

Army Regulation 608–99

Personal Affairs

**Family
Support, Child
Custody, and
Parentage**

**Headquarters
Department of the Army
Washington, DC
13 November 2020**

UNCLASSIFIED

SUMMARY of CHANGE

AR 608–99
Family Support, Child Custody, and Parentage

This major revision, dated 13 November 2020 --

- o Simplifies responsibilities at every echelon (para 1–4).
- o Clarifies the ability of human resources personnel to disclose certain information related to Soldiers when consistent with AR 25–22 (para 1–4*b*(2)).
- o Clarifies that this regulation does not alter baseline administrative individual readiness standards for worldwide deployment (para 1–7*c*(3)).
- o Clarifies the authority to enforce German court orders through garnishment by Army finance offices when Soldiers are stationed in Germany (para 1–10*b*).
- o Updates guidance related to parentage inquiries to account for the fact that a legal parent may be someone other than a biological parent (para 2–2).
- o Provides guidance related to email, text messages, and social media with regard to written financial support agreements (para 2–3*b*).
- o Establishes new guidance related to Army enforcement of ambiguous written financial support agreements (para 2–3*b*(2)).
- o Clarifies guidance pertaining to the enforceability of foreign financial support court orders (para 2–4*b*).
- o Clarifies that interim financial support required by this regulation does not constitute alimony for federal income tax purposes (para 2–6*a*).
- o Establishes new guidance related to calculating interim financial support for Soldiers stationed overseas who receive basic allowance for housing solely on account of unaccompanied Family members residing in the U.S. (paras 2–6*d* and 2–6*e*).
- o Establishes new guidance for calculating interim financial support when a battalion-level commander or higher has relieved a Soldier of the obligation to provide support to a Family member (para 2–6*d*(1)(*c*)).
- o Incorporates Army Directive 2020–04, Enhanced Interim Financial Support, pertaining to enhanced interim financial support for spouses and changes the computation formula for Enhanced Interim Financial Support (para 2–6*f*).
- o Reduces the authority to relieve Soldiers of certain regulatory support requirements on the basis of fundamental fairness from the brigade-level to the battalion-level commander (paras 2–12 thru 2–14).
- o Simplifies command obligations in response to Family support, child custody, and parentage inquiries (chap 3).
- o Incorporates policy contained in DoDI 5525.09 pertaining to cooperation with state and local officials in enforcing certain court orders relating to overseas Servicemembers (para 3–7*d*).
- o Replaces the term “paternity” with “parentage” (throughout).

- o Replaces the term (and acronym for) “basic allowance for housing II” with term (and acronym for) “basic allowance for housing Reserve Component/transit” (throughout).
- o Recognizes and provides guidance pertaining to the role of state child support enforcement agencies (throughout).

Personal Affairs

Family Support, Child Custody, and Parentage

By Order of the Secretary of the Army:

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General, United States Army
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History. This publication is a major revision.

Summary. This regulation sets forth Army policy on financial support of Family members, parentage, and child custody. It prescribes Army policy on financial support of Family members, child custody and visitation, parentage, and related matters. Also, it implements DoDI 5525.09 with regard to Soldiers and Family members stationed or residing outside the United States on court-related requests for assistance arising from financial support, child custody and visitation, parentage, and related cases.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the

United States, and the U.S. Army Reserve, unless otherwise stated. Specifically, it applies to the Regular Army, including cadets at the U.S. Military Academy; (2) The U.S. Army Reserve on active duty pursuant to orders for 30 days or more; (3) All members of the Army National Guard of the United States on active duty for 30 days or more; (4) Members of the Army National Guard on active duty for 30 days or more pursuant to orders under Title 32, United States Code, except for the punitive provisions of this regulation; and (5) Soldiers receiving full or partial pay and allowances while confined at the U.S. Disciplinary Barracks or other confinement facilities. This regulation applies during mobilization.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency, or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include

formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix C).

Supplementation. Supplementation of this regulation and the establishment of command and local forms are prohibited without prior approval from The Judge Advocate General (DAJA–ZA), usarmy.pentagon.hqda-ot-jag.mbx.la@mail.mil.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Office of The Judge Advocate General (DAJA–LA), usarmy.pentagon.hqda-ot-jag.mbx.la@mail.mil.

Distribution. This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Chapter 1

General

1-1. Purpose

This regulation sets forth Department of the Army (DA) policy, responsibilities, and guidance on financial support of Family members, child custody and visitation, parentage, and compliance with court orders regarding these and related matters. This regulation preempts all other regulations on these matters within the DA. This regulation should not be construed to create any right, benefit, or entitlement, substantive or procedural, enforceable by law or in equity, by a party against the United States, its agencies, its officers, or any other person. This regulation will not be construed to create any right to judicial review involving compliance or noncompliance with this regulation by the United States, its agencies, its officers, or any other person.

1-2. References and forms

See appendix A.

1-3. Explanation of abbreviations and terms

See the glossary.

1-4. Responsibilities

a. The Chief, Legal Assistance Policy Division, Office of The Judge Advocate General, on behalf of The Judge Advocate General (TJAG), will—

(1) Advise and assist Headquarters, Department of the Army (HQDA) agencies, commanders, staff judge advocates (SJAs), judge advocates, and DA civilian attorney employees on all matters addressed by this regulation.

(2) Provide guidance regarding the scope and nature of legal assistance services provided to Soldiers and their Family members on financial support, child custody and visitation, parentage, and related cases.

(3) Authorize exceptions on a case-by-case basis to the provisions of this regulation, if not inconsistent with the requirements set by statute, prescribed by executive order, mandated by applicable case law, or required by higher authority.

b. The Commanding General, U.S. Army Human Resources Command and special branch managers, on behalf of the Deputy Chief of Staff, G-1 will—

(1) Adhere to the assignment, reassignment, and deletion considerations contained in this regulation.

(2) Consistent with AR 25-22, disclose information pertaining to a Soldier's current commander, rank, and present duty assignment to dependents alleging nonsupport.

c. Commanders of Army commands/Army service component commands, direct reporting units will—

(1) Monitor compliance with this regulation and actions taken in response to inquiries under this regulation.

(2) Respond to all requests for assistance from government officials based on court orders and all other inquiries received under this regulation.

(3) Establish procedures to ensure that subordinate commanders and Soldiers within their commands are thoroughly familiar with the provisions of this regulation.

(4) Take other actions, as appropriate, to enforce the provisions of this regulation.

1-5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule-Army (RRS-A). Detailed information for all related record numbers, forms, and reports are located in Army Records Information Management System (ARIMS)/RRS-A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS-A, see DA Pam 25-403 for guidance.

1-6. Legal assistance client services files, records, and forms

Files, records, and forms relating to this regulation do not include those maintained pursuant to AR 27-3, with regard to legal assistance client services. The maintenance and disposition of all such files, records, and forms are governed by that regulation and those regulations cited therein.

1-7. Management of personal affairs

a. The Army recognizes the transient nature of military duty. This regulation, however, prohibits the use of a Soldier's military status or assignment to deny financial support to Family members or to evade court orders on financial support, child custody and visitation, parentage, and related matters.

b. Soldiers are required to manage their personal affairs in a manner that does not bring discredit upon themselves or the U.S. Army. This responsibility includes—

(1) Maintaining reasonable contact with Family members so that their financial needs and welfare do not become official matters of concern for the Army (see para 2-1).

(2) Conducting themselves in an honorable manner with regard to parental commitments and responsibilities (see chap 2).

(3) Providing adequate financial support to Family members (see paras 2-3 through 2-9).

(4) Complying with all court or child support enforcement agency (CSEA) orders (see paras 2-2, 2-4, and 2-11).

c. Commanders and their staffs have a responsibility, when consistent with other military requirements, to ensure that any action or inaction on their part does not encourage or facilitate violations of court orders or avoidance of a judicial resolution of issues relating to parentage, child custody, or support by Soldiers and Family members.

(1) In addition to the considerations contained in AR 614-100, AR 614-200, and AR 600-8-11, Human Resources Command and special branch managers may consider during the assignment process, or when evaluating requests for deletion or deferment, whether a Soldier's assignment, or continued assignment, outside of the United States will adversely affect the legal rights of others in pending court actions, or will result in a repeated or continuing violation of an existing court order.

(2) This paragraph does not prohibit a commander from assisting a Soldier to invoke the protections of the Servicemembers Civil Relief Act.

(3) This paragraph does not modify the baseline administrative individual readiness standards for worldwide deployment established in AR 600-8-101. No provision in this regulation requires a Soldier to be classified as non-deployable.

d. The policies of this regulation are solely intended as interim measures until pertinent issues are resolved in court or settled by agreement among the parties involved.

e. Soldiers are entitled to the same legal rights and privileges in state courts as civilians. This regulation is not intended to be used as a guide by courts in determining any of the following:

(1) The existence or amount of a Soldier's financial support obligations.

(2) The existence or extent of a Soldier's child custody or visitation rights.

(3) The existence or extent of a Soldier's rights or obligations in adjudicating parentage claims.

1-8. Penalties

Personnel subject to the Uniform Code of Military Justice (UCMJ) who fail to comply with paragraph 2-5 or 2-11 are subject to punishment under the UCMJ as well as to adverse administrative action and other adverse action authorized by applicable sections of the United States Code or Federal regulations. Paragraphs 2-5 and 2-11 are fully effective at all times, and a violation of either paragraph is separately punishable as a violation of a lawful general regulation under UCMJ, Art. 92 even in the absence of a prior complaint from a Family member or counseling by a commander. These paragraphs and other provisions of this regulation may also be the basis for a commissioned, warrant, or noncommissioned officer to issue a lawful order to a Soldier. This regulation provides guidance but is not punitive as to Title 32-status members of the Army National Guard.

1-9. Entitlement to military allowances

a. The financial support requirements of this regulation, in the absence of a court order or written support agreement, are stated in amounts equal to one of the following based on the Soldier's pay grade (see the DoD 7000.14-R, volume 7A, chapter 26):

(1) Basic allowance for housing (BAH): A military housing allowance based on the geographic duty location, pay grade, and dependency status.

(2) BAH Reserve Component/Transit (RC/T): The BAH allowance without consideration of the geographic duty location-the equivalent of the former basic allowance for quarters (often referred to as non-locality BAH).

(3) BAH-WITH: The BAH rate for a Soldier with dependents.

(4) BAH-WITHOUT: The BAH rate for a Soldier without dependents.

(5) BAH RC/T-WITH: The BAH RC/T rate for a Soldier with dependents.

(6) BAH RC/T-WITHOUT: The BAH RC/T rate for a Soldier without dependents.

(7) BAH-DIFF: The difference between the BAH RC/T-WITH and the BAH RC/T-WITHOUT for a Soldier's pay grade.

b. A Soldier's obligation to provide financial support to Family members under this regulation is not contingent upon whether the Soldier is entitled to, or receiving, any form of BAH. A Soldier will comply with the obligations of this regulation even if the BAH RC/T is greater than the BAH for their geographic duty location. Except as provided in paragraphs 2-13b(2) through 2-13b(4), the actual receipt or nonreceipt of BAH-WITH, BAH-WITHOUT, or BAH-DIFF has no relationship to that obligation.

c. Nothing in the regulation governs eligibility for BAH. Eligibility for BAH is established by federal law and DoD policy (currently contained in DoD 7000.14-R).

1-10. Availability of remedies based on court order

a. In certain circumstances, court and CSEA orders can be wholly or partially enforced by the Defense Finance and Accounting Service (DFAS), through garnishment (see Section 659, Title 42, United States Code (42 USC 659) and, Part 581, Title 5, Code of Federal Regulations (5 CFR 581)) or involuntary allotment (see 42 USC 665). Contact the DFAS Garnishment Law Directorate for current policies and procedures.

b. Within the Federal Republic of Germany (FRG), FRG court orders may be separately enforceable through garnishment by Army finance offices pursuant to the terms of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) Supplementary Agreement with Germany. Such garnishments terminate upon the Soldier's reassignment outside of the FRG.

c. The availability of these and other remedies to a Family member, based on an existing or potential court order or other basis, has no relationship to a Soldier's obligations under this regulation, or to a commander's responsibility to enforce the provisions of this regulation.

1-11. Role of legal assistance attorneys

a. Pursuant to AR 27-3, attorneys providing legal assistance may assist Soldiers and Family members on legal problems and needs involving financial support, child custody and visitation, parentage, and related matters. Unless otherwise authorized by AR 27-3, a person pursuing a parentage claim against a Soldier, or a child born out of wedlock before parentage is established or formally acknowledged, is not entitled to legal assistance. Once parentage has been established, the child is eligible for legal assistance under AR 27-3. A legal assistance attorney may then assist in establishing a child support obligation on behalf of that child or collecting child support on behalf of that child. Exceptions or variations from client eligibility requirements may be authorized pursuant to AR 27-3.

b. An attorney providing legal assistance may not assist both spouses involved in a domestic dispute or both parties involved in any dispute over financial support, child custody or visitation, parentage, or related matters. Attorneys from the same Army legal office may be precluded in certain instances from providing legal assistance to both parties (see AR 27-3 and AR 27-26).

c. The rules regarding conflicts of interest and imputed disqualification may also prevent a particular attorney from providing legal advice to a commander, or a member of the commander's staff, on the requirements of this regulation in certain cases. However, this prohibition would not prevent an attorney who is properly providing legal assistance to a client from advocating that client's position to the appropriate commander. The attorney has the responsibility to inform the commander of the attorney's role in situations where such a distinction may not be clear to the commander (see AR 27-3).

Chapter 2

The Legal Obligations of Soldiers

Section I

General

2-1. Obligations to geographically separated Family members

a. A Soldier is required to provide financial support to Family members. This obligation is frequently complicated when the Soldier is geographically separated from the Family. In the majority of these situations, the Soldier and the Family can manage the financial support without command involvement. These arrangements may include joint checking accounts or voluntary allotments to the Family as appropriate.

b. The commander must become involved when the parties are unable to agree on a proper method to provide financial support to the Family members. This obligation does not arise until a Family member or an authorized representative of the Family member complains to the command that the Soldier is failing to provide proper support.

c. Soldiers are expected to keep reasonable contact with Family members, as well as with others who have a legitimate need to know their location, to minimize the total number of inquiries to their commanders and other Army officials on financial support, child custody and visitation, parentage, and related matters. Within the parameters of the law, Soldiers will, whenever possible, resolve all such matters so that these personal problems do not become official matters of concern for their commanders or other Army officials. When this is not possible, Soldiers should promptly seek legal advice from an attorney providing legal assistance or from a civilian lawyer in private practice.

2-2. Obligations in response to parentage inquiries

a. This regulation applies to Soldiers who are the legal parent of a child. Within the United States, legal parentage is determined according to state law. Depending on the state, legal parentage may arise through legal presumptions associated with marriage at the time of the child's birth, voluntary acknowledgments of paternity or parentage, and administrative or judicial orders. A legal parent may be someone other than the biological parent or birth parent. This is especially true in cases involving adoption, same-sex marriage, surrogacy, and egg or sperm donation.

b. A foreign court order establishing paternity or parentage will be honored if the court had proper jurisdiction. If the financial support provisions of such a foreign court order are unenforceable under paragraph 2-4c, the Soldier will be required to provide support under the provisions of paragraph 2-6. Commanders should seek legal advice from their servicing SJA office before determining whether the foreign court has proper jurisdiction.

c. Determinations of legal parentage made by non-judicial foreign governmental entities will be recognized when the foreign parentage determination has been recognized and enforced by a court within the United States, or the United States has agreed in a treaty or international agreement to honor parentage determinations of a particular foreign nation.

d. Questions concerning a Soldier's status as a legal parent should be referred to the servicing Office of the Staff Judge Advocate.

e. Once parentage is determined pursuant to paragraphs 2-2a, 2-2b, 2-2c, and 2-2d, financial support will be calculated according to the provisions of chapter 2, section II.

f. A Soldier who admits legal parentage and agrees to provide financial support may, under certain circumstances, obtain BAH-DIFF (see DoD 7000.14-R).

g. Even if a Soldier admits parentage (not as part of a state process establishing the Soldier as a legal parent under state law) and agrees to provide financial support, they may terminate financial support at any time for any reason in the absence of a court order, subject to local law or international agreements. However, in this instance, a Soldier who is receiving BAH-WITH based solely on the financial support provided on behalf of the acknowledged child will immediately notify the appropriate military finance office so that excess BAH payments to which the Soldier is not entitled may be stopped.

Section II

Obligations to Provide Financial Support to Family Members

2-3. Financial support by agreement

a. *Oral financial support agreement.* It is not the Army's policy to become involved in disputes over the terms or enforcement of oral financial support agreements. Where an oral agreement exists and is being followed, the Army will not interfere. When a dispute arises over the terms of an oral agreement, the parties are not in agreement, and there is no agreement for the purposes of this paragraph (see para B-2).

b. *Written financial support agreement.* If a signed written financial support agreement exists, the amount of financial support specified in the agreement controls (see para B-2). A written financial support agreement is any written document (such as a separation agreement or property settlement agreement, a letter, email, or a series of letters or emails) evidencing an intent to create a binding financial support agreement. Ordinarily, informal forms of written communication (for example, text messages and social media posts) do not demonstrate an intent to create a binding agreement.

(1) If a written agreement is silent on an amount of financial support, the financial support requirements of paragraph 2-6 apply (in the absence of a court order or other written financial support agreement that does require a specific amount of financial support).

(2) Commanders will apply the terms of the agreement as written and will avoid making interpretations that depart from the clear meaning of the agreement. Commanders may rely on other existing documents to determine the specific financial support obligation; that is, if the agreement requires the Soldier to “pay the rent,” the commander may consult the lease agreement to determine the amount of the support obligation. Additionally, in order to be enforceable under this regulation, there must be no major dispute as to the meaning of the material terms of the agreement. If portions of the agreement are so ambiguous that the intent of the parties cannot be determined, or if it is clearly apparent that there was no meeting of the minds, the commander is not required by this regulation to enforce the contested provisions. Depending on the individual facts and circumstances of the case, the commander may also find that the entire agreement is unenforceable. These types of disputes are best resolved by state courts – not Army commanders. Commanders should seek legal advice from their servicing SJA office if they have any questions concerning the terms, or enforceability, of a written agreement.

(3) If, after a written financial support agreement is signed, a court grants a divorce to the parties signing the agreement, the financial support agreement will not be enforced under this regulation unless the agreement has been approved, ratified, or otherwise incorporated within the divorce decree or, by its specific language, the separation agreement continues beyond the divorce. In cases where the divorce decree does not approve, ratify, or incorporate a prior written financial support agreement of the parties or the separation agreement does not continue by its specific language, the following applies:

(a) A Soldier is not required to provide financial support to a former spouse unless required to do so by court order.

(b) A Soldier is not required to provide financial support to their children beyond the amount required in paragraph 2–6, unless required to do so by court order (see also para 2–14).

(4) With regard to a written financial support agreement that has not been approved, ratified, incorporated within a divorce decree, or continued by its specific language, a Family member may, depending on the applicable rules of law, seek a court judgment for arrearages resulting from a Soldier's breach of the agreement or specific performance of the agreement with regard to future payments due.

2–4. Financial support required by court or Child Support Enforcement Agency order

a. Domestic orders. Soldiers will comply with the financial support provisions of all state court or CSEA orders (see para 2–5 and para B–3). Failure of a Soldier to comply with a financial support or related provision of a state court or CSEA order (for example, provision of a court order directing a division of property or payment of a particular expense) may also be the basis for a lawful order from a commander to comply with such provision.

b. Foreign orders.

(1) A Soldier is not required by this regulation to comply with a foreign court order on financial support except in the following situations:

(a) The foreign court order has been recognized and enforced by a court within the United States. State courts may recognize foreign court orders under the provisions of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, separate bilateral agreements between states and foreign countries, or common law comity principles.

(b) The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation.

1. The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance creates mechanisms by which the federal government and U.S. states may recognize foreign court orders. For purposes of this regulation, however, this convention, alone, is not a sufficient basis for a commander to order a Soldier to comply with a foreign court order. Foreign court orders from countries party to the convention must first be processed and recognized as valid under the convention by either the U.S. Office of Child Support Enforcement, or a U.S. state child support enforcement agency.

2. North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) Supplementary Agreement with Germany creates an independent international legal requirement for U.S. Army commanders to secure compliance with German civil judgments and legally enforceable decisions by German government authorities relating to Soldiers stationed in the FRG. Accordingly, with regard to Soldiers assigned to and present for duty within the FRG, commanders will enforce FRG court orders for financial support as well as voluntary acknowledgements of support submitted to German government agencies that have equal effect to a court order under German law.

3. While an apostille issued pursuant to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, provides sufficient guarantee of the authenticity of a foreign court order, it does not by itself provide a basis for a commander to order a Soldier to comply with a foreign court order.

4. While a SOFA or other international agreement, may recognize that a Soldier present for duty within that country is subject to host-nation civil jurisdiction, that recognition alone is an insufficient basis for a commander to order a Soldier to comply with a foreign court order.

(2) Nevertheless, Soldiers who fail to comply with the financial support provisions of a foreign court order, regardless of whether it is enforced by this regulation, do so at their own peril. This is particularly true if the Soldier is within the jurisdiction of the foreign court or if the foreign court order is later recognized and enforced by a court within the United States.

(3) With regard to the financial support provision of a foreign court order entered by a court of a nation whose orders the United States has not agreed to recognize, or that has not been recognized and enforced by a court within the United States, a Soldier is in compliance with this regulation if they are providing financial support in an amount required by the foreign court order or by this regulation, whichever is less.

c. Orders without financial support provisions. An order without a financial support provision is one that contains no language directing or suggesting that the Soldier provide financial support to some or all Family members on a periodic or other continuing basis. Court or CSEA orders may be silent as to financial support for one or more Family members due to jurisdictional or other issues. For example a state child support enforcement agency may have the jurisdiction to order child support but not spousal support. As a result, orders that are silent regarding support, should not automatically be interpreted to mean that financial support was considered, but rejected. Accordingly, when a court or CSEA order is silent regarding the support requirements for one or more Family members, the Soldier will provide support to the un-addressed Family members according to paragraph 2–6, unless relieved of that obligation by the battalion-level commander pursuant to paragraphs 2–12 through 2–14.

2–5. Punitive provisions regarding financial support

a. Soldiers will not violate any of the following:

(1) The financial support provision of a state court or CSEA order, or a foreign court order enforceable under paragraph 2–4*b*.

(2) The financial support provision of a written financial support agreement as described in paragraph 2–3 in the absence of a court order.

(3) The financial support requirements of paragraph 2–6 in the absence of a written financial support agreement or a court order containing a financial support provision.

b. This paragraph is punitive in nature (see para 1–6). Commanders are responsible for the enforcement of this paragraph (see para 3–8).

c. A Soldier cannot fall into arrears without violating this regulation. Although the collection of arrearages based on violations of subparagraphs 2–5*a*(1) and 2–5*a*(2) may be enforced in court, there is no legal means to collect arrearages based on violations of subparagraph 2–5*a*(3). Nevertheless, in all cases, Soldiers should be encouraged, but not ordered, to pay arrearages. Additionally, a Soldier who falls into arrears may be punished under the provisions of UCMJ, Art. 92 for failing to make the support payment required by subparagraphs 2–5*a*(1), 2–5*a*(2), or 2–5*a*(3) at the time that the support obligation was originally due. Punishment in such instances is based on failure to provide financial support when due, not for failure to pay arrearages.

2–6. Financial support required in the absence of a financial support agreement or court order

a. Application. This paragraph establishes requirements for interim financial support (paras 2–6*d* and 2–6*e*) and enhanced interim financial support for spouses (para 2–6*f*). Both types of support only apply in the absence of a financial support agreement or a court order containing a financial support provision and until such an agreement is signed or such an order is issued. Allegations or even proof of desertion, adultery, or other marital misconduct, or criminal acts on the part of a spouse will not excuse a Soldier's obligation to comply with the provisions of this regulation unless a battalion-level commander, or higher, has released the Soldier under the provisions of paragraphs 2–12 through 2–14. The interim financial support required to be paid by this paragraph does not constitute an "alimony or separate maintenance payment" under Sections 71 or 215 of the Internal Revenue Code (26 USC).

b. Pro-rata share. Under this paragraph, when the term "pro-rata share" is used with regard to BAH RC/T–WITH, the amount of each such share of BAH RC/T–WITH is calculated using the equation in figure 2–1.

$$\text{pro-rata share} = \frac{1}{\text{total number of supported family members}} \times \text{applicable BAH RC/T - WITH rate}$$

Figure 2–1. Pro-rata share equation

c. Calculation. The "total number of supported Family members" in the denominator of the fraction in figure 2–1 includes all Family members (regardless of residence) except the following:

- (1) A Soldier's former spouse, regardless of whether the Soldier is providing financial support to the former spouse.
- (2) A Soldier's present spouse who is on active duty in one of the military services, unless financial support is required by a court order or written financial support agreement (see para 2–6d(4)).
- (3) A Family member for whom the Soldier is not required to provide financial support under this regulation or for whom the Soldier has been released by their commander from the regulatory requirement to provide financial support pursuant to paragraphs 2–12 through 2–14.

d. Single Family units. (See para B–4.)

(1) *Family unit not residing in government Family housing.* Except in the situations addressed in paragraphs 2–6d(1)(a), 2–6d(1)(b), and 2–6d(1)(c), the Soldier will provide financial support in an amount equal to the Soldier's BAH RC/T–WITH to the Family unit.

(a) When a Soldier stationed overseas receives BAH solely on behalf of unaccompanied Family members who reside in the United States, the actual amount of BAH paid to the Soldier on behalf of those dependents will be used to calculate the support requirement for those dependents, if it is greater than the BAH RC/T–WITH rate.

(b) Where one member of the Family unit has a court or CSEA order for support (frequently issued by a local CSEA that has no jurisdiction to order spousal support), and the other members of the Family unit are not addressed in that or any other support order, the Soldier must comply with the court order regarding support to that Family member. The remaining Family members will be provided a pro-rata share of the BAH RC/T–WITH (see para 2–4c). The pro-rata share will be paid to the other Family members even if they reside with the Family member receiving support pursuant to a court or CSEA order, and even if the court or CSEA ordered amount is in excess of BAH RC/T–WITH.

(c) Where the Soldier has been released by their commander from the regulatory requirement to provide financial support to one or more dependents of the Family unit pursuant to paragraphs 2–12 through 2–14, the amount of support required by paragraph 2–6d(1) will be reduced by the pro-rata share of each Family member whom the Soldier has been released from supporting.

(2) *Family unit residing in government Family housing.* While the Soldier's Family members are residing in government Family housing, the Soldier is not required to provide additional financial support unless required by paragraph 2–6f (enhanced interim financial support for spouses). When the supported Family member(s) move(s) out of government Family housing, the Soldier will provide BAH RC/T–WITH.

(3) *Family members within the Family unit residing at different locations.* The Soldier will provide a pro-rata share of BAH RC/T–WITH to each Family member not residing in government Family housing. The Soldier is not required to provide additional support for Family members residing in government Family housing.

(4) *Soldier married to another person on active duty in one of the military services.* In the absence of a written financial support agreement or a court order containing a financial support provision, a Soldier is not required to provide financial support to a spouse on active duty in one of the military services. With regard to a Soldier's child or children (from that marriage or a prior marriage), a Soldier will provide the following financial support in the absence of a written financial support agreement or a court order containing a financial support provision:

(a) If the Soldier does not have custody of any children, and the children do not reside in government quarters, the Soldier will provide BAH–DIFF to the military member having custody of the child or children.

(b) If the Soldier does not have custody of any children, and the children reside in government quarters, the Soldier is not required to provide financial support to the military member having custody of the child or children.

(c) If the Soldier has custody of one or more children, the Soldier is not required to provide financial support for a child or the children in the custody of the other military member.

e. Multiple Family units. (See para B–5.)

- (1) A Soldier will provide financial support for each Family unit and Family member in the following manner:

(a) Family members covered by court orders will be provided financial support in accordance with those court orders.

(b) Family members covered by financial support agreements will be provided financial support according to those agreements.

(c) Family members residing in government Family housing who are not covered by either a court order or a financial support agreement will not be provided additional financial support unless required by paragraph 2-6f (enhanced interim financial support for spouses).

(d) Each Family member not residing in government Family housing and who is not covered by a court order or a financial support agreement will be provided a pro-rata share of BAH RC/T-WITH. When a Soldier stationed overseas receives BAH solely on behalf of unaccompanied Family members who reside in the United States, the actual amount of BAH paid to the Soldier on behalf of those dependents will be used to calculate the support requirement for those dependents, if it is greater than their pro-rata share of BAH RC/T-WITH.

(e) If the Soldier's present spouse is on active duty in one of the military services, the requirements of paragraph 2-6d(4) apply.

(2) The amount of financial support provided pursuant to a financial support agreement or a court order covering one or more Family units or members does not affect the calculation of the pro-rata financial support required under this regulation for the financial support of any other Family units or members not covered by such agreement or order (see para B-5a).

f. Enhanced interim financial support for spouses.

(1) Enhanced financial support is temporary and designed to provide for sustenance and additional necessary expenses that initially arise when the Soldier and spouse separate, or when the time to obtain a court order is prolonged because of a lack of access to appropriate courts of competent jurisdiction. Enhanced interim financial support for spouses will be provided by the Soldier in addition to the interim support required by paragraphs 2-6d and 2-6e. Enhanced interim financial support payments will not be made to spouses who are Servicemembers of any component while serving on active duty.

(2) Enhanced interim financial support payments will be made in an amount equal to 25% of the BAH RC/T-WITH for the following periods:

(a) For those spouses residing in a location subject to the jurisdiction of a state court able to order financial support, the Soldier will make a one-time transitional support payment in conjunction with the first 30 days of interim support provided pursuant to paragraphs 2-6d or 2-6e. If the Soldier fails to make this one-time payment when due, the Soldier's commander is authorized to order the Soldier to make this payment when the command becomes aware of the deficiency.

(b) For all other spouses, the Soldier will make this enhanced interim support payment for the period of time the Soldier is providing support pursuant to paragraphs 2-6d or 2-6e and the spouse does not have access to a state court with jurisdiction to order spousal support.

(3) Soldiers may not satisfy enhanced interim support payment requirements by directly paying non-government housing expenses on behalf of spouses pursuant to paragraph 2-9d or by any other in-kind financial support without the written approval of the supported spouse.

(4) Paragraph 2-8 applies to enhanced interim financial support. However, the support will only apply to a 30 day period for those spouses residing in a location subject to the jurisdiction of a state court able to order financial support. The spouse may elect to receive two proportional payments over two months, or one lump sum payment on the first of the month for the previous month.

2-7. Initiation and termination of financial support obligations

a. Initiation.

(1) Unless otherwise required by a court order, court-ordered support will be effective as of the date of the order.

(2) Unless otherwise required by the terms of the written financial support agreement, the support obligation will begin on the day that the last necessary party signed the agreement.

(3) In the absence of a court order or a written financial support agreement, the support obligation will begin on the date that the parties cease living together in the same dwelling in either of the following events:

(a) Either party voluntarily leaving the residence.

(b) The Soldier being ordered out of the residence, subject to paragraph 2-6d(2).

(4) It will be presumed that the Soldier is complying with the support obligation until a Family member or a Family member's legal representative makes a complaint to the command, or authorized representative of the command, that the Soldier is not complying with the support obligation.

(5) A Soldier's obligation to pay BAH RC/T-WITH to the Family members will begin on the date that the Family members vacate government Family housing. The obligation to make this support payment begins even if the Soldier has not cleared government Family housing and is not entitled to draw BAH-WITH.

b. Termination.

(1) Any obligation to pay court-ordered support will terminate only in accordance with the terms of the court order.

(2) Any obligation to pay support pursuant to the terms of a written financial support agreement will terminate only in either of the following events:

(a) Pursuant to the terms of the agreement.

(b) Upon the effective date of a court order terminating the marriage or establishing a financial support obligation.

(3) Support provided pursuant to the requirements of paragraph 2-6 will terminate upon any of the following events:

(a) Upon the effective date of a financial support agreement.

(b) Upon the effective date of a court order terminating the marriage or establishing a financial support obligation.

(c) By the action of a commander relieving the Soldier of a support obligation under the provisions of paragraphs 2-12 through 2-14. Such termination will be effective upon the date release is granted.

(d) Upon the date the Soldier and supported Family member elect to no longer live apart.

2-8. Financial support obligations for less than a full month

Absent specific terms in a court order or a financial support agreement, a Soldier's support obligation beginning or terminating on other than the first or last day of the month will be calculated for that month based on a pro-rata daily share.

2-9. Form and timing of financial support payments

a. Unless otherwise required by court order or by a written financial support agreement, a financial support payment may be made in any of the ways listed in subparagraphs 2-9a(1) through 2-9a(7) as long as the payment reaches the adult Family member concerned, or the adult having custody of the child concerned, by the date required in paragraphs 2-9b and 2-9c. A Soldier seeking to make payment by allotment must make payments by alternative means until the allotment takes effect.

(1) Cash.

(2) Check.

(3) Money order.

(4) Electronic fund transfer.

(5) Voluntary allotment.

(6) Involuntary allotment.

(7) Garnishment (or wage assignment).

b. Unless otherwise required by a court order or by a written financial support agreement, a financial support payment made in cash, check, or money order will be personally delivered to the individual identified in paragraph 2-9a, not later than the first day of the month following the month to which the financial support payment pertains. Soldiers making cash payments may have to prove that the payment was made and should obtain a receipt or other proof that the payments were made (see para 3-4a(2)).

c. Unless otherwise required by a court order or by a written financial support agreement, a financial support payment by check or money order, not personally delivered in accordance with paragraph 2-9b, will be deposited in the U.S. mail with proper postage affixed, addressed to the individual identified in paragraph 2-9a, and postmarked not later than the first day of the month following the month to which the financial support payment pertains.

d. As an exception to paragraph 2-9a, a Soldier may comply with the financial support requirements of paragraphs 2-6d and 2-6e (but not paragraph 2-6f, absent written approval by the supported spouse) by directly paying non-government housing expenses on behalf of Family members if the Family members are residing in non-government housing.

(1) Non-government housing expenses are limited to—

(a) Rent (including payments to privatized housing on a military installation)(see para B-4f).

(b) The principal and interest payments due on any outstanding loan secured by a mortgage on a home in which the Family is residing and the real property taxes and property insurance due under an escrow agreement covering the same property.

(c) Essential utilities such as gas, electricity, and water.

(2) Non-government housing expenses do not include expenses described in paragraph 2-9d(1) for which the Soldier is not legally responsible by reason of contract, lease, or loan agreement. Authorized expenses also do not include

other housing costs, such as telephone or cable television charges, regardless of whether or the Soldier is legally responsible for their payment.

(3) To the extent that the monthly financial support requirements of this regulation exceed the monthly non-government housing expenses paid by a Soldier for their supported Family members, payment for any shortfall will be made as required by paragraph 2-9a. To the extent that the monthly non-government housing expenses paid by a Soldier exceed the monthly financial support requirements of this regulation, no credit is authorized under this regulation for any financial support payment due—

(a) In any subsequent month.

(b) For the same month with regard to any Family member residing elsewhere.

e. All other financial support in kind, such as payments made relating to non-government housing expenses not included in paragraph 2-9d(1), automobile loans and insurance, or charge accounts, made to others on behalf of supported Family members requires the written approval of the supported Family members in order to be credited as indicated in paragraph 2-9d.

Section III

Obligations regarding Child Custody and Visitation

2-10. General

a. Applicable state laws and international treaties may prohibit a parent, even in the absence of a court order, from removing a child under certain circumstances from the state in which the child is residing without the permission of the other parent.

b. Soldiers will comply with the provisions of all applicable court orders, laws, and treaties regarding child custody and visitation, and related matters, regardless of the age of the children concerned. The punitive provisions of paragraph 2-11, however, apply only to violations relating to unmarried children under the age of 14 years. Nevertheless, a Soldier who disobeys a court order on child custody, regardless of the age of a child, may be subject to civil and criminal sanctions by civil authorities. The content of a court order on child custody may also be the basis for a lawful order from a Soldier's commander (see para 3-6b(3)).

2-11. Punitive provisions regarding child custody

a. A Soldier relative who is aware that another person is a lawful custodian of an unmarried child under the age of 14 years will not wrongfully—

(1) Abduct, take, entice, or carry the child away from the lawful custodian.

(2) Withhold, detain, or conceal the child from the lawful custodian.

b. The fact that joint legal custody of a child has been awarded to both parents by a court does not preclude violation of this paragraph by a Soldier parent who is not authorized physical custody of that child by a court order or who is authorized only visitation with that child by a court order.

c. A Soldier relative is a Soldier who is the parent, stepparent, grandparent, brother, sister, uncle, aunt, or one who has at some time in the past been the lawful custodian of the child.

d. It is not a violation of this paragraph if the Soldier at the time of the alleged offense was authorized to have physical custody of the child to the exclusion of others pursuant to a valid court order.

Section IV

Release from Specific Regulatory Requirements

2-12. General

a. A battalion-level commander, or higher, must be satisfied by a preponderance of the evidence that the underlying intent of this regulation would be furthered before that commander may release a Soldier from a requirement imposed by this regulation (see para 1-7).

b. A battalion-level commander, or higher, may reconsider and change any decision they, or a prior commander, has made under this paragraph.

c. Before granting relief—

(1) A commander, or an officer acting on their behalf, should attempt to contact the affected Family member for whatever additional information may be necessary to make an informed decision on this matter.

(2) A Soldier has the burden of coming forward with sufficient information and documents (for example, tax returns, pay vouchers, court orders, written financial support agreements) to establish a basis for a commander's action

under paragraphs 2–13 or 2–14. This burden may also be met if, in reply to a personal letter or telephone call from the commander or an officer acting on their behalf, a spouse refuses to provide the documents in their possession that may support or rebut the Soldier's claim.

(3) Prior to granting release under this section, the commander must obtain a written legal opinion from the servicing SJA office, that a release is legally sufficient and complies with the requirements of this regulation, applicable laws, legally effective court orders, and written financial support agreements.

2–13. Situations warranting release from regulatory spousal support requirements

a. A battalion-level commander may release a Soldier under their command from the regulatory requirement to provide spousal support pursuant to paragraphs 2–5a(3) and 2–6. This provision may not be used to relieve a Soldier of any child support requirement. This does not give the commander authority to release a Soldier from the requirement to provide support required by a court order or a written financial support agreement.

b. Relief under this paragraph may include any of the following:

- (1) A release from the total support requirement.
- (2) Release from the interim support requirements of paragraphs 2–6d and 2–6e, but not the enhanced interim financial support requirement of paragraph 2–6f, or vice versa.
- (3) A reduction in the amount of the monthly support requirement.
- (4) A credit towards the regulatory support requirement.

c. A battalion-level commander, or higher, must be satisfied by a preponderance of the evidence that the Soldier should be released from the support requirement as a matter of fundamental fairness.

d. Situations which may warrant relief include, but are not limited to, the following:

- (1) The income of the spouse exceeds the military pay of the Soldier.
- (2) The Soldier has been the victim of substantial abuse by the spouse.
- (3) The supported Family member is in jail.
- (4) Regulatory support has been provided to the spouse for 18 months.
- (5) A court with the jurisdiction to order financial support for the spouse has issued one or more orders, none of which contain a financial support provision.

(6) The spouse has acted in a manner to cause divorce proceedings to be unreasonably prolonged.

e. Additionally, the requirement to provide enhanced interim financial support for spouses (see para 2–6f) should routinely be waived when all of the following criteria are met:

- (1) The Soldier and spouse have lived apart for 30 days and the spouse resides outside the jurisdiction of any state court with jurisdiction to order support.
- (2) The Soldier has paid the required enhanced interim financial support for at least one 30-day period.
- (3) The spouse is a citizen of the host nation or it is otherwise appropriate for a host nation court of competent jurisdiction to order spousal support. (This criterion requires more of a connection to the host nation than mere presence in compliance with military orders).

f. Relief should not be granted when the Soldier is receiving BAH–WITH solely on the basis of providing financial support to that spouse, unless the Soldier agrees to terminate BAH–WITH effective the date released from the support obligation.

2–14. Situations warranting release from regulatory child support requirements

A battalion-level commander may release a Soldier from the regulatory requirement to provide financial support to a child pursuant to paragraphs 2–5a(3) and 2–6 if all of the following criteria are met:

- a.* The Soldier is the lawful custodian of the child.
- b.* The child, without the Soldier's consent, is in the custody of another person who is not the lawful custodian of the child.
- c.* And the Soldier is diligently pursuing legal means to obtain physical custody of the child.

Chapter 3 Command Responses to Inquiries

3–1. General

a. For purposes of this regulation, an inquiry is any telephone call, letter, facsimile transmission, email, or other form of communication from, or clearly on behalf of, an affected Family member that requests information, expresses dissatisfaction, states a protest, makes a complaint or claim for money, or asks for other relief about financial support,

child custody or visitation, parentage, or related case involving a Soldier or Family member that is addressed, forwarded, or otherwise communicated to HQDA or any subordinate command or activity.

b. Family support, child custody, or parentage inquiries will be directed to the company-level commander of the Soldier concerned. In many instances civilian Family members initially direct inquiries to legal assistance attorneys, inspector general offices, or other Army agencies either because they do not know the Soldier's current unit of assignment, or because they do not know the inquiry should be directed to the company-level commander. In order to facilitate this coordination, Department of the Army Human Resources personnel are authorized to disclose a Soldier's current unit of assignment to other DA personnel. This information may only be disclosed to third parties, to include the inquiring Family member, if consistent with the guidance contained in AR 25–22.

3–2. Investigations

a. Upon receipt of an inquiry concerning an assigned Soldier, the commander will determine if additional information is necessary to resolve the issues presented.

b. If additional information is required, the commander will initiate a preliminary inquiry or administrative investigation, whichever is most appropriate under the circumstances, according to the procedures contained in AR 15–6.

c. In the alternative, the commander (or someone acting on behalf of the commander), may inform the Soldier of the nature of the Family support, child custody, or parentage inquiry without conducting an inquiry or administrative investigation, in order to determine whether the Soldier wishes to voluntarily take the requested action, or provide the requested support. Prior to approaching a Soldier suspected of any criminal offense, the Soldier should be advised of their rights under UCMJ, Art. 31.

3–3. Standard requirements for all replies

a. The responsible commander will provide complete and accurate information in a timely manner in reply to all inquiries under provisions of this regulation (see para 1–4*c*). The responsible commander should send a reply in response to each inquiry within a reasonable time of receipt and/or upon completion.

b. Each reply to an inquiry should contain the specific information required by paragraphs 3–4 through 3–7, as appropriate, together with the following information:

(1) The name, rank, organization, and contact information for the responsible commander.

(2) A statement as to whether the Soldier has authorized the release outside the DoD of information obtained from a system of records. The Soldier's decision regarding the release of information should be recorded on DA Form 5459 (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries).

(3) If the Soldier consents, a statement as to whether the Soldier admits that they have an obligation to take certain action under this regulation and, if so; the nature of that action and, if not; why not.

c. Replies to inquiries should also provide information that is helpful and responsive to all the questions asked to the extent that such information is releasable pursuant to AR 25–22.

3–4. Financial nonsupport inquiries

a. If an AR 15–6 proceeding is initiated, the investigation or inquiry should address the following, as appropriate:

(1) If a Soldier denies they have an obligation to provide financial support to a spouse or children for any reason, the investigation will determine why the Soldier believes they do not have a financial support obligation to the Family member(s) in question.

(2) If the Soldier admits the obligation, but asserts that they have been providing financial support as required by this regulation, the investigating officer (IO) should request the Soldier provide proof of such payments. Cancelled personal checks and leave and earnings statements reflecting voluntary allotments are acceptable proof. Bank records showing electronic funds transfers are also acceptable proof, when combined with other evidence showing the Family member has access to the receiving bank account.

(3) If a commander determines that the Soldier has failed to comply with this regulation in the past, for whatever reason, or indicates any unwillingness to comply with this regulation in the future, the commander will order the Soldier to comply with this regulation. The order should specify—

(*a*) That financial support is to be provided not later than the first day of the next month (see para 2–9).

(*b*) The exact amount of financial support to be provided, as required by this regulation, and the continuing nature of the financial support to be provided (for example, provided each month).

(*c*) The person(s) to whom the financial support is to be provided.

(*d*) The method of payment (for example, voluntary allotment, personal check, electronic funds transfer, or money order).

(4) Regardless of the Soldier's immediate response to the order, the commander should consider taking appropriate action against the Soldier for failure to provide financial support when due, in violation of this regulation (see para 2–5c). The commander should also make efforts to eliminate future or continuing violations (see para 3–8).

(5) If a Soldier has been or is receiving allowances on behalf of dependents, without supporting those dependents, the commander should notify the appropriate finance office so that excess allowances may be stopped, and recouped in accordance with DoD 7000.14–R.

b. In replying to an inquiry alleging financial nonsupport, the commander will provide the information required by paragraph 3–3 and, to the extent permitted by AR 25–22, the following:

(1) A statement as to whether the Soldier admits that they have a financial support obligation to the Family member in question and, if not; why not.

(2) If the commander determines that the Soldier has no financial support obligation under this regulation to the Family member(s) in question, the commander should advise the person making the inquiry why no financial support is required.

(3) If the commander determines that the Soldier has a financial support obligation under this regulation to the Family member(s) in question, a statement as to whether the Soldier admits that they failed to provide financial support as required by this regulation.

(a) If the Soldier admits the obligation but asserts that they have been providing financial support as required by this regulation, the commander will provide a summary of such payments including the dates and amounts of the checks or money orders sent, and the address the payments were mailed to; or if a voluntary allotment was initiated on behalf of the Family member, the date the allotment was initiated, the amount and effective date of the voluntary allotment.

(b) If the Soldier admits that they failed to provide financial support, the commander will provide a complete summary of the reason(s), if any, provided by the Soldier for violating this regulation and the immediate steps that the Soldier will take to comply with this regulation in the future.

3–5. Parentage inquiries

a. The commander will follow the procedures in paragraph 3–4 in responding to inquiries where a court order already exists identifying the Soldier as a legal parent.

b. If parentage has not been legally established, the commander should take the following actions, as appropriate:

(1) Inform a Soldier who is the subject of a parentage inquiry of their legal and moral obligations, if any, and refer them to an attorney for legal assistance if they have questions about their legal rights. A referral to legal assistance is appropriate regardless of whether the Soldier admits parentage. A commander will urge the Soldier to provide financial support to the child if, after legal consultation, the Soldier admits parentage.

(2) In cases where a Soldier admits parentage and agrees to provide financial support, the commander should—

(a) Assist the Soldier in obtaining either BAH–WITH or BAH–DIFF, as appropriate, on behalf of the child if the Soldier is not already drawing BAH on behalf of another Family member.

(b) Assist the Soldier in filing for a voluntary allotment for the child.

(c) Assist the Soldier or mother of the child with enrolling the child in the Defense Enrollment Eligibility Reporting System and TRICARE, and if necessary obtaining a military identification card for the child (see AR 600–8–14).

(3) In cases where a Soldier has provided financial support for the child in the past but now denies parentage or has stopped or decreased the amount of financial support being provided, the commander should follow the procedures in paragraph 3–6.

c. In replying to an inquiry alleging parentage, the commander will provide the information required by paragraph 3–3 and, to the extent permitted by AR 25–22, the following:

(1) In cases where a Soldier refuses to answer questions about a parentage inquiry, denies parentage, or admits parentage but refuses to provide financial support, the reply to the inquiry will indicate this fact and inform the person making the inquiry that issues of parentage and financial support can only be resolved by a court or CSEA having jurisdiction over the Soldier.

(2) In cases where a Soldier admits parentage and agrees to provide financial support, the reply to the person making the inquiry will reflect the Soldier's response. The reply should also indicate the amount of financial support that will be provided to the child, together with the effective date and means of payment.

3–6. Child custody inquiries

a. If an AR 15–6 proceeding is initiated, the investigation or inquiry should address the following, as appropriate:

(1) If the Soldier denies they, or someone acting on the Soldier's behalf, has physical custody of the child(ren) in question, the IO should check this response against other sources of information, such as the Soldier's military records, government Family housing records, and supervisors and friends.

(2) If a Soldier denies having a legal obligation to give up physical custody of, or grant visitation with, the child(ren), the IO should determine why the Soldier believes they do not have a legal obligation to do so.

(3) If the Soldier has no legal right to physical custody of the child(ren), the commander will order the Soldier to comply with this regulation. Regardless of the Soldier's response to the order, the commander may take appropriate action against the Soldier for violating this regulation, if such violation has occurred (see paras 2–11 and 3–8).

(4) Commanders will not take physical custody of a child, and they will not order a Soldier to give up physical custody of a child to anyone other than the child's lawful custodian (see para 3–7c).

b. In replying to an inquiry about child custody, visitation, or a related matter, the commander will provide the information required by paragraph 3–3 and, to the extent permitted by AR 25–22, the following:

(1) A statement as to whether the Soldier admits they, or someone acting on the Soldier's behalf, has physical custody of the child(ren) in question.

(2) If the commander determines that neither the Soldier nor someone acting on the Soldier's behalf has physical custody of the child(ren) in question, the commander will inform the person making an inquiry of their determination.

(3) If the Soldier or someone acting on the Soldier's behalf has physical custody of the child(ren) in question, a statement as to the Soldier's intention regarding the request to give up physical custody of, or to grant visitation with, the child(ren).

(a) If the Soldier has no legal right to physical custody of the child(ren), the commander will advise the person making the inquiry that the Soldier has been ordered to return the child(ren) to the lawful custodian.

(b) If the commander determines that the Soldier or someone acting on their behalf has the legal right to physical custody of the child(ren), the commander should advise the person making the inquiry of their determination.

3–7. Other inquiries

a. Soldiers and their Family members are expected to obey the law, including court orders that enforce the law. Soldiers and their Family members should comply with all provisions of court orders, including those granting or denying visitation, dividing marital property, providing access to medical care, and other such provisions.

b. Commanders should take appropriate action, including those listed in paragraph 3–8, when the noncompliance of a Soldier or Family member with such provisions becomes an official matter of concern within the Army. In particular, commanders will consider the actions listed in paragraph 3–8b(2) with regard to Soldiers and Family members stationed outside of the United States who, without lawful basis, violate any provision of a court order.

c. A Soldier who is the lawful custodian of a child should not be ordered to comply with a provision granting visitation to a noncustodial parent. Obtaining relief in such matters should be left to the courts. However, commanders will consider the actions listed in paragraph 3–8b(2) with regard to Soldiers stationed outside of the United States who, without lawful basis, deny visitation to noncustodial parents residing in the United States.

d. Consistent with AR 190–9, AR 630–10, and DoDI 5525.09, commanders will cooperate with state courts and state and local officials in enforcing criminal court orders relating to Army personnel stationed outside the United States, as well as their Family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in contempt by a court for failure to obey a court's order, or have been ordered to show cause why they should not be held in contempt for obeying the court's order. If a request for assistance from a state court or state or local official pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child by a Soldier, the General Court-Martial Convening Authority (GCMCA) will take prompt action to cooperate with the state or local entity and expeditiously return the Soldier to the United States at government expense, unless an exception is granted by the Undersecretary of Defense for Personnel and Readiness. All procedures in DoDI 5525.09 will be followed.

3–8. Enforcement

a. Commanders should seek the advice of the servicing SJA office on measures that may be taken to enforce compliance with, and punish violations of, this regulation under applicable Federal, state, or foreign laws. Commanders should also notify appropriate law enforcement authorities when apprehension or criminal investigation is warranted.

b. Commanders will ensure that actions they take enhance the enforcement of this regulation. Commanders will also avoid taking actions that enable or foster the efforts of Soldiers to evade the requirements of this regulation, or the application of laws, or the enforcement of court orders addressed by this regulation.

(1) In this regard, commanders will take lawful actions designed to—

(a) Eliminate repeated or continuing violations of court orders and this regulation.

(b) Ensure that financial support is provided to Family members on a continuing basis in accordance with this regulation.

(c) Enable children to be returned to the parent or lawful guardian entitled to custody.

(d) Facilitate the approval of leave for Soldiers to attend hearings to determine parentage or financial support to a Family member.

(2) Outside of the United States, the commanders, in their efforts to enforce compliance with this regulation, may, in addition to other measures, recommend or initiate actions in appropriate cases to—

(a) Terminate the command sponsorship of a civilian Family member and order their advance return to the United States (see AR 55–46).

(b) Request host-nation authorities, in accordance with applicable international agreements and established procedures, to remove a civilian Family member from the host nation. This measure will not be used without first revoking the civilian Family member's command sponsorship and obtaining legal advice from the servicing SJA office. Release of the civilian Family member to host-nation authorities must be coordinated with the servicing SJA office and military law enforcement authorities.

(c) Curtail or refuse to extend a Soldier's military tour of duty outside of the United States.

c. Commanders will take appropriate actions against Soldiers who fail to comply with this regulation or lawful orders issued based on this regulation. These actions include, but are not limited to—

(1) Counseling.

(2) Admonition.

(3) Memorandum of reprimand (see AR 600–37).

(4) Barring Soldier from reenlistment (see AR 601–280).

(5) Administrative separation from the service (see AR 600–8–24 or AR 635–200).

(6) Nonjudicial punishment under UCMJ, Art. 15.

(7) Court-martial.

d. Violations of the financial support requirements of paragraph 2–5 or the child custody provisions of paragraph 2–11 of this regulation may be charged as violations of UCMJ, Art 92. These and other provisions of this regulation may also be the subject of lawful orders issued by commissioned or noncommissioned officers. Failure to obey such orders may be charged as violations of UCMJ, Art. 90, 91, or 92, as appropriate (see para 3–3). The commander will consider the actions listed in paragraph 3–8b(2) with regard to Soldiers and Family members residing outside of the United States, who, without justification or excuse, avoid efforts on the part of others to resolve these issues in a U.S. court having jurisdiction.

Appendix A

References

Section I

Required Publications

AR 15–6

Procedures for Administrative Investigations and Boards of Officers (Cited 3–2*b*.)

AR 25–22

The Army Privacy Program (Cited in paras 1–4*b*(2).)

AR 27–3

The Army Legal Assistance Program (Cited in paras 1–6.)

AR 27–26

Rules of Professional Conduct for Lawyers (Cited in para 1–11*b*.)

DoD 7000.14–R, volume 7A, chapter 26

Financial Management Regulation: Housing Allowances (Cited in para 1–9*a*.)

DoDI 5525.09

Compliance with Court Orders by Service Members and DoD Civilian Employees, and Their Family Members Outside The United States (Cited on title page) (Available at <https://www.esd.whs.mil/>.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication.

AR 11–2

Managers' Internal Control Program

AR 20–1

Inspector General Activities and Procedures

AR 25–30

Army Publishing Program

AR 25–400–2

The Army Records Information Management System (ARIMS)

AR 55–46

Travel Overseas

AR 190–9

Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 600–8–11

Reassignment

AR 600–8–14

Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel

AR 600–8–24

Officer Transfers and Discharges

AR 600–8–101

Personnel Readiness Processing

AR 600–37

Unfavorable Information

AR 601–280

Army Retention Program

AR 614–100

Officer Assignment Policies, Details, and Transfers

AR 614–200

Enlisted Assignments and Utilization Management

AR 630–10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 635–200

Active Duty Enlisted Administrative Separations

DA Pam 25–403

Guide to Recordkeeping in the Army

Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents, 5 October 1961 (Available at <https://www.hcch.net/en/instruments/conventions.>)

Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance, 23 November 2007 (Available at <https://www.hcch.net/en/instruments/conventions.>)

Hague Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters, 15 November 1965 (Available at <https://www.hcch.net/en/instruments/conventions.>)

NATO SOFA Supplementary Agreement with respect to Foreign Forces stationed in the Federal Republic of Germany, 29 March 1998 (Available at [https://www.aepubs.eur.army.mil/references/.](https://www.aepubs.eur.army.mil/references/))

UCMJ, Article 15

Commanding officer's non-judicial punishment (Available at [https://jsc.defense.gov/.](https://jsc.defense.gov/))

UCMJ, Article 31

Compulsory self-incrimination prohibited (Available at [https://jsc.defense.gov/.](https://jsc.defense.gov/))

UCMJ, Article 90

Willfully disobeying superior commissioned office (Available at [https://jsc.defense.gov/.](https://jsc.defense.gov/))

UCMJ, Article 91

Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer (Available at [https://jsc.defense.gov/.](https://jsc.defense.gov/))

UCMJ, Article 92

Failure to obey order or regulation (Available at [https://jsc.defense.gov/.](https://jsc.defense.gov/))

5 CFR 581

Processing Garnishment Orders for Child Support and/or Alimony (Available at [https://www.ecfr.gov/.](https://www.ecfr.gov/))

26 USC

Internal Revenue Code

42 USC 659

Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations (Available at [https://uscode.house.gov/.](https://uscode.house.gov/))

42 USC 665

Allotments from pay for child and spousal support owed by members of uniformed services on active duty (Available at [https://uscode.house.gov/.](https://uscode.house.gov/))

Section III**Prescribed Forms**

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) website (<https://armypubs.army.mil>).

DA Form 5459

Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries (prescribed in para 3–3*b*(2).)

Section IV**Referenced Forms**

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) website (<https://armypubs.army.mil>).

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

Appendix B

Examples of Parentage and Support Cases

B-1. Financial support in parentage cases

a. Example 1. A Soldier acknowledged parentage of a child born out of wedlock and had been providing voluntary support. The voluntary acknowledgment of parentage was not part of a state process establishing the Soldier as a legal parent under state law. Legal parentage has not been established by any domestic or foreign governmental entity. The mother of the child has written the Soldier's commander and asserts that the Soldier is not providing financial support for the child. In response to his commander's questions as to why he is not providing financial support, the Soldier claims that he no longer believes he is the father of the child. Pursuant to paragraph 2-2a, the Soldier is not required by this regulation to provide financial support to the child in the absence of a court order requiring him to do so. The Soldier's reasons for not providing financial support are irrelevant. Pursuant to paragraphs 3-4a(5) and 3-5b(3), the commander should contact the appropriate finance office to ensure that the Soldier is not receiving BAH-WITH based solely on the support of the child.

b. Example 2. Assume the same facts as in example 1, except that the acknowledgment of parentage consisted of an agreement to being named as a legal parent on the birth certificate when the child was born a year ago. The Soldier has not raised any subsequent challenge to the validity of the birth certificate. The state law where the birth occurred will determine resolution of the support issue. If, as in many states, agreeing to being listed as a legal parent on the birth certificate and not challenging the document within a specified number of days is the judicial equivalent of a court order establishing parentage, then there would be a legal order establishing parentage pursuant to paragraph 2-2a. The Soldier would have an obligation to provide support to that dependent child. Since there is no court order establishing the amount of the child support, the Soldier will provide the appropriate support required under paragraph 2-6.

c. Example 3. A woman in the FRG obtains a judgment in an FRG court as a result of a parentage action declaring a Soldier to be the father of the woman's child and ordering him to pay 500 Euros per month in child support. The FRG court acquired jurisdiction over the Soldier, who is assigned for duty within the FRG, in accordance with the NATO SOFA Supplementary Agreement with the FRG. The Soldier is required by paragraphs 2-2b, 2-4b, and 2-5a(1) to provide financial support to the child in the dollar equivalent of 500 Euros per month. In addition, while stationed in Germany, the Soldier may have the dollar equivalent of 500 Euros withheld from his pay each month if he fails to voluntarily comply with the FRG court order (by virtue of the U.S. Army honoring and implementing the FRG court garnishment order pursuant to the governing international agreement).

d. Example 4. Assume the same facts as in example 3, except that now the Soldier, pursuant to his request, has been reassigned to an Army installation in the United States. The German order establishing parentage remains valid; however, the financial support portion of the order will not be enforceable (see para 2-4b). The Soldier has an obligation to provide support to that dependent child. Since there is no court order establishing the amount of child support, the Soldier should provide the appropriate support required under paragraph 2-6. The Soldier will be in compliance with this regulation if he provides either the support required by paragraph 2-6 or the support specified in the court order. If the mother gets the German court order adopted by a United States court, the order will be binding upon the Soldier and he must comply with the financial support provisions of the order.

B-2. Financial support by financial support agreement

a. Example 1. A Soldier's spouse and child move out of privatized housing on the installation. There is no court order. The Soldier's spouse and the child move into the spouse's parents' home in another state. One week later, in an email to the Soldier's commander, the spouse complains that the Soldier orally agreed to provide the spouse an amount that exceeds the Soldier's BAH-WITH. In response to the commander's questions, the Soldier states that the agreed amount was less than BAH-WITH. There is no longer a functional agreement between the parties as to the appropriate level of support. In accordance with paragraphs 2-3a, 2-5a(3), and 2-6, the commander should direct the Soldier to send his spouse BAH RC/T-WITH, and a one-time enhanced interim financial support payment in the amount of BAH-DIFF.

b. Example 2. Assume the same facts as in example 1, except in this case the Soldier, in response to the commander's questions, shows the commander a copy of a letter he wrote and sent to his spouse in which he offered to pay his spouse an amount less than BAH-WITH. Unless the Soldier can present a signed letter from his spouse agreeing, in unequivocal language, that payment of that amount is acceptable, the commander should direct the Soldier to provide the regulatory support required by paragraph 2-6. If the Soldier presents a signed letter from his spouse agreeing, in

unequivocal language, that payment of the lesser amount is acceptable, the commander should direct the Soldier to pay that amount in accordance with paragraphs 2-3b and 2-5a(2).

c. Example 3. A Soldier's spouse and two children reside in privatized housing on the installation. The Soldier and his spouse have both signed a marital separation agreement in which the Soldier has agreed to pay his spouse spousal and child support in an amount equal to BAH-WITH plus \$1,000 per month. The Soldier now refuses to pay the full amount of support stated in the agreement because his Family has not yet vacated their quarters and the Soldier is still paying an allotment in the amount of BAH-WITH to the privatized housing company. The spouse complains to her husband's commander. The commander should initiate an inquiry under the provisions of AR 15-6 to obtain more information. During the course of the inquiry, the IO discovers that the Soldier believes part of his financial obligation is covered by the voluntary allotment of BAH-WITH for rent, and that he is only obligated to pay an additional cash payment in the amount of \$1,000; while the spouse asserts that under the agreement the Soldier is obligated to pay BAH-WITH, plus \$1,000, in addition to the continuing voluntary allotment. The commander, in consultation with their legal advisor, may find that this agreement is too ambiguous to be enforceable as to the BAH-WITH payment, and may decline to order the Soldier to pay anything more than the uncontested amount of \$1,000 until the voluntary allotment to housing is terminated (see para 2-3b(2)).

d. Example 4. A Soldier and his spouse sign a marital separation agreement that provides that she will receive financial support in an amount equal to one-half of the Soldier's BAH-WITH until she remarries. The agreement does not provide that it will be merged into any subsequent divorce judgment or otherwise indicate that it will continue beyond the divorce. The Soldier has no children. Thereafter, the spouse obtains a divorce decree that does not reference the marital separation agreement. The court ordered no alimony. She now complains to the Soldier's commander that she is not receiving financial support as provided in the agreement. In accordance with paragraph 2-3b(3)(a) the Soldier is not required by this regulation to provide financial support to his spouse since the agreement was not incorporated in the divorce decree. Upon divorce she is no longer a Family member under the regulation nor is she entitled to financial support in the absence of a court order. The result is the same if the court was without jurisdiction to order the Soldier to pay alimony.

B-3. Financial support by court order

a. Example 1. A Soldier and his spouse separate. At the time of separation they resided in Virginia, where the Soldier is assigned for military duty. The Soldier is also domiciled in Virginia. The spouse returns, together with their one child, who was born in Virginia, to the home of the spouse's parents in the FRG. The Soldier obtains a divorce from the spouse in the United States. The court does not order financial support, and there is no written financial support agreement. The spouse now requests through the Soldier's commander in Virginia that the spouse be provided BAH-WITH for the spouse and their child. The Soldier has one Family member (the child) to support. In accordance with paragraphs 2-4c, and 2-6b, 2-6c, and 2-6d(3), the commander should direct the Soldier to provide his child BAH RC/T-WITH.

b. Example 2. Assume the same facts as in example 1, except in this case the spouse also has obtained a divorce decree in a FRG court. The FRG court has also issued an order, mailed to the Soldier in the United States, directing him to pay child support in an amount equal to twice his BAH-WITH. In accordance with paragraphs 2-4b, and 2-6b, c and d(3), the commander should direct the Soldier to pay BAH RC/T-WITH unless the FRG court order has been recognized and enforced by a court within the United States.

B-4. Financial support in single Family units

a. Example 1. Two married Soldiers have three children. One child resides with the first Soldier and two reside with the second Soldier. There is no court order or written financial support agreement. Neither spouse has a financial support obligation to the other under this regulation (see para 2-6d(4)(c)).

b. Example 2. Assume the same facts as in example 1 of this except that all three children reside with the first Soldier, and the second Soldier, now residing in a private apartment, is being paid BAH-WITH by the Army. Pursuant to paragraphs 2-5a(3) and 2-6d(4)(a), the second Soldier must pay BAH-DIFF to the first Soldier on behalf of the children. If the second Soldier fails to pay this amount, the second Soldier may, in addition to receiving disciplinary action, lose her entitlement to BAH-WITH. (In this case, DFAS may cancel her entitlement to BAH-WITH and recoup past payments of BAH-DIFF because she is providing less than adequate financial support to her Family members and, therefore, is only entitled to BAH-WITHOUT (see para 1-7c)).

c. Example 3. A civilian spouse separates from a Soldier on 15 June and moves out of government Family housing into an apartment of his own. The Soldier is in the field at the time and is unable to clear government quarters until 31 July. The Soldier has no other dependents. There is no court order or written financial support agreement. The Soldier is required to provide his spouse with one-half (15/30 as the pro-rata calculation) of the BAH RC/T-WITH amount

for the month of June and the full amount of the BAH RC/T–WITH for the subsequent months. It does not matter that the Soldier will not be eligible for BAH–WITH until 1 August. Additionally, the Soldier must provide enhanced interim financial support to the spouse as required by paragraph 2–6f (see paras 2–5a(3), 2–6d(1), 2–7a(3)(a) and (5), 2–8, and 2–9).

d. Example 4. A Soldier and his spouse decide to separate. They have one child. There is no agreement, and the spouse and child continue to reside in government quarters. The Soldier is required to provide enhanced interim financial spousal support under paragraph 2–6f.

e. Example 5. Assume the same facts as in example 4 except that on-post quarters are managed by a private contractor. The Soldier has signed a lease with the private contractor and established an allotment to the contractor in an amount equal to his BAH–WITH. If the Soldier’s BAH–WITH is equal to, or more than, the BAH RC/T–WITH for his grade, he has no financial support obligation to pay interim financial support to either the wife or child under paragraphs 2–6d or 2–6e of this regulation, but does have a requirement to provide enhanced interim financial support under paragraph 2–6f. If the BAH–WITH is less than the appropriate BAH RC/T–WITH, the Soldier must also pay that difference to the spouse to fulfill the interim support obligation.

f. Example 6. A Soldier is assigned on an unaccompanied tour overseas. The Soldier receives BAH–WITH solely on account of her spouse and child who remain in the United States. Absent an agreement or court order to the contrary, the Soldier must provide support in the amount of the actual BAH–WITH rate, if it is higher than the BAH RC/T–WITH for her grade (see para 2–6d(1)(a)).

g. Example 7. A Soldier is currently serving an overseas tour and is accompanied by his current spouse and child who live in privately leased housing on the local economy. The Soldier separates from his spouse and moves into the barracks. The Soldier must provide support in the amount of BAH RC/T–WITH for his spouse and child. If the Soldier’s overseas housing allowance (OHA) and utility allowance are greater than or equal to that amount, he may satisfy this portion of his regulatory requirement by continuing to pay the rent and utilities using his allowances (see para 2–9d). Pursuant to paragraph 2–6f, however, the Soldier must also provide a cash payment to his spouse in the amount of BAH–DIFF, as enhanced interim financial support.

h. Example 8. Assume the same facts as Example 7, except the Soldier’s spouse and child are sent back to the United States as an Early Return of Dependents, and the Soldier begins to receive BAH–WITH solely on account of those dependents. The Soldier is required to provide support equal to the actual BAH–WITH rate, or BAH RC/T–WITH rate, whichever is greater (see para 2–6d(1)(a)). Because the spouse is back in the United States and has access to state courts, the Soldier may petition his battalion commander to be relieved of the paragraph 2–6f enhanced interim financial support requirement (BAH–DIFF) (see para 2–13e).

i. Example 9. A Soldier has been separated from her spouse, who also has custody of their child for over six months, and has been making interim support payments in the amount of BAH RC/T–WITH. The Soldier learns that her spouse just obtained new employment and makes substantially more money than her. The Soldier’s battalion commander relieves her of the requirement to provide a pro-rata share of support to the spouse (see para 2–13). The Soldier is now only obligated to provide support in the amount of one-half of BAH RC/T–WITH as interim financial support for her child (see para 2–6d(1)(c)).

B–5. Financial support in multiple Family units

a. Example 1. A Soldier is divorced and has three children from that marriage. The Soldier is required by a court order to pay \$300 per month in financial support for these children and \$100 per month in alimony to his former spouse. The Soldier has remarried and has two more Family members (spouse and child) living in non-government housing. The Soldier has separated from his current spouse. The current spouse and child are living in a private apartment. There is no court order or written financial support agreement pertaining to the Soldier’s second marriage. The Soldier now has a total of five Family members for whom he is required to provide financial support under this regulation. (Pursuant to para 2–6b and c(1), a former spouse is not considered a Family member in determining the pro-rata shares of BAH RC/T–WITH of Family members.) In accordance with the court order, the Soldier must pay a total of \$400 to his former spouse and to the children from that marriage. He must also provide financial support to his present spouse and their child in an amount equal to two-fifths of BAH RC/T–WITH (see paras 2–5a(1) and (3), and 2–6e).

b. Example 2. A Soldier in the Illinois National Guard has one child from a previous marriage. There is no written financial support agreement. The court that granted the Soldier a divorce did not have personal jurisdiction over his former spouse to decide such issues as custody or financial support of the child. The Soldier has remarried and has a spouse and two children living in non-government housing. The Soldier has separated from his current spouse. There is no court order or written financial support agreement pertaining to the Soldier’s second marriage. The Soldier has been called up for active duty pursuant to Title 32, United States Code. Under this regulation the Soldier has no

enforceable financial support obligation, even if his active duty extends beyond 29 days. Members serving under Title 32 are subject to state law. This regulation provides guidance but is not punitive as to Title 32-status members of the National Guard (see “applicability” section and para 1–7).

c. Example 3. Assume the same facts as in example 2 except that the Soldier was called up for active duty for 30 days or more pursuant to orders issued under the authority of Title 10, United States Code. This regulation would now apply to him. In that event, the Soldier would have a total of four Family members for whom he must provide financial support under this regulation (these Family members are the child by a previous marriage and the present spouse and two children). The child of the former marriage should receive 1/4 of the BAH RC/T–WITH, and the current spouse should receive 3/4 of the BAH RC/T–WITH as support for herself and the two children (see “applicability section and paras 2–5a(3) and 2–6b, 2–6c(1), and 2–6e(1)).

d. Example 4. A Soldier has two children from a previous marriage. The Soldier is required by court order to pay \$200 per month for these children. Also, the Soldier is required to pay \$75 per month for support of another child in accordance with a court order declaring him to be the father of that child. He has remarried and has a spouse and three children residing in government Family housing. The Soldier has separated from his current spouse and children and has moved into the barracks. There is no court order or written financial support agreement pertaining to the Soldier's second marriage. The Soldier now has a total of seven Family members that he must support under this regulation. In accordance with the court orders, he must pay the children from his previous marriage \$200 per month and the other child \$75 per month. He has no obligation to provide his spouse and the children from his present marriage a portion of BAH RC/T–WITH since they reside in government Family housing, but must provide enhanced interim financial support under paragraph 2–6f (see paras 2–5a(1) and (3), 2–6e(1) and 2–6f).

e. Example 5. A Soldier is married to an airman in the Regular Air Force. They have two children from this marriage, both of whom reside with the airman-spouse in a private apartment. The Soldier has moved out of the apartment. There is no court order or written financial support agreement pertaining to the marriage. The Soldier adopted a child during a previous marriage, who resides with his former spouse, for whom he is required by court order to pay \$150 per month. The Soldier has a total of three Family members for whom he is required to provide financial support. The Soldier will pay \$150 per month in accordance with the court order for the adopted child. On behalf of the two children from his current marriage, he will pay BAH–DIFF. Under paragraph 2–6d(4) the Soldier has no financial support obligation to his current spouse (the airman), and the airman is not counted in determining the pro-rata shares of the supported children. Because the current spouse is an airman in the Regular Air Force, enhanced interim financial support is not required (see para 2–6f(1)). The financial support obligation of the airman to her Family members is determined in accordance with Air Force instructions (see paras 2–5a(1) and (3), and 2–6e(1)(e) and (2)).

f. Example 6. A Soldier has a child from a prior relationship with a CSEA order requiring \$500 per month to be paid as child support. The Soldier is currently serving an overseas tour and is accompanied by his current spouse and two children who live in privately leased housing on the local economy. The Soldier separates from his spouse and moves into the barracks. The Soldier has a total of four Family members for whom he is required to provide financial support. The Soldier will pay \$500 per month in accordance with the CSEA order for the child from the prior relationship. The Soldier must provide support in the amount of 3/4 of the BAH RC/T–WITH rate for his current spouse and two children. If the Soldier's OHA and utility allowance are greater than or equal to that amount, he may satisfy this portion of his regulatory requirement by continuing to pay the rent and utilities using his allowances. Pursuant to paragraph 2–6f, however, the Soldier must also provide a cash payment to his current spouse in the amount of BAH–DIFF, as enhanced interim financial support (see paras 2–5a(1), 2–5a(3), 2–6b, 2–6c(1), 2–6e(1)(a), 2–6e(1)(d), 2–6f, and 2–9d).

Appendix C

Internal Control Evaluation

C–1. Function

The function covered by this checklist is compliance with legal assistance pursuant to AR 608–99 and AR 11–2.

C–2. Purpose

The purpose of this checklist is to assist commanders in evaluating their key internal controls. It is not intended to cover all controls.

C–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

C–4. Test questions

a. General command responsibilities.

- (1) Are Family support, child custody, or parentage inquiries directed to the company-level commander in accordance with paragraph 3–1, AR 608–99?
- (2) Do commanders become involved in enforcing this regulation when a Family member complains that a Soldier is failing to provide financial support in accordance with AR 608–99, paragraph 2–1?
- (3) Do commanders respond to inquiries in a timely manner, in accordance with AR 608–99, paragraph 3–3?
- (4) When additional information is required, are AR 15–6 preliminary inquiries or administrative investigations initiated pursuant to AR 608–99, paragraph 3–2?
- (5) Do commanders require Soldiers to comply with written financial support agreements and/or court or CSEA orders as required by AR 608–99, paragraphs 2–3 through 2–5?
- (6) Are questions concerning a Soldier’s legal obligations referred to the servicing SJA in accordance with paragraphs 2–2d, 2–3b(2), and 3–8?
- (7) When required to be paid, is financial support correctly calculated according to AR 608–99, paragraph 2–6?
- (8) Are requests for relief from support requirements routed to and acted on by battalion-level commanders as required by AR 608–99, paragraphs 2–12 through 2–14?
- (9) Do commanders take appropriate action to enforce this regulation in accordance with AR 608–99, paragraph 3–8?

b. Financial nonsupport inquiries. Do commanders comply with the provisions of AR 608–99, paragraph 3–4 when responding to financial nonsupport inquiries?

c. Parentage inquiries. Do commanders comply with the provisions of AR 608–99, paragraph 3–5 when responding to parentage inquiries?

d. Child custody inquiries. Do commanders comply with the provisions of AR 608–99, paragraph 3–6 when responding to child custody inquiries?

e. Cooperation with state and local officials. Do GCMCAs take prompt action to respond to requests for assistance from state and local officials in cases involving the unlawful removal of a child by a Soldier in accordance with AR 608–99, paragraph 3–7, and DoDI 5525.09?

C–5. Supersession

Not applicable.

C–6. Comments

Help make this a better tool for evaluating management controls. Submit comments to The Judge Advocate General (DAJA–LA), usarmy.pentagon.hqda-otjag.mbx.la@mail.mil.

Glossary

Section I

Abbreviations

AR

Army regulation

ARIMS

Army Records Information Management System

DA

Department of the Army

DFAS

Defense Finance and Accounting Service

DoD

Department of Defense

DoDI

Department of Defense Instruction

GCMCA

General Court-Martial Convening Authority

HQDA

Headquarters, Department of the Army

IO

investigating officer

NATO

North Atlantic Treaty Organization

OHA

overseas housing allowance

SJA

Staff Judge Advocate

SOFA

Status of Forces Agreement

TJAG

The Judge Advocate General

UCMJ

Uniform Code of Military Justice

USC

United States Code

Section II

Terms

Arrearage

The total amount of money a Soldier may owe a Family member for prior months in which the Soldier failed to comply with the financial support requirements of a court order, a financial support agreement, or this regulation. A support obligation becomes an arrearage if it was not paid by the date that the obligation was due.

Child custody

The physical custody of a child or children. Child custody does not include visitation.

Child support enforcement agency order

An administrative order issued by a governmental entity, recognized as valid and enforceable under applicable state law.

Command sponsorship

The state or condition of being a command sponsored dependent as defined in AR 55–46.

Court order

As used in this regulation a court order includes any final, temporary, or interlocutory order, including an ex parte order, issued by a court within the United States, by a judge or any other judicial official, such as a judge pro tem, magistrate, commissioner, or master. A court order also includes a stay of a court order. With regard to parentage, a court order also includes any document that is granted the equivalent effect of a court order under applicable state law. In many cases, consenting to be named a legal parent on a birth certificate, or acknowledging parentage in an affidavit will have the legal effect of a court order if the alleged parent fails to challenge the document within a specified number of days. In those cases, the documents will be treated as a court order establishing parentage.

Enhanced interim financial support

Support, in the amount of BAH–DIFF a Soldier is required to provide under certain circumstances to a spouse under paragraph 2–6f of this regulation.

Family member

For the purpose of this regulation only, a Family member includes—*a.* A Soldier's present spouse. (A former spouse is not a Family member.) *b.* Any minor children for whom the Soldier is a legal parent, so long as the Soldier's duty to provide financial support has not been terminated by court or CSEA order, or by a written financial support agreement. *c.* Any adult for whom the Soldier is a court-appointed legal guardian (for example, a disabled or incapacitated adult child, sibling, or parent). It does not include financial support voluntarily provided to a child 18 years of age or older or to some other person.

Family unit

For the purpose of this regulation only, a Family unit includes any of the following: *a.* A Soldier's present spouse and any children from that marriage for whom the Soldier is required to provide financial support. *b.* One or more children from a prior marriage for whom the Soldier is required to provide financial support. *c.* One or more children born out of wedlock from a prior relationship for whom a Soldier is required to provide financial support.

Financial support

The amount of money or support in kind provided to one's Family members on a periodic or other continuing basis in accordance with a written or oral support agreement, court order, or this regulation. Financial support includes court-ordered spousal support (or alimony) and child support but does not include any division of marital or non-marital property between spouses or former spouses or financial payments made as part of a property settlement.

Financial support requirement

The amount of financial support a Soldier is required to pay to their Family members under this regulation.

General court–martial convening authority

The Army officer who, by virtue of command, exercises general court-martial convening authority over a Soldier who (or whose Family member) is the subject of a request for assistance from a government official or the subject of any inquiry received under this regulation.

Geographically separated Family member

A situation in which a Soldier is assigned at an installation different from the location at which their Family member is attempting to obtain assistance under this regulation.

Government Family housing

Any government-owned or government-leased housing occupied by a military member and one or more of their Family members for which, because of such occupancy, the military member loses entitlement to BAH under the Department of Defense Joint Travel Regulations. This does not include on-post housing that the Soldier leases from a government-approved private contractor (note: Soldiers who lease Family housing from an on-post privatized housing contractor do not forfeit BAH; rather they receive full BAH, and simultaneously pay the same amount via voluntary allotment to the privatized housing contractor).

Interim financial support

Support a Soldier is required to provide to a Family member by paragraphs 2–6*d* or 2–6*e* of this regulation, expressed as a proportion of BAH RC/T–WITH.

Lawful custodian

A person authorized, either alone or with another person or persons, to have physical custody of a minor child by court order. In the absence of a court order to the contrary, the mother of a child born out of wedlock is deemed the “lawful custodian” of that child for the purpose of this regulation.

Legal assistance

Legal advice, counseling, and other help provided to eligible clients on their personal legal affairs under provisions of AR 27–3 or comparable regulations or instructions of the Air Force, Navy, Marine Corps, or Coast Guard.

Legal assistance attorney

A judge advocate, or civilian attorney employee within the Department of Defense, who, as to a particular case, is providing legal assistance to an eligible client pursuant to AR 27–3 or comparable regulations or instructions of the Air Force, Navy, Marine Corps, or Coast Guard.

Minor children

Unmarried children under 18 years of age who are not on active duty with the Armed Forces.

Multiple Family units

Two or more Family units.

Non–government housing

Any housing that is not government housing.

Personal jurisdiction

The power of a court over one of the parties in a case to order one of the parties to pay financial support to their Family members or to direct one of the parties to do an act or refrain from doing an act (for example, relating to child custody or visitation, physical restraining orders) under sanction of the court’s contempt power. Due process requirements of notice and opportunity to be heard must be satisfied. The usual manner of obtaining personal jurisdiction over a party is by serving process on the person of the party or by certified mail, return receipt requested.

Preponderance of the evidence

The degree of proof that leads one to find that the existence of a fact in issue is more probable than not.

State court

Any court within the 50 states, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, or the Virgin Islands.

United States

The 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

Section III**Special Abbreviations and Terms****BAH**

basic allowance for housing (at either the with- or without-dependents rate)

BAH RC/T

basic allowance for housing Reserve Component/transit (at either the with- or without-dependents rate)

BAH RC/T–WITH

basic allowance for housing Reserve Component/transit at the with-dependents rate

BAH RC/T–WITHOUT

basic allowance for housing Reserve Component/transit at the without-dependents rate

BAH–DIFF

difference in amount between basic allowance for housing Reserve Component/transit at the with-dependents rate and basic allowance for housing Reserve Component/transit at the without-dependents rate

BAH-WITH

basic allowance for housing at the with-dependents rate

BAH-WITHOUT

basic allowance for housing at the without-dependents rate

CSEA

Child Support Enforcement Agency

FRG

Federal Republic of Germany

UNCLASSIFIED

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