



# The ADVOCATE

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This edition of The Advocate includes Legal Assistance topics that cover identity theft, the Exceptional Family Member Program, and housing rights for tenants residing in privatized housing. The articles are designed as a quick reference and overview on these subjects. To speak with an attorney, about your specific legal matter, please contact us at [RLSONDWLEGALASSISTANCE@NAVY.MIL](mailto:RLSONDWLEGALASSISTANCE@NAVY.MIL).

## **IDENTITY THEFT**

***- LTJG DAN LUCEY, JAGC, USN***

The holiday stand-down period is a welcome respite for Sailors to get away from the stress of deployments, duty sections, and qualifications. But while many are taking a much needed rest and relaxation from protecting their nation, they themselves remain vulnerable to the ever-present risk of identity theft. Here are some tips to prevent a Grinch from ruining your Christmas.

### **Know Your Risk**

Sailors are at a significantly higher risk of having their identities stolen as compared to their civilian counterparts. The Federal Trade Commission reports that servicemembers are nearly three times more likely to have money directly taken from their bank account by another person using electronic means.<sup>1</sup> Additionally, they are 76% more likely to report that an existing account was fraudulently misused and 22% more likely to report that their stolen information was used to open a new account such as a credit card.<sup>2</sup> This data suggests that your service affiliation alone places you at a higher risk of identity theft, and you should be ever vigilant of monitoring your credit to quickly identify when identity

<sup>1</sup> <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2020/05/identity-theft-causing-outsized-harm-our-troops#end2>

<sup>2</sup> Id.

theft does happen. Even more troubling, servicemembers are twice as likely to report that a family member or someone they know stole their identity.<sup>3</sup> You may not want to ask Uncle Ernie to pass the latkes this Hanukkah knowing his new OLED television was purchased using your credit card.

### **Protect Yourself Now**

When it comes to preventing identity theft, the best offense is a good defense and Sailors should be proactive to ensure they have not had their identity stolen. With the increased vulnerability towards having funds taken directly from their bank accounts, Sailors should check their bank accounts and online credit card statements daily to ensure no unauthorized transactions have been made. To keep track of your credit history, and to see if a Grinch has applied for credit in your name, Sailors should sign up for free credit monitoring available to all active-duty military members through the Equifax, Transunion, and Experian websites. If you do not intend on applying for credit anytime soon, you may want to consider placing a freeze on your credit which prevents scammers from accessing your sensitive data which is needed to approve the application. If you are doing a credit freeze, make sure you freeze your credit through all three credit bureaus, Equifax, Transunion, and Experian, as access to one bureau will still allow a scammer to open credit in your name.

### **Act Quickly to Mitigate Damage**

While taking preventative measures can stop most scammers, the means of stealing a person's identity is constantly evolving. Because of this, Sailors remain always vulnerable to fraud. When identity theft does occur, Sailors should take swift action to protect themselves and their credit history. If a Sailor notices unauthorized transactions on a credit or debit card, they should immediately contact their banking institution to place a lock on their card and to report the transactions as fraudulent. Many banking institutions reimburse members for unauthorized purchases, and Sailors should choose a bank that guarantees this benefit. If they notice credit has been opened in their name, they should alert the creditor of the fraud. Regardless of the means, Sailors should report that their identity has been stolen on [identitytheft.gov](http://identitytheft.gov) which will then provide them with a recovery plan tailored to their unique situation. Sailors should additionally alert one of the three credit bureaus, who will place a fraud alert on their file and inform the other two bureaus of a fraud alert, as well. By understanding their vulnerability, utilizing preventative measures, and acting quickly to minimize the ill effects of identity theft, Sailors can ensure their holiday season is still the most wonderful time of the year.

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<sup>3</sup> Id.

## **THE EXCEPTIONAL FAMILY MEMBER PROGRAM: A GUIDE**

- LTJG DeLorean L. Forbes, JAGC, USN

The Department of Defense's (DOD) most valuable assets are its warfighters and their families. Consequently, the DOD has taken steps to ensure that military families are given the support that they need in order to accomplish the mission. One of the DOD's most important programs for achieving this goal is the Exceptional Family Member Program (EFMP). Originally started by the U.S. Army in 1979, the EFMP serves military families with special needs dependents by ensuring that service members with exceptional family members (EFMs) are stationed at or near installations where necessary medical, mental health, or educational resources are available for their EFM dependents. The EFM Program does not preclude members from sea duty, normal sea/shore rotation, unaccompanied assignments, Global War on Terrorism (GWOT) Support Assignments (GSA), standing watches, or performing normally assigned duties. However, the program does ensure that servicemembers are assigned to the geographic areas where the medical and educational needs of their family can be met. In order to maximize the coverage and effectiveness of the program, enrollment in EFMP is *mandatory* for servicemembers whose dependents are eligible for EFM classification.

### **EFM Enrollment, Categorization, and Support**

The EFMP was established by the Navy in compliance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, and its administration in the Navy is controlled by MILPERSMAN 1300-700. The program essentially consists of two core components: EFM enrollment and EFM categorization.

#### EFM Enrollment

The Navy Medical Corps is responsible for identifying family members who qualify for EFM classification. A family member will qualify for EFM classification when they have a chronic medical, mental, or special education need or condition. A condition will be considered chronic for EFM purposes when the condition is expected to last for six months or longer. Some conditions may require enrollment in the program on a temporary basis of 6-12 months.

Once a Navy doctor has identified a dependent as having a chronic condition, their sponsoring service member is required to complete DD 2792, "Exceptional Family Member Medical Summary" and appropriate addenda and DD 2792-1, "Exceptional Family Member Special Education/Early Intervention Summary", to enroll the family member into the program. The family member's military or civilian medical provider will fill out the medical summary portion of DD 2792. This medical summary is mandatory for children who are being enrolled in the program. Servicemembers can receive enrollment assistance from the medical facility's EFM Program Coordinator. The EFM Program Coordinator must also sign all paperwork.

After the forms are completed, the servicemember with the assistance of their local EFM program coordinator will forward the forms to a Central Screening Committee (CSC).

There are three different Central Screening Committees, and each is responsible for reviewing referrals in their specific geographic region. Members with EFMs who reside east of the Mississippi; in the European, South American, Middle Eastern, and African areas; and in the Atlantic/Caribbean region submit their forms to the CSC in Portsmouth, Virginia. Members with EFMs who reside west of the Mississippi in CONUS, Canada, and Alaska submit theirs to the CSC in San Diego, CA. Finally, members with EFMs who reside in countries in the South Pacific, Asia, and Hawaii forward their submissions to the CSC located in Yokosuka, Japan.

#### EFM Categorization

The CSCs are responsible for validating the appropriateness of a family member's enrollment in the program and, most critically, for categorizing the family members who are accepted into the program based on the severity of their condition. Where an EFM's needs are not severe but warrant enrollment in the event of an acute exacerbation, the EFM should be placed in **Category 1 (enrollment for monitoring purposes)**. Where an EFM's care is usually available at most locations, except for some isolated CONUS/overseas areas, the EFM should be placed in **Category 2 (limited overseas/remote CONUS assignments)**. If the EFM's medical or educational needs preclude assignment to overseas locations, they should be placed into **Category 3 (no overseas assignments)**. When the EFM's medical condition requires assignment to billets near major medical facilities, they should be placed in **Category 4 (major medical areas within CONUS only)**. When the family member's needs are complex, and permanent change of station (PCS) moves could disrupt continuity of care (which could jeopardize the EFM's health) the EFM will be placed in **Category 5 (Homestead Program)**. Homestead Program members should receive long-term assignment to an area that can support multiple sea/shore rotations. **Category 6 (temporary category)** is for EFMs whose condition requires a stable environment for 6-12 months due to treatment or ongoing diagnostic testing. Category 6 also applies to those who have been identified through overseas screening as having chronic needs but have not submitted an enrollment package.

#### **How RLSO Legal Assistance Offices Can Help EFMP Families**

According to the Congressional Research Service, the Navy has more than 20,000 EFMP enrolled dependents as of 2020. The families of every single one of these dependents face unique and difficult legal challenges. Military families frequently move and are often unfamiliar with the area in which they live. As such, they may have trouble finding a school or medical facility that can effectively meet the needs of a family member with special needs. Transient military life can also leave servicemembers and their children liable to education or medical discrimination from unscrupulous institutions that are willing to simply wait out the family rather than fulfill their legal obligations to them.

Fortunately, the Navy JAG Corp's Region Legal Service Offices (RLSOs) are here to help. Legal Assistance (LA) attorneys at the RLSOs can advise service members on their housing, educational, medical, and privacy rights and those of their families, as well as provide advice on common legal issues that arise in cases where a service member has

an EFM dependent. LA attorneys can also draft powers of attorney (POAs) for an EFM dependent in order to give their family the power to take care of their finances or medical needs, as long as the individual is competent enough to consent to the grant of power. While RLSO attorneys are unable to represent clients directly in court, they are able to help service members understand the litigation process, timeline, and how to file a case. In some cases, RLSO LA attorneys can refer clients to private or volunteer attorneys who specialize in disability law.

While the RLSOs advise service members out of court, the Navy has also developed a 3-year EFMP Legal Assistance Pilot Program, in compliance with the FY 2021 National Defense Authorization Act (NDAA). The EFMP Pilot Program consists of two disability and special education law subject matter experts (SMEs), located in Norfolk and San Diego, who can provide direct, in-court legal services to EFMP families in the jurisdiction wherein they are licensed. SMEs further supplement the RLSOs by serving as resources for the LA attorneys and clients to consult when dealing with cases involving the IDEA, the Family Education Rights and Privacy Act (FERPA) and the right to a Free Appropriate Public Education (FAPE) under section 504 of the Rehabilitation Act of 1973. Service members are encouraged to contact their nearest RLSO's LA Department and inquire about our services.

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**The Exceptional  
Family Member  
Program:  
A Guide  
(cont.)**

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## **The Military Housing Privatization Initiative: Tenant Rights for Service Members and their Families**

*-LTJG Spencer W. Lindsay, JAGC, USN*

Service members and their families know finding affordable and adequate housing can be one of the biggest stressors on military life. In 1996, Congress passed the Military Housing Privatization Initiative (MHPI) in order to improve the condition and quality of military housing, considered a key aspect of military readiness and necessary to improve retention.<sup>1</sup> The MHPI allowed private housing and development companies to compete and obtain funding to build 75,000 new homes and major renovations to an additional 50,000 homes to house military members and their families.<sup>2</sup> Today, the MHPI provides housing for military families and single service members at over 150 installations, with over 200,000 Family Housing units and 80 projects managed by 14 MHPI private company partners.<sup>3</sup>

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<sup>1</sup> *About MHPI, MILITARY HOUSING ASSOC. <https://www.militaryhousingassociation.org/about/about-mhpi/> (last visited 19 Oct. 2022).*

<sup>2</sup> *See id.*

<sup>3</sup> *See id.*

Despite this progress, military families living on MHPI communities continued to face significant challenges and lacked adequate housing.<sup>4</sup> As result, the Department of Defense (DOD) created the MHPI Tenant Bill of Rights to better ensure the safe, quality and well-maintained housing of service members and their families.<sup>5</sup> Effective as of August 1<sup>st</sup>, 2021, a list of 18 tenant bill of rights now affords service members extra protection when renting at privatized family and unaccompanied MHPI properties.<sup>6</sup> For any agreements at MHPI properties signed before August 2021, the DOD is working to secure voluntary agreements in order for the bill of rights to apply retroactively to those agreements.<sup>7</sup> The DOD has obtained retroactive agreements from almost all MHPI properties incorporating the 18 tenant rights into their lease agreements.<sup>8</sup>

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***The Military Housing Privatization Initiative: Tenant Rights for Service Members and their Families (cont.)***

The full MHPI Tenant Bill of Rights include:

1. The right to reside in a housing unit and a community that meets applicable health and environmental standards.
2. The right to reside in a housing unit that has working fixtures, appliances, and utilities and to reside in a community with well-maintained common areas and amenity spaces.
3. The right to be provided with a summary of the maintenance conducted with respect to a prospective housing unit by the landlord for the previous seven years, before signing a lease, and upon request, all information possessed by the landlord regarding such maintenance within two business days after making the request. Upon request, a current Tenant who did not receive maintenance information before signing a lease has the right to receive such information within five business days after making the request.

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<sup>4</sup> *Danielle Keech, The Good, The Bad, and The Ugly of Military Landlord/Tenant Relationships (And What You Can Do To Make It Better!) MILITARY BY OWNER BLOG (02 May 2018)* <https://blog.militarybyowner.com/the-good-the-bad-and-the-ugly-of-military-landlord-tenant-relationship>

<sup>5</sup> *Military Housing Privatization Initiative Bill of Rights Signed by Secretary Esper*, DEP'T OF DEFENSE (25 Feb. 2020) <https://www.defense.gov/News/Releases/Release/Article/2094184/military-housing-privatization-initiative-tenant-bill-of-rights-signed-by-secretary-esper>

<sup>6</sup> *Military Housing Privatization Initiative Bill of Rights* (25 Feb. 2020).

<sup>7</sup> *See id.*

<sup>8</sup> *Official Says DoD is Working to Improve Military Housing*, DEP'T OF DEFENSE (1 Apr. 2022). <https://www.defense.gov/News/News-Stories/Article/Article/2985853/official-says-dod-is-working-to-improve-military-housing/>

4. The right to a written lease with clearly defined rental terms to establish tenancy in a housing unit, including any addendums and other regulations imposed by the landlord regarding occupancy of the housing unit and use of common areas.
5. The right to a plain-language briefing, before signing a lease and 30 days after move-in, by the installation housing office on all rights and responsibilities associated with tenancy of the housing unit, including information regarding the existence of any additional fees authorized by the lease, any utilities payments, the procedures for submitting and tracking work orders, the identity of the Military Tenant Advocate, and the dispute resolution process.
6. The right to have sufficient time and opportunity to prepare and be present for move-in and move-out inspections, including an opportunity to obtain and complete necessary paperwork.
7. The right to report inadequate housing standards or deficits in habitability of the housing unit to the landlord, the chain of command, and housing management office without fear of reprisal or retaliation, including reprisal or retaliation in the following forms: (A) unlawful recovery of, or attempt to recover, possession of the housing unit; (B) unlawfully increasing the rent, decreasing services, or increasing the obligations of a Tenant; (C) interference with a Tenant's right to privacy; (D) harassment of a Tenant; (E) refusal to honor the terms of the lease; or (F) interference with the career of a Tenant.
8. The right of access to a Military Tenant Advocate through the housing management office of the installation of the Department at which the housing unit is located or a military legal assistance attorney to assist in the preparation of requests to initiate dispute resolution.
9. The right to receive property management services provided by a landlord that meet or exceed industry standards and that are performed by professionally and appropriately trained, responsive, and courteous customer service and maintenance staff.
10. The right to have multiple, convenient methods to communicate directly with the landlord maintenance staff, and to receive consistently honest, accurate, straightforward, and responsive communications.

11. The right to have access to an electronic work order system through which a Tenant may request maintenance or repairs of a housing unit and track the progress of the work.
12. With respect to maintenance and repairs to a housing unit, the right to the following: (A) prompt and professional maintenance and repair; (B) to be informed of the required time frame for maintenance or repairs when a maintenance request is submitted; and (C) in the case of maintenance or repairs necessary to ensure habitability of a housing unit, to prompt relocation into suitable lodging or other housing at no cost to the Tenant until the maintenance or repairs are completed.
13. The right to receive advice from military legal assistance on procedures involving mechanisms for resolving disputes with the property management company or property manager to include mediation, arbitration, and filing claims against a landlord.
14. The right to enter into a standardized, formal dispute resolution process, should all other methods be exhausted, to ensure the prompt and fair resolution of disputes that arise between landlords and Tenants concerning maintenance and repairs, damage claims, rental payments, move-out charges, and such other issues relating to housing units. The dispute resolution process shall contain the following elements: installation or regional commander as deciding authority; a process for withholding allotment of rental payments; standard mechanisms and forms for requesting dispute resolution; minimal costs to Tenants for participation; a completed investigation within seven days; and except in limited circumstances, a decision within 30 days and in no event longer than 60 days. A decision in favor of the Tenant may include a reduction in rent or an amount to be reimbursed or credited to the Tenant.
15. The right to have the Tenant's basic allowance housing payments segregated, with approval of a designated commander, and not used by the property owner, property manager, or landlord pending completion of the dispute resolution process.
16. The right to have reasonable, advance notice of any entrance by a landlord, installation housing staff, or chain of command into the housing unit, except in the case of an emergency or abandonment of the housing unit.



17. The right to not pay non-refundable fees or have application of rent credits arbitrarily held.

18. The right to expect common documents, forms, and processes for housing units will be the same for all installations of the Department, to the maximum extent applicable without violating local, State, and Federal regulations.

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***The Military  
Housing  
Privatization  
Initiative:  
Tenant Rights for  
Service Members  
and their  
Families  
(cont.)***

You can learn more information about the MHPI and their properties at [www.militaryhousingassociation.org/about/about-mhpi/](http://www.militaryhousingassociation.org/about/about-mhpi/)

If you have any questions regarding if your MHPI property has adopted the tenant bill of rights, or if you believe your MHPI property is violating your tenant rights, please contact your installation housing office, chain of command, and a legal assistance attorney at your local Region Legal Service Office.

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## COMMAND SERVICES STAFF JUDGE ADVOCATE DIRECTORY

The mission of the command services department is to provide prompt and effective legal services to commands throughout the Naval District Washington area of responsibility. The following is a list of contacts for each installation:

NSA Washington/Washington Navy Yard – (202) 685-7046

Joint Base Anacostia-Bolling – (202) 685-5597

NSA Bethesda – (202) 685-5525

NSA Annapolis – (410) 293-9203

NAS Patuxent River – (301) 342-1934

NSA South Potomac – (301) 342-1934

For NDW related issues, please contact:

Naval District Washington

- Staff Judge Advocate (202) 433-2424
- Deputy Staff Judge Advocate – (202) 433-2423

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## RLSO NDW LEADERSHIP

|                                   |  |
|-----------------------------------|--|
| COMMANDING OFFICER:               | CAPT David M. Gonzalez   |
| EXECUTIVE OFFICER:                | CDR Elizabeth M. Roche   |
| SENIOR ENLISTED LEADER:           | LNCM (SW/AW) Earl R. Brown   |
| COMMAND SERVICES DEPARTMENT HEAD: | LCDR Philip Johnston   |
| TRIAL DEPARTMENT HEAD:            | LCDR Chuck Roman   |
| LEGAL ASSISTANCE DEPARTMENT HEAD: | Ms. Erica S. Riley/Mr. Kurt E. Gilabert  |
| COMMAND DUTY OFFICER:             | (571) 379-6030   |
| COMAND E-MAIL:                    | <a href="mailto:RLSO.NDW@NAVY.MIL">RLSO.NDW@NAVY.MIL</a>                             |
| LEGAL ASSISTANCE E-MAIL:          | <a href="mailto:RLSONDWLEGALASSISTANCE@NAVY.MIL">RLSONDWLEGALASSISTANCE@NAVY.MIL</a> |

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