

United States Senate
WASHINGTON, DC 20510

March 12, 2021

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Fudge:

We are writing to request information on the role that the Department of Housing and Urban Development (HUD) plays in ensuring that military families with disability-related needs receive appropriate housing. In July 2020, the Military Housing Advocacy Network (MHAN) released the findings from a survey of military families that painted a troubling picture of housing problems for thousands of servicemembers and their families, revealing that many military families with disability-related needs are being denied access to accessible and adaptable housing.¹

Under the Military Housing Privatization Initiative (MHPI),² the Department of Defense (DoD) has partnered with private companies that develop and maintain nearly all military housing installations in the country.³ Amid media reports of decrepit housing conditions on military bases,⁴ a staff investigation led by Senator Warren's office in 2019 revealed that private housing providers were obtaining substantial profits and fees from their contracts but failing to provide military families with the safe, clean, and secure housing conditions that they deserve.⁵ The MHAN survey reveals a new set of problems for military families living in on-base installations operated by these same private housing providers, suggesting that these corporations that have partnered with the DoD may not be following federal laws that protect persons with disabilities who require ADA-compliant housing and other fair housing protections.

¹ Military Housing Advocacy Network, "Accessibility of ADA Homes and Reasonable Accommodations for Disabled Individuals in Privatized Military Housing," July 2020, <http://militaryhousingadvocacynetwork.org/wp-content/uploads/2020/07/MHAN-Report-ADA-and-Accomodations.pdf>.

² U.S. Department of Defense, Office of the Assistant Secretary of Defense for Sustainment, "Military Housing Privatization," https://www.acq.osd.mil/eie/FIM/Housing/Housing_index.html.

³ U.S. Government Accountability Office, Report to Congressional Addressees, "MILITARY HOUSING: DOD Needs to Strengthen Oversight and Clarify Its Role in the Management of Privatized Housing," March 2020, <https://www.gao.gov/assets/710/705552.pdf>.

⁴ Reuters, "Ambushed at Home: The hazardous, squalid housing of American military families," <https://www.reuters.com/investigates/section/usa-military/>.

⁵ Letter from Senator Elizabeth Warren to the Senate Committee on Armed Services Chairman James Inhofe and Ranking Member 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>.

Denying or Delaying ADA-Compliant Homes or Reasonable Accommodations for People with Disabilities Violates Federal Law

Several federal laws under HUD’s purview provide broad protections for individuals with disabilities, including housing nondiscrimination laws. These include the ADA, which “provide[s] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and ensures “that the Federal Government plays a central role in enforcing...standards...on behalf of individuals with disabilities.”⁶ Title II of the ADA “requires public entities to make both new and existing housing facilities accessible to persons with disabilities, as well as ensuring that individuals with disabilities have access to the programs, activities, and services provided,” whereas “Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and public accommodations” and “covers public and common use areas at housing developments.”⁷

Section 504 of the Rehabilitation Act⁸ directs that “[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service,”⁹ including HUD and the DoD. Moreover, “[f]or a federally-assisted new construction housing project, Section 504 requires 5% of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional 2% of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.”¹⁰

Moreover, the Architectural Barriers Act of 1968 (ABA)¹¹ “requires that certain buildings financed with federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities” and “does not cover privately-owned housing, but covers buildings or facilities financed in whole or in part with federal funds.”¹² As HUD further clarifies, “buildings built to meet the requirements of Section 504 and Title II of the ADA will conform to the requirements of the ABA because HUD ABA regulations require compliance with [Uniform Federal Accessibility Standards].”¹³

⁶ 42 U.S.C. 12101.

⁷ U.S. Housing and Urban Development, “Section 504: Frequently Asked Questions,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

⁸ 29 U.S.C. 794.

⁹ *Id.*

¹⁰ U.S. Housing and Urban Development, “Section 504: Frequently Asked Questions,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

¹¹ 42 U.S.C. 4151-4157.

¹² U.S. Housing and Urban Development, “Section 504: Frequently Asked Questions,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

¹³ *Id.*

The Fair Housing Act (FHA)¹⁴ “prohibits discrimination in housing and housing-related transactions because of disability,”¹⁵ “requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities,”¹⁶ and “makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling and public and common use areas.”¹⁷ These accessibility and adaptability requirements cover construction projects with four or more units that are built for occupancy after March 13, 1991, “regardless of whether it receives federal financial assistance” and “applies to the vast majority housing [sic], including privately owned housing...”¹⁸

The FHA, Section 504, and Titles II and III of the ADA “require housing providers to make reasonable accommodations and reasonable modifications for individuals with disabilities,”¹⁹ which, according to the FHA, includes “a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.”²⁰ Additionally, “[t]hese laws also prohibit housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because they require reasonable accommodations or modification.”²¹

According to HUD, “the requirement to provide reasonable accommodations and modifications applies to, but is not limited to individuals, corporations, associations and others involved in the provision of housing or residential lending” including property owners and housing managers.²² HUD also states that “a provider has an obligation to provide prompt responses to reasonable accommodation requests” and that “[a]n undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.”²³ Moreover, “[u]nder Section 504, a housing provider is required to provide and pay for the structural modification as a reasonable accommodation unless it amounts to an undue financial and administrative burden or a fundamental alteration of the program.”²⁴

¹⁴ 42 U.S.C. 3601.

¹⁵ U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Disability page, https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_main.

¹⁶ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, “A Guide to Disability Rights Laws,” February 2020, <https://www.ada.gov/cguide.htm#anchor63409>.

¹⁷ U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, “Reasonable Accommodations and Modifications,” https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications.

¹⁸ U.S. Housing and Urban Development, “Section 504: Frequently Asked Questions,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

¹⁹ U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, “Reasonable Accommodations and Modifications,” https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Last, when waiting lists for accessible housing are utilized, “HUD’s Section 504 regulations at 24 C.F.R. § 8.27 require [housing providers that receive federal assistance] to adopt suitable means to assure that information on available accessible units reaches otherwise qualified individuals with disabilities who need the features of those units.”²⁵ As HUD outlines, recipients are to prioritize such available housing to persons with disabilities in need of accessible housing, and “[i]f no qualified applicant with disabilities requires the accessible features of a unit, and the recipient places a family where none of the family members have disabilities in that unit, the recipient may include language in the lease requiring this family to agree to move to a non-accessible unit, as soon as one becomes available that otherwise meets the family’s needs.”²⁶

Private Military Housing Companies Are Not Adequately Addressing Accessible Housing and Accommodations Needs

In order to obtain additional information on the concerns raised by the MHAN survey, we wrote to Balfour Beatty Communities, Corvias Property Management, Hunt Military Communities, Lendlease Communities, and Lincoln Property Company on December 22, 2020, seeking information on their policies and procedures for providing such housing.²⁷ The responses from these companies that own and manage thousands of on-base military housing units did not provide all of the information we sought, but they did reveal a series of concerns about providing accessible housing and accommodations to military families and the companies’ interpretation of federal laws pertaining to disabled servicemembers.²⁸

First, the companies indicated that a relatively small number of accessible homes were being built on military bases, and that in many cases they were not meeting the ADA 5% standard. Several companies indicated that they exceeded this standard over their entire portfolio – but only one company provided this information on a per-installation basis, and that information indicated more than 75% of the facilities they manage did not meet that standard.²⁹ This company indicated that only 4.3% of their MHPI housing units were ADA-compliant.

Second, each of these private military housing companies maintain a waitlist for families in need of accessible housing when none are available, but their waitlist procedures clearly do not prioritize persons in need of accessible housing as is outlined by HUD’s waitlist procedure under Section 504.³⁰ The responses received from the housing providers indicated that, if an accessible housing unit is available but there are no families on the waiting list, then families that do not

²⁵ U.S. Housing and Urban Development, “Section 504: Frequently Asked Questions,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

²⁶ *Id.*

²⁷ Office of Senator Elizabeth Warren, “Warren, Tillis Question Private Military Housing Providers on Reports They Have Denied Access And Failed to Provide Appropriate On-Base Housing to Military Families With Disabilities,” press release, December 22, 2020, <https://www.warren.senate.gov/newsroom/press-releases/warren-tillis-question-private-military-housing-providers-on-reports-they-have-denied-access-and-failed-to-provide-appropriate-on-base-housing-to-military-families-with-disabilities>.

²⁸ Letters from these military housing providers are filed in the Offices of Senators Elizabeth Warren and Thom Tillis.

²⁹ *Id.*

³⁰ U.S. Housing and Urban Development, “Section 504: Frequently Asked Questions,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq.

require such housing are allowed to move into these units.³¹ Hence, these companies are allowing families without accessibility needs to stay in accessible housing units until a family with accessibility needs requires one, rather than trying to maintain an open inventory of such houses to accommodate residents with disability-related needs. As a result, there is at least a 35 day turnover rate for accessible homes, which includes time for the previous owners to move out as well as any modifications to the home that must be made for the incoming family to move in.

In addition, we are troubled that at least one of the MHPI providers indicated that they were not subject to all federal disability laws. This company wrote that it “has received advice from legal counsel that its MHPI projects are not covered by Section 504 on the basis that they do not ‘receive financial assistance from any federal agency’ as such term has been interpreted under applicable case law,” and that “to our knowledge, there is no requirement that [our company] certify under any of its MHPI project agreements that it will be compliant with the non-discrimination obligations of Section 504 as a condition of receipt of the contract or funding – which is another indicia of governmental intent for application of Section 504.”³² Moreover, this company stated that it does not believe it is obligated under Section 504 to make reasonable modifications at no cost to the tenant since it “does not receive specific HUD-funding for its MPHI projects” and that “the mere fact that there is a delay in the assignment of an ADA housing unit is not indicative of a violation of law.”³³

Finally, most of the MHPI providers indicated that they are not collecting vital information that would help them keep track of disability-related needs across their portfolios, without which it is impossible to conduct oversight and make sure they are compliant with federal laws pertaining to people with disabilities living in their housing facilities on-base.

HUD is Responsible for Enforcing Federal Laws for People with Disabilities

Within HUD, the Office of Fair Housing and Equal Opportunity (FHEO) is responsible for “the enforcement, administration, development, and public understanding of federal fair housing policies and laws,” including the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the ADA.³⁴ When the FHEO receives a discrimination complaint, they are responsible for investigating that complaint, and “[i]f the investigation shows that the law has been violated, HUD or the Department of Justice may take legal action to enforce the law.”³⁵

³¹ Letters from these military housing providers are filed in the Offices of Senators Elizabeth Warren and Thom Tillis. In most, but not all, of these situations, “the resident who is assigned the ADA home is required to execute a special addendum to the lease agreement that requires the resident to acknowledge that he/she is living in an ADA accessible/adaptable home and may be requested by the landlord to move at no-cost out of the ADA home in the event a need arises to move a higher priority family in that home.”

³² Letters from these military housing providers are filed in the Offices of Senators Elizabeth Warren and Thom Tillis.

³³ *Id.*

³⁴ U.S. Housing and Urban Development, “About FHEO,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo.

³⁵ U.S. Housing and Urban Development, “Learn About the FHEO Complaint and Investigation Process,” accessed on February 26, 2021, https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process# Process_for_Fair.

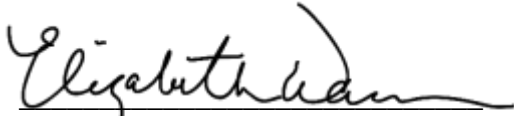
To better understand the role of HUD in ensuring families living in on-base military housing managed by MHPI providers are receiving appropriate housing for their disability-related needs, we request answers to the following questions no later than March 26, 2021:

1. Please describe HUD's regulatory or enforcement authorities with regard to on-base military housing. Does HUD coordinate with the DoD regarding housing issues pertaining to servicemembers with disability-related needs and have access to information concerning military families in need of accessible housing or accommodations?
2. Is residential housing constructed and managed by private MHPI companies in partnership with the DoD covered by Titles II and III of the ADA, Section 504 of the Rehabilitation Act, and the Fair Housing Act? Have any military housing providers ever received funding from HUD? Are they classified as federally financed companies?
3. How does HUD define a 'prompt response' to a request for accommodation, and what would constitute an unlawful 'undue delay' that would lead HUD to classify such a case as a failure to provide a reasonable accommodation?
4. Has HUD ever conducted an investigation into MHPI housing to make sure that servicemembers with disability-related needs have access to safe and appropriate housing? If so, please describe the nature of the investigation(s) and their findings.
5. Has HUD received any formal complaints from military families with disabilities concerning obstacles to their ability to obtain adequate housing or requested accommodations? If so, please provide information on the location, the housing provider, the nature of the complaint(s), the actions HUD took to investigate, and whether the complaint was resolved.
6. Has HUD ever fined or sanctioned MHPI housing providers for problems related to housing for military families with disabilities? For each instance, please provide information on the location, the housing provider, the amount of the fine or other sanction, and the reason for the fine or sanction.
7. Has HUD ever received a request for waivers, modifications, or exemptions from DoD standards for military families with disabilities? For each instance, please provide detailed information on the nature of the request, the requester, and whether the request was granted.

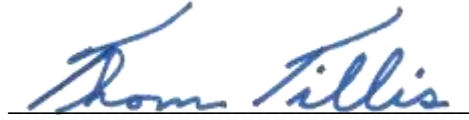
As you take the helm of the HUD, we hope you will work with your colleagues at DoD to address the ongoing concerns about the availability of accessible housing for military families with disability-related needs living in on-base installations through the MHPI program.

Thank you for your attention to this important matter, and we look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Warren". The signature is written in a cursive style with a long horizontal flourish at the end.

Elizabeth Warren
United States Senator

A handwritten signature in blue ink that reads "Thom Tillis". The signature is written in a cursive style with a long horizontal flourish at the end.

Thom Tillis
United States Senator