



DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION  
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ARLINGTON, VA 22202  
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July 13, 2005  
BAM# 3-17

Chairman:  
The Honorable Anthony J. Principi

Commissioners:  
The Honorable James H. Bilbray  
The Honorable Phillip E. Coyle, III  
Admiral Harold W. Gehman, Jr., USN (Ret.)  
The Honorable James V. Hansen  
General James T. Hill, USA (Ret.)  
General Lloyd W. Newton, USAF (Ret.)  
The Honorable Samuel K. Skinner  
Brigadier General Sue Ellen Turner, USAF (Ret.)

Executive Director:  
Charles Battaglia

Mr. Bob Meyer  
Director  
BRAC Clearinghouse  
1401 Oak St.  
Rosslyn VA 22209

Dear Mr. Meyer:

*I respectfully request a written response from the Department of Defense concerning the enclosed document:*

**X** *Base Closure & Realignment Commission question*

3. *Explain the legal structures or types of agreements (e.g., ground leases, Limited Liability Corporations (LLC), financial guarantees, etc.) typically used by the Military Services to facilitate housing privatization projects?*
4. *Identify and provide a brief description (installation, location, number of units new or rehabbed, type of agreement, type and amount of private financing, etc.) for each of the Housing Privatization Projects affected by a DoD BRAC recommendations. Identify whether the related BRAC recommendation is to close or realign an activity? Provide an estimate of the financial cost to DoD to terminate a privatization agreement for each affected installation individually.*
5. *Legally, how much control do the Military Services have over the actions or decisions of the LLC?*
6. *Explain the legal and financial responsibilities and obligations, if any, assumed by the US Government when a Military Service agrees to become a member of a special purpose entity (like a LLC)?*
7. *By the nature of the Military Service's relationship to the LLC, does the government's "risk profile" change (i.e., worsen or increase) if the LLC (created by the private "partner") is established primarily to secure and borrow the funds - from sources of conventional real estate debt or public and private bond (debt) markets -- needed to capitalize the housing project?*
8. *Which entity in transactions employing a LLC assumes business or legal risks including construction risk, payment risk (due to DoD actions resulting in*

reductions or elimination of BAH) to mortgagees/lenders or other obligees, federal appropriations risk, termination for default, and termination for convenience (for the sole benefit of the government). DCN 6317

9. *As the result of the Military Services entering into or joining a LLC (or other housing privatization agreement), has the Office of Management and Budget (OMB) ever required a Military Services/DoD to set-aside existing or future budget resources (i.e., either appropriations or budget authority) sufficient to fund what it has interpreted to be the creation of an "unfunded contingent liability" (under federal fiscal law), or a violation of budget scorekeeping rules for capital assets under OMB Circular A-11 (Appendices A and B)?*
10. *Which entity (e.g., the LLC?) is the borrower (or mortgagor) of record in a housing privatization project?*
11. *If the developer, borrower, or LLC does not provide the lender a direct financial guarantee, have lenders or investors required the LLC to provide alternative credit enhancements such as a Letter of Credit, bond insurance, or other form of third party payment guarantee? If so, what of guarantee was used in the Navy Northeast Family Housing Privatization Project and resulting Navy Northeast LLC.*
12. *Is the developer and/or manager partner of the LLC required to invest a minimum amount of equity to cover development costs or help secure cost-effective financing?*
13. *Based on DoD experience with these transactions and its participation in LLCs, do lenders seek answers from the government either directly or indirectly through the LLC as to the need or essentially of the housing to the Service's mission, credit worthiness of the "payor" or "obligor" to the debt, and local housing market dynamic and trends?*
14. *Explain what business and legal benefits flow to the Military Services and the other partners or members of the LLC as the result of the Military Service agreeing to become a member of a "housing" LLC.*
15. *Does a LLC "own" or have exclusive control over monetary or non-monetary (e.g., real estate interests) assets controlled by over the life of the LLC and/or government ground lease? Do lenders or investors typically require the LLC to pledge any or all of its monetary and non-monetary assets to secure borrowed funds?*
16. *Based on DoD's experience with, or membership in an LLC, are funds (regardless of source or use) borrowed by the LLC considered "recourse" or "non-recourse" debt to the LLC?*
17. *Have the Military Services agreed to subordinate the government's real estate interest (i.e., the government's fee interest in the leased property) to the lender/investors interests or position?*

*I would appreciate your response by July 22, 2005. Please provide a control number for this request and do not hesitate to contact me if I can provide further information concerning this request.*

*Yours sincerely,*

**Frank Cirillo**  
**Director**  
**Review & Analysis**

**DOD Response the Base Closure & Realignment Commission Questions  
(Control Number-BAM#3-17-CO-553)**

3. Explain the legal structures or types of agreements (e.g., ground leases, Limited Liability Corporations (LLC), financial guarantees, etc.) typically used by the Military Services to facilitate housing privatization projects? *DoD Response: The two main deal structures are (1) a combination of a long-term ground lease and a government direct loan, and (2) a combination of a long-term ground lease and a limited partnership or a limited liability company. In six lease or lease/debt deals, the government also has provided a limited loan guarantee against circumstances where the private loan falls into default due directly to the government's reduction of military tenants. The guarantee requires developer best efforts and none of the existing guarantees appear to be at risk of being exercised by the private lender.*
4. Identify and provide a brief description (installation, location, number of units new or rehabbed, type of agreement, type and amount of private financing, etc.) for each of the Housing Privatization Projects affected by DoD BRAC recommendations. Identify whether the related BRAC recommendation is to close or realign an activity? Provide an estimate of the financial cost to DoD to terminate a privatization agreement for each affected installation individually. *DoD Response: Aside from Navy Northeast (Navy Submarine Base New London, Connecticut is one installation included in this privatization deal called Navy Northeast Region), none of the BRAC recommendations appear to have an effect upon an executed housing privatization project.*
5. Legally, how much control do the Military Services have over the actions or decisions of the LLC? *DoD Response: The services as limited partners must concur with major decisions of the LP/LLC.*
6. Explain the legal and financial responsibilities and obligations, if any, assumed by the US Government when a Military Service agrees to become a member of a special purpose entity (like a LLC)? *DoD Response: As in any limited partnership or limited liability company, the services liability is limited to their financial contributions.*
7. By the nature of the Military Service's relationship to the LLC, does the government's "risk profile" change (i.e., worsen or increase) if the LLC (created by the private "partner") is established primarily to secure and borrow the funds – from sources of conventional real estate debt or public and private bond (debt) markets -- needed to capitalize the housing project? *DoD Response: The service's liability is limited regardless of the private capital source to its financial contribution.*
8. Which entity in transactions employing a LLC assumes business or legal risks including construction risk, payment risk (due to DoD actions resulting in reductions or elimination of BAH) to mortgagees/lenders or other obligees, federal appropriations risk, termination for default, and termination for convenience (for the sole benefit of the government). *DoD Response: The risk is fully on the limited partnership or the limited liability company.*
9. As the result of the Military Services entering into or joining a LLC (or other housing privatization agreement), has the Office of Management and Budget (OMB) ever required a Military Services/DoD to set-aside existing or future budget resources (i.e., either appropriations or budget authority) sufficient to fund what it has interpreted to

be the creation of an “unfunded contingent liability” (under federal fiscal law), or a violation of budget scorekeeping rules for capital assets under OMB Circular A-11 (Appendices A and B)? *DoD Response: No, because the projects are designed to place the risk fully on the developer, which in lease/partnership deals is the limited partnership or the limited liability company.*

10. Which entity (e.g., the LLC?) is the borrower (or mortgagor) of record in a housing privatization project? *DoD Response: The partnership itself is the mortgagor.*
11. If the developer, borrower, or LLC does not provide the lender a direct financial guarantee, have lenders or investors required the LLC to provide alternative credit enhancements such as a Letter of Credit, bond insurance, or other form of third party payment guarantee? If so, what of guarantee was used in the Navy Northeast Family Housing Privatization Project and resulting Navy Northeast LLC. *DoD Response: No. In Navy deals, neither the developer, the borrower, nor the LLC provides the lender a direct financial guarantee. Bond insurance is occasionally secured; however, in the case of Navy Northeast Family Housing Privatization Project no alternative forms of credit enhancement was used.*
12. Is the developer and/or manager partner of the LLC required to invest a minimum amount of equity to cover development costs or help secure cost-effective financing? *DoD Response: There has not been a set minimum, but developer equity has been required in almost every project, particularly those projects requiring a government cash subsidy.*
13. Based on DoD experience with these transactions and its participation in LLCs, do lenders seek answers from the government either directly or indirectly through the LLC as to the need or essentially of the housing to the Service’s mission, credit worthiness of the “payor” or “obligor” to the debt, and local housing market dynamic and trends? *DoD Response: No, they do their own due diligence.*
14. Explain what business and legal benefits flow to the Military Services and the other partners or members of the LLC as the result of the Military Service agreeing to become a member of a “housing” LLC. *DoD Response: Liability is limited while lines of communication are formalized.*
15. Does a LLC “own” or have exclusive control over monetary or non-monetary (e.g., real estate interests) assets controlled by over the life of the LLC and/or government ground lease? Do lenders or investors typically require the LLC to pledge any or all of its monetary and non-monetary assets to secure borrowed funds? *DoD Response: Project finances are generally secured by the subject land and improvements.*
16. Based on DoD’s experience with, or membership in an LLC, are funds (regardless of source or use) borrowed by the LLC considered “recourse” or “non-recourse” debt to the LLC? *DoD Response: Capital sources are secured by the land and may be recourse to the developer, but the developer is usually a special purpose entity whose assets are limited to the project itself.*
17. Have the Military Services agreed to subordinate the government’s real estate interest (i.e., the government’s fee interest in the leased property) to the lender/investors interests or position? *DoD Response: No, the government’s future interest or fee is not subordinated.*