to share installations' experiences with any major housing contract changes and community interaction, DOD and the services cannot ensure that the four installations facing potential contract changes in their out-lease will have all timely information to position them to negotiate the most cost-effective contract terms for the U.S. government.

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<sup>24</sup> GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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In our review, we found a number of bases experienced significant changes in demand for their Section 801 military housing—either during the in-lease in which DOD pays a developer rent for housing units or during the out-lease when a developer pays DOD rent for the use of the land while renting the units to either military or general public occupants. On-base housing demand can vary if the installation’s mission is expanded or reduced (e.g., increasing or decreasing the number of personnel assigned to that base) or even eliminated. Because of changes in installations’ operations, the Army and the Air Force sought changes in their housing leases. In the previously cited Fort Hood example, the Army renegotiated its out-lease to accept several changes that could have relevance to other installations facing potential changes in their leases, but these lease changes were not shared with Air Force or Navy installations with Section 801 housing. In one change, the Army renegotiated its out-lease to give rental preference to its military and DOD civilian members and their families, and agreed to lease to the general public when base operations change because of a base closure, low occupancy, or changes in the number of on-base military personnel. This option allowed Fort Hood to keep the on-base Section 801 housing units within its inventory for service member or DOD civilian use and not have to separate the housing units from the installation. In addition, we found that Fort Hood’s renegotiated contract in 2008 expanded the reasons under which the federal government may terminate a base’s housing contract with a developer—from the standard termination clause of “in the event of a national emergency” to also include “base closure, deactivation or substantial realignment, or in the interest of national defense.” In today’s changing environment, if installations could renegotiate the contract terms to include broader reasons for contract terminations, it could potentially protect the taxpayers interests in the event of unforeseen circumstances that could significantly impact the DOD’s occupancy of the housing.

Additionally, DOD’s Inspector General recommended in 1991<sup>25</sup> that the military services include “termination for convenience” clauses in future contracts, in order to retain some flexibility in the contract terms for early termination. Specifically, the DOD Inspector General’s report found that most Section 801 housing contracts did not contain termination for convenience clauses, as required by the Federal Acquisition Regulation in solicitations for award of fixed-price and cost-reimbursement contracts, in

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<sup>25</sup> Department of Defense Inspector General, *DOD Leasing of Family Leasing, Audit Report Number 92-006* (Arlington, Va.: Oct. 16, 1991).

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order to protect the interests of the government in the event of unforeseen circumstances.<sup>26</sup> The report found that the failure to incorporate termination for convenience clauses, along with other issues, constituted material internal control weaknesses. Included in the DOD Inspector General's report was a recommendation that DOD incorporate termination for convenience clauses in future Section 801 transactions, especially given DOD's efforts to reduce and realign its military forces. However, DOD disagreed with this recommendation, stating that the decision against including termination for convenience clauses in Section 801 contracts was a calculated business decision to avoid extra costs for bidders to cover the additional financial risk of a termination for convenience clause, which could potentially be passed along to the government. While the DOD Inspector General's report recognized that DOD can always cancel a lease agreement whether or not a termination for convenience clause is incorporated into the contracts, the report also stated that it was in the government's best economical interest to retain its flexibility by incorporating clauses that recognize all liabilities for each party in the agreement rather than imply such liabilities. Subsequently, between 1992 and 1996, DOD awarded Section 801 contracts at three installations: Eielson Air Force Base; Hurlburt Field; and Naval Base Ventura County Port Hueneme; however, none of these contracts included the termination for convenience clause.

Moreover, we found that at Eielson Air Force Base, which has the Moose Lake and French Creek Section 801 housing units, the Air Force negotiated changes in its contract in 1996 that may be of interest to other Section 801 housing installations facing potential contract changes and seeking to reduce their financial liability for any unexpected termination of a contract. Specifically, the Air Force in 1996 renegotiated the out-lease phase of the contract to end on the same date as the in-lease—September 2016—and give the government the option of purchasing the units at any time during the remainder of the contract for the price equal to the indebtedness of the developer, including a prepayment premium. In addition, the developer's responsibility for removing its improvements and restoring the property at the end of the contract was deleted. These renegotiated contract terms helped the Air Force avoid any unexpected termination liability costs; this information could be of interest to other installations seeking best practices for any transition into an out-lease.

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<sup>26</sup> Federal Acquisition Regulation, subparts 49.502 and 49.503.

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## Installations Also Are Not Sharing Community Interaction Experiences with All Services

We found that any DOD interaction with a community related to housing use was tied to whether on-base Section 801 military housing was being considered for public use; however, the installation's community interaction experience is not shared with all services. In planning for occupancy by the general public, the installation, developer, and local community are likely to have interactions to address potential impacts on school enrollment, road access, utilities, and other services. For example, at Fort Wainwright officials met with community representatives on potential impacts before converting on-base housing to the general public's use. Fort Wainwright officials stated that they started conducting meetings with the local Chamber of Commerce, Board of Realtors, and community officials approximately 18 months prior to the expiration of the in-lease in May 2007. At these meetings, Fort Wainwright and the community representatives discussed potential community impacts and costs from the transition of the on-base housing units, including costs that would be incurred by the Army, community, and developer. For example, according to Fort Wainwright officials, in preparation for the transition of the units to the general public's use, the Army was responsible for erecting a security fence, relocating an installation entry gate, and constructing a new entrance from the housing to a public road. Additionally, while the community would assume the responsibility for patrolling the units and continuing its snow removal services for the streets outside of the community, the developer would be responsible for snow removal within the community. Fort Wainwright officials, however, were uncertain whether the developer or the community would be responsible for trash removal.

Furthermore, Fort Wainwright officials stated that local developers and property managers expressed concern about the impact of increasing the local rental market's inventory and the potential competition among rental housing developments. Moreover, Fort Wainwright officials held town hall meetings with service members to discuss time frames and service members' options for moving or continuing to live in the units with the understanding that in June 2007 the units would no longer be base housing. Fort Wainwright officials stated that, as a best practice, installations with on-base Section 801 housing should begin discussing the potential transition with service members as early as possible (even earlier than 18 months) in order to prevent unnecessary relocations. This information could be useful to other installations as they begin to plan for transitioning into the out-lease phase of their contracts. However, during our review of other installations, we found that officials at the four installations with contracts in the in-lease phase were unaware of the



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process undertaken by Fort Wainwright as it transitioned the housing from military housing to public use.

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## Conclusions

As the military services continue to adapt to meet their challenges around the world, the services' installations can gain or lose personnel and experience significant impacts at on-base housing. Faced with long-term leases with private developers, some installations with on-base Section 801 housing have, over time, sought minor or major changes in their housing contracts, including specifying additional reasons for potential early termination. However, other than a general provision for the resolution of contract disputes, Section 801 contracts are typically silent regarding potential government liability for terminations resulting from reduced demand for housing because of base realignment and closure, security concerns, and other reasons. Some installations have successfully completed other revisions to their contracts, including one developer who gave military personnel priority over the general public when the contract advanced beyond the in-lease phase. Although this report has identified some contract changes that could benefit multiple installations with Section 801 housing, we believe there remains the potential for many other experiences and best practices to be shared over time as installations transition to the out-lease phase. While the individual services may have a means for sharing information within the service, such as the Air Force's centralized office that evaluated out-lease options for its Section 801 housing program (a potential best practice), DOD does not have a communications process to share this type of information among all services. Also, while at least one installation has interacted with the community—including communicating which entity pays for security, education, transportation, and environmental considerations when the general public occupy on-base housing—DOD lacks a communications process to share any community interaction experiences among all Section 801 housing installations. Without such a communications process, the installations nearing the out-lease phase of their housing contracts will not be fully informed about significant contract changes included in the renegotiated contracts with private developers and may be unaware of the best practices for interacting with communities before allowing the general public's use of on-base housing. Finally, unless all installations with Section 801 housing communicate their contract changes with each other in a timely manner, there is no assurance that future contracts will be negotiated with the benefit of best practices identified elsewhere to help ensure that resulting Section 801 contract changes are in the best financial interest of the federal government.

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## Recommendation for Executive Action

To ensure that DOD and the military services have all information and possible options they need to revise relevant housing contracts in the future in the best interests of the federal government, we recommend that the Secretary of Defense direct the Under Secretary of Defense (Acquisition, Technology and Logistics) to develop a communications process so that all Section 801 housing installations may share information and best practices for negotiating any revisions to military housing contracts and for interacting with communities before allowing the general public's use of on-base housing.

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## Agency Comments and Our Evaluation

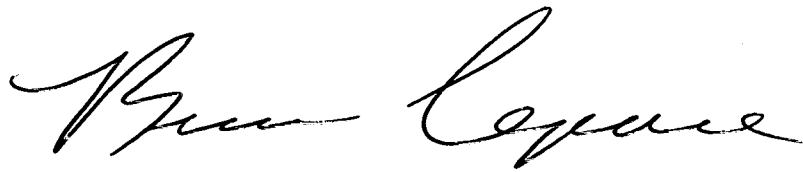
In written comments on a draft of this report, DOD concurred with our recommendation. Specifically, DOD stated that its Housing Policy Panel meetings with the military services will become the venue for sharing information and best practices for negotiating revisions to its Section 801 contracts and interacting with communities before potentially opening on-base housing to the public's use. The Housing Policy Panel meetings are held quarterly to discuss issues and initiatives about government-owned and privatized military housing. We agree that using the Housing Policy Panel as a sounding board would be an effective first step to ensure that relevant information about on-base Section 801 housing contracts is communicated in a timely manner to the installations that will be entering into their out-leases within the next 1 to 6 years. DOD also provided technical comments which have been incorporated into our draft as appropriate. DOD's written comments on this report are reprinted in their entirety in appendix II.

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We will send copies of this report to the appropriate congressional committees. We will also send copies to the Secretary of Defense; the Secretaries of the Army, the Navy, and the Air Force; and the Director, Office of Management and Budget. The report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

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If you or your staff have any questions on this report, please contact me at (202) 512-4523 or leporeb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this reports are listed in appendix III.

A handwritten signature in black ink, reading "Brian Lepore". The signature is written in a cursive style with a large initial "B" and a long, sweeping underline.

Brian J. Lepore  
Director, Defense Capabilities and Management

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*List of Committees*

The Honorable Carl Levin  
Chairman  
The Honorable John McCain  
Ranking Member  
Committee on Armed Services  
United States Senate

The Honorable Daniel K. Inouye  
Chairman  
The Honorable Thad Cochran  
Ranking Member  
Subcommittee on Defense  
Committee on Appropriations  
United States Senate

The Honorable Ike Skelton  
Chairman  
The Honorable Howard P. "Buck" McKeon  
Ranking Member  
Committee on Armed Services  
House of Representatives

The Honorable Norman D. Dicks  
Chairman  
The Honorable C.W. Bill Young  
Ranking Member  
Subcommittee on Defense  
Committee on Appropriations  
House of Representatives

# Appendix I: Status of Each Military Installation's Section 801 Housing

Figure 1: Eielson Air Force Base, Alaska—French Creek and Moose Lake

## French Creek and Moose Lake Community



### Quick Facts

**Land Lease** (includes construction period): Originally 40 years from January 1992—January 2032; however, lease renegotiated to end in September 2016

**Structural Lease:** 20 years from October 1996—September 2016

**Number/Type of Units:** 366 units (two-, three-, four-, and five-bedrooms, but predominantly three-bedroom units)

**Occupancy Rate:** 95 percent

**DOD's Lease Payment:** \$8,688,150 per year

**Developer:** Originally Eielson Housing Build to Lease (HEBL), but units were purchased by CH2M Hill in 2007

### Current Status

**DOD is still leasing housing units**—Eielson Air Force Base continues paying the developer to lease the Moose Lake and French Creek military housing units. This in-lease phase expires in September 2016. In 1996, the Air Force renegotiated its contract with the developer to reduce the out-lease term to end with the in-lease and give the Air Force the option to purchase the structures at any time for a price equal to the indebtedness of the developer. In addition, the developer's responsibility for removing its improvements and restoring the property at the end of the contract was deleted.

### Next Milestone

**New developer to be selected**—As of January 2010, Eielson Air Force Base became part of the Continental Group for the Air Force's Military Housing Privatization program. After the Continental Group's project developer is selected, the Air Force's strategy is to transfer DOD's option to purchase to that developer. Therefore, the project developer will purchase the units to incorporate into future private developments on Eielson Air Force Base. The renegotiated contract states that the purchase price is equal to the indebtedness of the current project owner as set forth in loan documents.

### Potential Cost and Impacts

**No costs for DOD or community**—Because of the terms of the revised lease agreement, the military will retain use of the on-base housing. DOD and the local community will not incur any transition costs.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

Figure 2: Eielson Air Force Base, Alaska—Sprucewood

## Sprucewood Community



### Quick Facts

**Land Lease** (includes construction period): 22 years from January 1985—January 2008

**Structural Lease:** Originally 20 years from August 1986—August 2006, extended one year to August 2007

**Number/Type of Units:** 300 units (two- and three-bedrooms)

**Occupancy Rate:** None, demolition has begun

**DOD's Lease Payment:** \$3,600,000 per year (last payment was in August 2006)

**Developer:** Originally Ben Lomond, Inc., but units were transferred to Polar Star Alaska Housing Corporation in May 1995

### Current Status

**Demolition planned**—In 2006, before the end of the in-lease, the Air Force offered to purchase the Sprucewood housing units from the Section 801 developer. The Air Force wanted to convert the duplex units into single-family homes; however, the Air Force and developer were unable to reach agreement on the purchase price. The Air Force exercised an option for a 1-year lease extension to relocate the service members and dependents in the housing units. During the lease extension, the Air Force maintained the units, but did not pay rent to the developer. According to Air Force officials, in July 2006, the Air Force began eminent

domain action against the extended lease, and the court ruled in favor of the Air Force, stating that the Air Force successfully renewed its housing lease and the land lease would expire in January 2008. However, the developer did not remove the units and abandoned them. The Air Force contracted for demolition and restoration services, which were scheduled to begin in summer 2010.

### Next Milestone

**Air Force and developer remain at odds**—Air Force officials stated that since July 2006, the Air Force and the developer have remained in litigation. The Air Force continues to seek reimbursement for the cost of maintenance during the lease extension and for the cost of demolition and restoration services—both of which were the developer's responsibility under the original contracts. However, the developer seeks compensation for the rental payments for the lease extension period.

### Potential Cost and Impacts

**Demolition cost alone is \$3.27 million**—The contract between the Air Force and the developer did not include an out-lease phase in which the developer had the option to lease the on-base Section 801 housing units to the general public. Therefore, there will be no housing transition involving the general public and no related cost for the Department of Defense and the local community. However, DOD has incurred costs from the contract dispute for: maintaining the housing units during the lease extension, demolishing the housing units (contracted for \$3.27 million), and continuing litigation with the developer.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

Figure 3: Ellsworth Air Force Base, South Dakota—Centennial Estates

## Centennial Estates Community



limited storage, heating problems and frozen pipes, and the units remain in less than desirable conditions despite many attempts to correct the deficiencies. For example, during the winter, some families have reported being unable to sleep in the upstairs bedrooms because of the heating problems and the intense cold room temperatures.

### Quick Facts

**Land Lease** (includes construction period): 40 years from August 1989—December 2030

**Structural Lease:** 20 years from December 1990—July 2011 (contract amended to end when the last unit's in-lease expires)

**Number/Type of Units:** 828 units (two-, three-, and four-bedrooms)

**Occupancy Rate:** 66 percent

**DOD's Lease Payment:** \$8,186,000 per year

**Developer:** Hunt Building Corporation

### Next Milestone

**Air Force recommends housing use by civilians**—In a January 2010 study examining Ellsworth Air Force Base's out-lease options, the Air Force recommended continuing the out-lease phase as written, which allows the developer to rent the units to civilians. It further recommended that a new, short-term lease (i.e., 3-year term with two 1-year renewal options) be negotiated and executed to retain the three senior officer quarters until they can be replaced under the newer Military Housing Privatization Initiative. Installation officials, the developer, and the Box Elder community are working together to meet the July 2011 transition. The Box Elder planner is also requiring the developer to meet any requirements of a new developer.

### Current Status

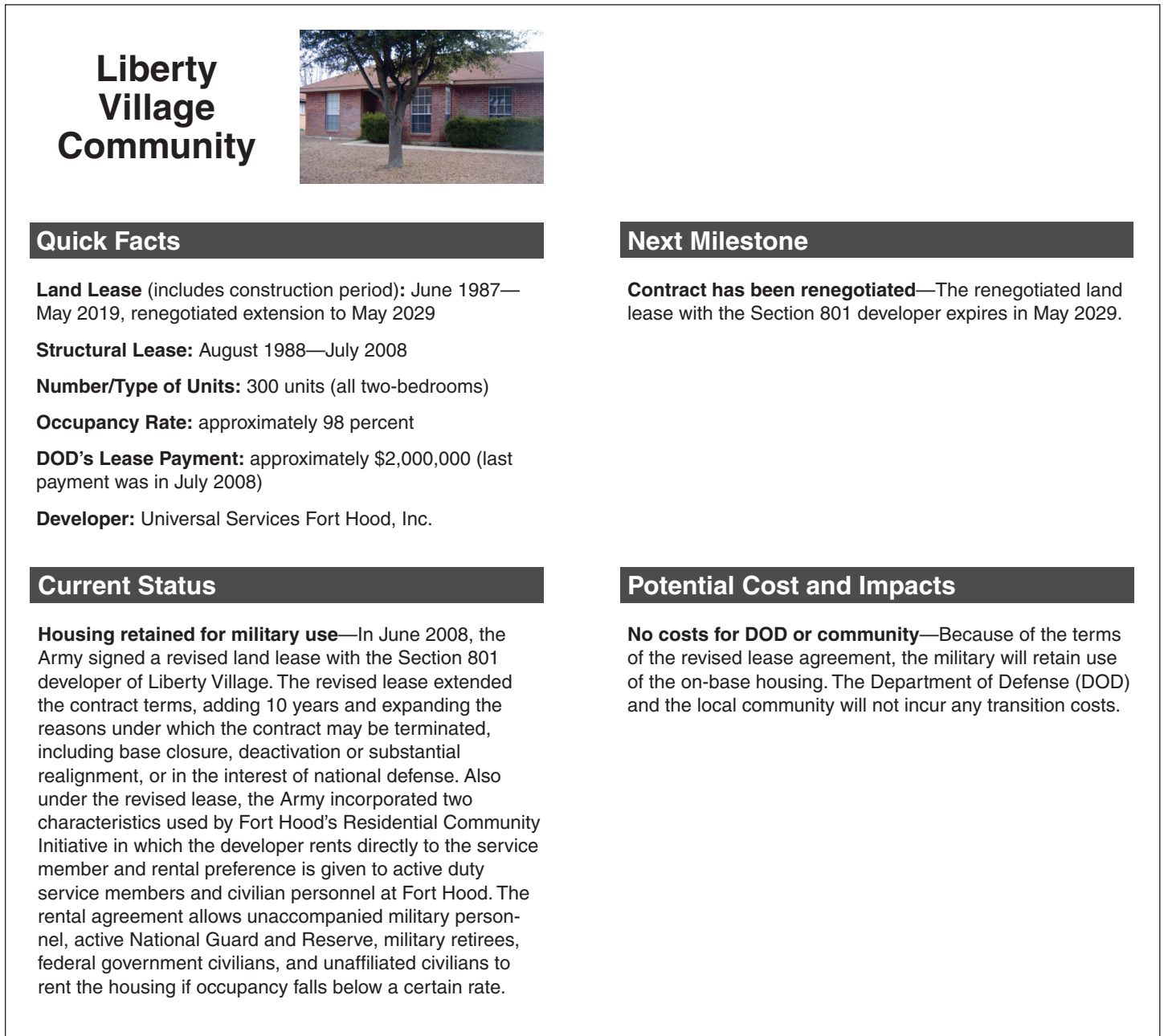
**DOD still is leasing housing units**—Ellsworth Air Force Base continues to pay the developer to lease the Centennial Estates housing units, which are located on the perimeter of the installation in the recently annexed town of Box Elder. Based on the original contract terms, the units were to transfer from in-lease to out-lease status in phases—December 2010 through July 2011—depending on the date in which the units were delivered to the Air Force for occupancy. For security and operational reasons, including minimum disruption to the occupants, the Air Force and the developer amended the lease so that all the units are turned over to the project owner at one time, in July 2011. According to Air Force officials, these housing units have had many construction quality issues, including

### Potential Cost and Impacts

**Community to pay transportation and environmental costs**—If housing units are converted to civilian use in 2011, the town of Box Elder expects to upgrade roadways between the housing and the community, including building a two-lane road from the housing to existing roads, installing a traffic signal, and posting school speed limit signs as needed. The community is also planning three potential water system projects to serve the housing units; an initial bid was received for \$4.3 million for the three projects. No DOD costs are expected.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

Figure 4: Fort Hood, Texas—Liberty Village



Sources: GAO analysis of DOD data; DOD Inspector General (photo).



Figure 5: Fort Wainwright, Alaska—Birchwood

## Birchwood Community



### Quick Facts

**Land Lease** (includes construction period): June 1986—June 2018

**Structural Lease:** November 1987—May 2007

**Number/Type of Units:** 400 units (three-, four-, and five-bedrooms)

**Occupancy Rate:** Not applicable; units converted to public use

**DOD's Lease Payment:** approximately \$8,200,000 per year (last payment was in May 2007)

**Developer:** North Star Alaska Housing Corporation

### Current Status

**Housing transitioned to the general public's use**—Fort Wainwright's in-lease expired in May 2007. Fort Wainwright separated the Birchwood units from the installation and the developer is operating the units as private housing. However, approximately 28 percent of the residents are service members assigned to Fort Wainwright. Fort Wainwright is the only installation with Section 801 on-base housing that has converted units to the general public's use under the terms of the out-lease phase of the original contract.

### Next Milestone

**Decide whether to extend developer's lease**—In June 2018, Fort Wainwright will complete its Section 801 out-lease. At the expiration of the out-lease, the developer is responsible for removing the property and restoring the land to its previous condition. However, the developer has requested an extension of the out-lease so that he may either refinance or sell the housing units. As of July 2010, the Army had not made a decision on whether to extend the out-lease.

### Potential Cost and Impacts

**Some community and DOD costs incurred**—According to Fort Wainwright officials, the community adjacent to the installation had to assume the responsibility for policing and patrolling the units; a service that was provided by Ft. Wainwright during the in-lease. DOD paid the costs of erecting the security fence, relocating an installation entry gate, and constructing a new entrance from the housing to a public road. The units already were integrated into the community's utilities, so there were no additional costs to put meters on the units.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

Figure 6: Hurlburt Field, Florida—Commando Village

## Commando Village Community



### Quick Facts

**Land Lease** (includes construction period): 40 years from January 1991—January 2031

**Structural Lease:** 20 years from June 1992—June 2012

**Number/Type of Units:** 300 units (two-, three-, and four-bedrooms)

**Occupancy Rate:** 96 percent

**DOD's Lease Payment:** \$2,030,000 per year

**Developer:** Fort Walton Defense Housing

### Current Status

**DOD still is leasing housing units**—Hurlburt Field continues to pay a developer to lease the Commando Village military housing units and the lease is scheduled to expire in June 2012. The units are located outside of the mission area and are already separated from other federal property by fencing and have unimpeded access to a public road. The residents of the units have to pass through a security gate to enter the mission area of the base—as would any other service member living off-base. According to a February 2010 draft of an Air Force study, DOD would have to pay about \$5,200,000 for rent and operating expenses through the expiration of the lease.

### Next Milestone

**Air Force recommends housing use by civilians**—In a February 2010 draft study on out-lease options for Commando Village, the Air Force recommended that Hurlburt Field continue with the out-lease provision to allow the housing units to be leased to civilians. If this occurs, the developer will be responsible for the cost of utilities and paying land lease payments to the Air Force totaling 8 percent of gross rental income. Also, one out-lease provision states if the developer agrees to set a rent ceiling for the units in exchange for nominal rent for the federal land, the government will refer personnel and dependents to the units and the developer will give priority to these personnel as tenants who would pay rent directly to the developer. However, the Air Force also is considering entering a bridge lease with the developer that would be renewed annually to preserve all the housing for military use until its new military housing units are available under its Military Housing Privatization Initiative. At the time of our review, there was no final decision on the next step for the housing's use.

### Potential Cost and Impacts

**Community may incur security services costs**—The housing units are behind a security fence with controlled entry and routine patrols by the Air Force. If the housing is converted to civilian use in 2012, these security services will no longer be available unless the developer or the community continues to provide these services. However, the base commander may continue providing these services if the majority of residents remain service members. Otherwise, DOD is not expected to incur any transition costs.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

Figure 7: Naval Base Ventura County Port Hueneme, California—Pearl Court and Midway Estates

## Pearl Court and Midway Estates Community



### Quick Facts

**Land Lease** (includes construction period): September 1991—September 2033

**Structural Lease:** March 1994—February 2014

**Number/Type of Units:** 300 two-bedroom units

**Occupancy Rate:** 16 percent as family housing and later 38 percent as family and single sailor housing

**DOD's Lease Payment:** approximately \$3,200,000 per year

**Developer:** John E. Sims

### Current Status

**DOD still is leasing housing units**—Naval Base Ventura County Port Hueneme continues paying a developer to lease the Pearl Court and Midway Estates housing units. The Navy's lease is scheduled to expire in March 2014. Midway Estates, consisting of 208 units, is located along the perimeter of the installation; while Pearl Court, consisting of 92 units, is located within the interior of the installation. Separating these units from the installation and making them available for public use may require the demolition of some of the units because of their proximity to a hardened, mission-critical building and other base support service buildings.

### Next Milestone

**Study under way on housing's future use**—Naval Base Ventura County Port Hueneme is studying options for the Section 801 property. The study will include a formal assessment and appraisal of the property and outline seven options for the Navy and developer, including alternative uses for the structures. For example, several of the options consider using the units as family or bachelor housing, military lodging or a combination of the three. The study began in early July 2010 and is scheduled for completion in November 2010.

### Potential Cost and Impacts

**Some DOD and community costs are expected**—If units are converted to the general public's use in 2014, the community expects to incur transportation costs, including constructing a road to intersect an expected Navy-built access road and adding traffic signals. In addition to building an access road to the housing units, the Navy also would incur costs for erecting a fence to separate the housing from the installation, increasing security patrols, and relocating adjacent Navy facilities. Moreover, the new fence's boundaries may require the Navy to pay for demolition of 17 structures belonging to the Section 801 developer that includes 120 housing units, which would equal 40 percent of the developer's inventory.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

Figure 8: Naval Weapons Station Earle, New Jersey—Laurelwood

## Laurelwood Community



### Quick Facts

**Land Lease** (includes construction period): September 1988—August 2040

**Structural Lease:** May 1990—April 2010

**Number/Type of Units:** 300 units (two-, three-, and four-bedrooms)

**Occupancy Rate:** None, contract has been terminated

**DOD's Lease Payment:** Approximately \$3,500,000 per year

**Developer:** Laurelwood Homes, Inc.

### Current Status

**DOD is in contract dispute with the developer**—In April 2010, the in-lease expired for Naval Weapons Station Earle's Section 801 housing. Earlier, in April 2009, the Navy completed its Final Environmental Impact Statement that evaluated options for providing unimpeded access between the Laurelwood housing area and an adjacent state primary or secondary road so that the housing units could be converted to the general public's use. In May 2009, the Navy issued a Record of Decision announcing its decision to provide unimpeded access to housing units. As required by its contract, the Navy, with assistance from the developer, began obtaining the necessary permits and approvals to construct a new access road to the housing units. However, legislation was introduced in the New Jersey legislature that would have required additional

studies about security, transportation, and economic impacts to be completed before the permits could be granted. Additionally, in September 2009, the community filed suit against the Navy, claiming that the decision to lease to civilians--which required the construction of an access road--would violate the National Environmental Policy Act and the Clean Water Act.

In April 2010, the Navy suspended execution of the Record of Decision, because of (1) difficulties in obtaining the required state permits for the construction of a new road that could have significantly delayed the Navy's ability to provide unimpeded access to the units and (2) the challenges of resolving the Navy's and the developer's conflicting interpretations of their respective obligations under the contract. Also, in April 2010, the developer submitted a certified claim for compensation to the Navy under the Contracts Dispute Act. In June 2010, the Navy terminated its contract with the developer, and subsequently, the community's complaint against the Navy and developer was dismissed.

### Next Milestone

**Final decision on contract dispute pending**—The Navy notified the developer that it would issue a final decision on the certified claim for compensation by September 30, 2010; however this date was extended so that settlement negotiations could continue. At the time of our report, the Navy had not made a decision regarding the claim.

### Potential Cost and Impacts

**No costs for DOD or community**—Because of the termination of the out-lease, the DOD and the local community will not incur any costs related to the transition of the on-base Section 801 housing to the general public's use. However, DOD will incur some lease termination costs.

Sources: GAO analysis of DOD data; DOD Inspector General (photo).

# Appendix II: Comments from the Department of Defense



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

OCT 25 2010

Mr. Brian Lepore  
Director, Defense Capabilities and Management  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Lepore:

This is the Department of Defense (DoD) response to the GAO draft report, GAO-11-60, "Military Privatization: Installations Need to Share Information on Their Section 801 On-Base Housing Contracts," dated September 20, 2010 (GAO Code 351432). Specific comments are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorothy Robyn".

Dorothy Robyn  
Deputy Under Secretary of Defense  
(Installations and Environment)

Enclosure:  
As stated

**GAO DRAFT REPORT DATED SEPTEMBER 20, 2010  
GAO-11-60 (GAO CODE 351432)**

**“MILITARY HOUSING PRIVATIZATION: INSTALLATIONS NEED TO SHARE  
INFORMATION ON THEIR SECTION 801 ON-BASE HOUSING CONTRACTS”**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATION**

**RECOMMENDATION:** The GAO recommends that the Secretary of Defense direct the Under Secretary of Defense (Acquisition, Technology and Logistics) to develop a communications process between all Section 801 housing installations that shares information and best practices for negotiating with private housing developers, any revisions to military housing contracts and for interacting with communities before allowing the general public’s use of on-base housing.

**DoD RESPONSE:** DoD concurs. On a quarterly basis, the Department convenes meetings of the Housing Policy Panel (HPP) with the Military Services to discuss issues and initiatives relative to government-owned and privatized military housing. The HPP would be an excellent venue for the Military Services to share information and best practices for negotiating revisions to 801 contracts and interacting with communities before allowing the general public’s use of on-base 801 housing.

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Brian J. Lepore, Director, (202) 512-4523 or [leporeb@gao.gov](mailto:leporeb@gao.gov)

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## Acknowledgments

In addition to the contact listed above, key contributors to this report include Mark J. Wielgoszynski, Assistant Director; Jennifer Echard; Tisha Derricotte; Elizabeth Dunn; Greg Marchand; Jacqueline S. McColl; Leonard Ogborn; and Richard Powelson.

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# Related GAO Products

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*Defense Infrastructure: Army's Privatized Lodging Program Could Benefit from More Effective Planning.* [GAO-10-771](#). Washington, D.C.: July 30, 2010.

*Military Housing Privatization: DOD Faces New Challenges Due to Significant Growth at Some Locations and Recent Turmoil in the Financial Markets.* [GAO-09-352](#). Washington, D.C.: May 15, 2009.

*Defense Infrastructure: Services' Use of Land Use Planning Authorities.* [GAO-08-850](#). Washington, D.C.: July 23, 2008.

*Rental Housing Programs: Excluding Servicemembers' Housing Allowances from Income Determinations Would Increase Eligibility, but Other Factors May Limit Program Use.* [GAO-06-784](#). Washington, D.C.: July 31, 2006.

*Defense Infrastructure: Continuing Challenges in Managing DOD Lodging Programs as Army Moves to Privatize Its Program.* [GAO-07-164](#). Washington, D.C.: December 15, 2006.

*Military Housing: Management Issues Require Attention as the Privatization Program Matures.* [GAO-06-438](#). Washington, D.C.: April 28, 2006.

*Military Housing: Further Improvements Needed in Requirements Determination and Program Review.* [GAO-04-556](#). Washington, D.C.: May 19, 2004.

*Military Housing: Better Reporting Needed on the Status of the Privatization Program and the Costs of Its Consultants.* [GAO-04-111](#). Washington, D.C.: October 9, 2003.

*Military Housing: Management Improvements Needed as the Pace of Privatization Quickens.* [GAO-02-624](#). Washington, D.C.: June 21, 2002.

*Military Housing: DOD Needs to Address Long-Standing Requirements Determination Problems.* [GAO-01-889](#). Washington, D.C.: August 3, 2001.

*Military Housing: Continued Concerns in Implementing the Privatization Initiative.* [GAO/NSIAD-00-71](#). Washington, D.C.: March 30, 2000.



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**Related GAO Products**

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*Military Housing: Privatization Off to a Slow Start and Continued Management Attention Needed.* [GAO/NSIAD-98-178](#). Washington, D.C.: July 17, 1998.

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