

**Army Regulation 608–99**

**Personal Affairs**

# **Family Support, Child Custody, and Paternity**

**Headquarters  
Department of the Army  
Washington, DC  
29 October 2003**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 608-99

Family Support, Child Custody, and Paternity

This regulation sets forth Army policy on financial support of family members, paternity, and child custody. This revision-

- o Clarifies the obligation of Staff Judge Advocates (SJAs) to establish office policies to avoid conflicts of interest in implementing this regulation (para 1-4h(2)).
- o Accommodates the change in terms from basic allowance for quarters (BAQ) to basic allowance for housing (BAH) (para 1-7 and throughout).
- o Clarifies what actions trigger a command's obligation to take action under this regulation (para 2-1b).
- o Clarifies a soldier's obligation to provide support in the case of paternity orders that do not include a financial support obligation (para 2-2a).
- o Expands the definition of court order for paternity to accommodate the functional equivalent of court orders as established under state law (para 2-2b).
- o Clarifies a soldier's obligation to provide support in the case of a foreign paternity order (para 2-2c).
- o Eliminates the interim support requirement for families residing in Government family housing (para 2-6d).
- o Defines events that begin or end an obligation to provide support under the terms of this regulation (para 2-7).
- o Provides for support for periods of less than one full month (para 2-8).
- o Creates a procedure for a soldier (without children) who has been separated from his or her spouse for 18 months and has no court order establishing a financial support obligation to request an exception to the interim support requirements (para 2-14b(6)).
- o Establishes procedures whereby the Special Court-Martial Convening Authority (SPCMCA) may grant exceptions to this regulation (para 2-15).

Personal Affairs

Family Support, Child Custody, and Paternity

By order of the Secretary of the Army:

PETER J. SCHOOMAKER  
*General, United States Army*  
*Chief of Staff*

Official:



JOEL B. HUDSON  
*Administrative Assistant to the*  
*Secretary of the Army*

**History.** This publication is a major revision.

**Summary.** This regulation prescribes Army policy on financial support of family members, child custody and visitation, paternity, and related matters. It also implements Department of Defense (DOD) Directive 5525.9 with regard to soldiers and family members stationed or residing outside of the United States on court-related requests for assistance arising from financial support, child custody and visitation, paternity, and related cases.

**Applicability.** a. This regulation applies to—

- (1) The Active 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.

(5) Family members who are command-sponsored and reside outside of the United States.

(6) Soldiers receiving full or partial pay and allowances while confined at the U.S. Disciplinary Barracks or other confinement facilities.

b. This regulation applies during mobilization.

c. Paragraphs 2–5 and 2–11 of this regulation are punitive with regard to soldiers. A violation of either paragraph is separately punishable as a violation of a lawful general regulation under Article 92, Uniform Code of Military Justice. Penalties for violating either of these paragraphs include the full range of statutory and regulatory sanctions, both criminal and administrative. These 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.

d. Provisions of this regulation regarding compliance with court orders on financial support, child custody and visitation, paternity, and related matters apply to family members who are command sponsored and reside outside of the United States. Noncompliance with such orders may adversely affect their continued entitlement to command sponsorship or the duration of their sponsor's military assignment outside of the United States.

**Proponent and exception authority.**

The proponent of this regulation is the Judge Advocate General (TJAG). TJAG has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. TJAG may

delegate the approval authority, in writing, to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

**Army management control process.**

This regulation is not subject to the requirements of AR 11–2 and does not contain management control provisions.

**Supplementation.** Supplementation of this regulation and the establishment of command and local forms are prohibited without prior approval from the Office of The Judge Advocate General, Legal Assistance Policy Division, 1777 North Kent Street, Rosslyn, VA 22209–2194.

**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, Legal Assistance Policy Division, 1777 North Kent Street, Rosslyn, VA 22209–2194.

**Distribution.** This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard of the United States, and the U.S. Army Reserve.

\*This regulation supersedes AR 608–99, dated 1 November 1994.

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## **Chapter 1**

### **General**

#### **1-1. Purpose**

*a.* This regulation sets forth Department of the Army (DA) policy, responsibilities, and procedures on financial support of family members, child custody and visitation, paternity, and compliance with court orders regarding these and related matters.

*b.* This regulation is designed to improve procedures for enforcing financial support, child custody, paternity, and related obligations within the DA. It 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.

*c.* 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**

Required and related publications and prescribed and referenced forms are listed in appendix A.

#### **1-3. Explanation of abbreviations and terms**

Abbreviations and special terms used in this regulation are explained in the glossary.

#### **1-4. Responsibilities**

*a.* The Judge Advocate General (TJAG) provides all Army policies on—

(1) The obligation of soldiers to provide financial support to family members.

(2) The obligation of soldiers to comply with court orders on financial support, child custody and visitation, paternity, and related matters.

(3) The obligation of family members who are command-sponsored and reside outside the United States to comply with court orders on financial support, child custody and visitation, paternity, and related matters.

(4) The scope and nature of legal assistance services provided to soldiers and family members on financial support, child custody and visitation, paternity, and related matters.

(5) Handling and processing all requests for assistance from Government officials based on court orders pertaining to soldiers or family members stationed or residing outside the United States (see chap 4).

(6) Handling and processing of all other inquiries received under this regulation.

*b.* The Chief, Legal Assistance Policy Division, Office of The Judge Advocate General (OTJAG), will—

(1) Establish procedures for handling, processing, and responding to the following:

(a) All requests for assistance from Government officials based on court orders pertaining to soldiers or family members stationed or residing outside the United States (see chap 4).

(b) All other inquiries received under this regulation.

(2) Process all requests for assistance from Government officials based on court orders, and all other inquiries under this regulation, received at Headquarters, Department of the Army (HQDA), pertaining to soldiers or family members.

(3) Carry out the objectives of this regulation to protect the interests of the Army and the legal rights and interests of each soldier and family member whose conduct is governed or affected by this regulation.

(4) Advise and assist HQDA agencies, commanders, staff judge advocates (SJAs), judge advocates, and DA civilian attorney employees on all matters addressed by this regulation.

(5) Implement policies regarding the scope and nature of legal assistance services provided to soldiers and their family members on financial support, child custody and visitation, paternity, and related cases.

*c.* The Commander, U.S. Army Human Resources Command will implement and assist commanders with enforcement of the policies in this regulation in all actions relating to the assignment of officer and enlisted personnel when consistent with other military requirements (see paras 1-5*c*, 3-10*b* and 4-3*d*).

*d.* General Court-Martial Convening Authorities (GCMCAs) will—

(1) Respond to all requests for assistance from Government officials based on court orders and all other inquiries received under this regulation (see chap 4).

(2) Establish procedures within their commands to respond to requests for assistance from Government officials based on court orders and all other inquiries received under this regulation, particularly from geographically separated family members (see para 2-1). These procedures will insure that each inquiry received under this regulation will be routed to the responsible commander in the most expeditious manner possible and that responses are sent to all inquiries received under this regulation.

(3) Authorize SJAs or other staff officers (such as Director of Community and Family Activities, the post Adjutant General), as appropriate, to initiate official messages (using priority precedence) or other official inquiries (that is, for the commander) to units located within other commands to obtain information or to request assistance under this

regulation for geographically separated family members. Such messages or other inquiries may be drafted by an attorney providing legal assistance on behalf of a client whose complaint about a matter addressed by this regulation appears to be valid, but only after the client has waived the attorney-client privilege with regard to the release of information necessary to send the message. The message will be sent as an official command message and not on behalf of the client. The reply, when received, will be provided to the SJA. Subject to the provisions of paragraph 3-2, the SJA will then release information from this reply to the client or the client's attorney, as appropriate.

(4) Establish procedures to ensure that subordinate commanders and soldiers within their commands are thoroughly familiar with the provisions of this regulation (see chap 5).

(5) Take other actions, as appropriate, in enforcing the provisions of this regulation (see para 3-10).

*e. Special Court-Martial Convening Authorities (SPCMCAs) will—*

(1) Establish procedures to ensure compliance with this regulation.

(2) Ensure that subordinate commanders and soldiers within their commands are thoroughly familiar with the provisions of this regulation (see chap 5).

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

(4) Determine, when requested to do so by a soldier under his or her command, whether to release that soldier from a support requirement of this regulation (see para 2-15).

(5) Take other actions, as appropriate, in enforcing the provisions of this regulation (see para 3-10).

*f. Battalion commanders will—*

(1) Respond to all requests for assistance from Government officials based on court orders and all other inquiries received under this regulation (see chap 3).

(2) Establish procedures to ensure compliance with this regulation.

(3) Ensure that subordinate commanders and soldiers within their commands are thoroughly familiar with the provisions of this regulation (see chap 5).

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

(5) Counsel soldiers and take other actions, as appropriate, in response to all inquiries received under this regulation (see para 3-4).

(6) Sign replies to inquiries received under this regulation pertaining to soldiers involved in repeated or continuing violations of this regulation. (See chap 3 for the required content and timeliness of all replies.)

(7) Determine, when requested to do so by a soldier under his or her command, whether a specific provision of this regulation releases that soldier from a requirement of this regulation (see paras 2-12, 2-13, and 2-14).

(8) Forward, with recommendation, to the SPCMCA any request by a soldier to be released from a specific provision of this regulation when the stated basis for release is not contained in paragraph 2-14.

(9) Take other actions, as appropriate, in enforcing the provisions of this regulation (see para 3-10).

*g. Company commanders will—*

(1) Respond to all requests for assistance from Government officials based on court orders, and all other inquiries received under this regulation (see chap 3).

(2) Ensure that soldiers are thoroughly familiar with the provisions of this regulation (see chap 5).

(3) Establish procedures to ensure compliance with this regulation.

(4) Counsel soldiers and take other actions, as appropriate, in response to all inquiries received under this regulation (see para 3-4).

(5) Sign replies to inquiries received under this regulation except to inquiries routed to superior commanders pertaining to soldiers involved in repeated or continuing violations of this regulation (see para 1-4f(6) and chap 3). All replies will conform to the provisions of chapter 3 with regard to timeliness and content.

(6) Forward, with recommendation, to the battalion commander any request by a soldier to be released from a specific provision of this regulation (see paras 1-4e(4), 1-4f(7), 1-4f(8), and 2-12).

(7) Take other actions, as appropriate, in enforcing the provisions of this regulation (see para 3-10).

*h. Staff judge advocates will—*

(1) Provide legal advice to commanders and their staff on—

(a) Application of this regulation, and other laws and regulations, to financial support, child custody and visitation, paternity, and related cases arising under this regulation.

(b) Disposition of requests from soldiers to be released from specific provisions of this regulation (see paras 1-4e(4), 1-4f(7), and 2-12).

(c) Potential actions under the Uniform Code of Military Justice (UCMJ), and other possible adverse actions, with respect to violations of the punitive provisions of this regulation and violations of lawful orders issued to enforce this regulation.

(d) The type of information that may be released in replies to inquiries (see para 3-2).

(e) Legal interpretations of this regulation.



(2) Establish procedures to avoid conflicts of interest while insuring that legal services and guidance are provided to all eligible clients and commanders, including—

- (a) Procedures to screen for conflicts of interest within the legal assistance office (see para 1–9b).
- (b) Designating an office, other than legal assistance, to be responsible for providing command advice on issues related to this regulation (see para 1–9c).
- (c) Procedures to insure that attorneys avoid conflicts when transferred to other areas of responsibility within the SJA office.

#### **1–5. 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, paternity, 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 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 nonaction on their part does not encourage or facilitate violations of court orders or this regulation or avoidance of a judicial resolution of issues relating to paternity, child custody, or support by soldiers and family members.

(1) This regulation will be enforced in a timely and effective manner in all actions relating to assignment of officer and enlisted personnel when consistent with other military requirements.

(2) Before recommending approval of requests for, or extensions of, military assignments outside of the United States, commanders and others responsible for making decisions on these matters will consider whether the soldier’s assignment, or continued assignment, outside of the United States will adversely affect the legal rights of others in pending or anticipated court actions in the United States against the soldier, or against family members, or will result in a repeated or continuing violation of an existing state court order or this regulation. If there is the potential for such an adverse affect, no assignment or extension of an assignment will be made absent a compelling need of the service.

(3) This paragraph does not prohibit a commander from assisting a soldier to invoke the protections of the Soldiers’ and Sailors’ Civil Relief Act.

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 paternity claims.

#### **1–6. Penalties**

Personnel subject to the 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 Article 92, UCMJ, 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.

#### **1–7. 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 DOD 7000.14–R, para 260101):

- (1) Basic allowance for housing (BAH): A military housing allowance based on the geographic duty location, pay grade, and dependency status.
- (2) BAH II: The BAH allowance without consideration of the geographic duty location—the equivalent of the former basic allowance for quarters.

- (3) BAH-WITH: The BAH rate for a soldier with dependents.
- (4) BAH-WITHOUT: The BAH rate for a soldier without dependents.
- (5) BAH II-WITH: The BAH II rate for a soldier with dependents.
- (6) BAH II-WITHOUT: The BAH II rate for a soldier without dependents.
- (7) BAH-DIFF: The difference between the BAH II-WITH and the BAH II-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 II is greater than the BAH for his or her geographic duty location. Except as provided in paragraphs 2-14b(2) through (6), the actual receipt or nonreceipt of BAH-WITH, BAH-WITHOUT, or BAH-DIFF has no relationship to that obligation.

c. Where a soldier's entitlement to BAH-WITH or BAH-DIFF is based solely on the financial support the soldier provides to a family member, the soldier's entitlement to this allowance is only authorized if the monthly financial support provided by the soldier is at least the amount of BAH-DIFF. The Defense Finance and Accounting Service (DFAS) may cancel a soldier's entitlement to BAH-WITH or BAH-DIFF and recoup past payments of BAH-WITH or BAH-DIFF when a soldier's monthly financial support is less than BAH-DIFF regardless of the current residence of the supported family member, or, if the supported family member is a child, regardless of the soldier's marital status when the child was born (see DOD 7000.14-R, para 260406B).

d. Soldiers who comply with the DOD 7000.14-R in providing the required amount of financial support may receive BAH-WITH even if the court order is silent on support or releases the soldier from the responsibility of supporting the family member. Normally, a soldier is not entitled to BAH-WITH on behalf of a former spouse or stepchildren after the divorce. BAH-WITH is not authorized when the soldier or the supported family is residing in Government family housing. Also, if two soldier-parents are providing financial support to the same child, only one soldier is entitled to BAH-WITH.

#### **1-8. Availability of remedies based on court order**

a. Family members may use the following remedies to enforce court orders requiring financial support from soldiers:

(1) *Garnishment.* Section 659, title 42, United States Code (42 USC 659) authorizes a soldier's military pay, or military retired pay, to be garnished in order to enforce court-ordered financial support obligations for child support or alimony. With regard to soldiers assigned for duty within the Federal Republic of Germany (FRG), an FRG court may garnish a soldier's military pay if it acquired jurisdiction—

(a) Consistent with the provisions of Article 32 of the North Atlantic Treaty Organization (NATO) Supplementary Agreement for Germany.

(b) Pursuant to personal service by a U.S. Marshal in accordance with the Hague Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 (20 UST 361).

(c) By virtue of the soldier voluntarily appearing before the court in person or through counsel.

(2) *Involuntary allotment for child support and alimony.* In the absence of a garnishment order, 42 USC 665 authorizes an involuntary allotment from an active duty soldier's military pay and allowances to enforce court-ordered financial support obligations when the soldier has failed to make court-ordered child support, or court-ordered child support and alimony payments for two months, or in a total amount equal to, or in excess of, that amount for two months. Also, the failure to make such payments must be established by a notice to DFAS from an agent, attorney, or other authorized official of a state having in effect a plan approved under part D of title IV of the Social Security Act (see 42 USC 651-664), who has the duty or authority under the plan to seek recovery of the financial support owed, or from a court or agent of the court that has authority to issue an order against the soldier for financial support of a child.

b. 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.

#### **1-9. 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, paternity, and related matters. Unless otherwise authorized by AR 27-3, paragraph 2-5, a person pursuing a paternity claim against a soldier, or a child born out of wedlock before paternity is established or formally acknowledged, is not entitled to legal assistance. Once paternity has been established, the child is eligible for legal assistance under AR 27-3, paragraph 2-5. 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, paragraph 1-4b(3) or g(2)(c).

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, paternity, 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 27–26, app B, Rule 1.10, and AR 27–3, para 4–9).

*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, para 3–7*c*(2) and *d*(2)).

## **1–10. Records**

*a.* Files, records, and forms relating to this regulation do not include those maintained pursuant to AR 27–3, chapter 5, 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.

*b.* Maintenance and disposition of all nonlegal-assistance-client files, records, and forms relating to this regulation are governed by AR 25–400–2. Release of information to the public is governed by AR 27–40, AR 25–55, and AR 340–21. Also see paragraph 3–2 regarding release of information in response to inquiries.

## **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, paternity, 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 paternity inquiries**

*a.* Soldiers will comply with the financial support provisions of court orders arising from paternity. In the absence of a court order identifying a soldier as the father of a child, a male soldier has no legal obligation under this regulation to provide financial support to a child alleged to have been born to him and the child’s mother out of wedlock (see app B, para B–1). If there is a court order establishing paternity, but not directing financial support, the soldier will provide support as required by paragraph 2–6.

*b.* For purposes of establishing paternity, the definition of a court order includes actions that are the functional equivalent under applicable state law to a judicial determination of paternity (see glossary, sect II). Commanders should seek legal advice from their servicing SJA office when determining whether there is a functional equivalent to a judicial determination of paternity.

*c.* A foreign court order establishing paternity will be honored if the court had proper jurisdiction. If the financial support provisions of such a foreign court order are unenforceable under paragraph 2–4*c*, 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.

*d.* A soldier who admits paternity and agrees to provide financial support may, under certain circumstances, obtain BAH–DIFF (see DODFMR paras 260412A and 260416B).

*e.* Even if a soldier admits paternity and agrees to provide financial support, he or she may terminate financial support at any time for any reason in the absence of a court order. 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 pay office (MPO) 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 2-6 and para B-2).

*b. Written financial support agreement.* If a signed written financial support agreement exists, the amount of financial support specified in such an agreement controls (see app B, para B-2). A written financial support agreement is any written document (such as a separation agreement or property settlement agreement, a letter, or a series of letters) signed and evidencing an agreement to provide financial support.

(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. Commanders should seek legal advice from their servicing SJA office if they have any questions concerning the terms 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 his or her 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 order**

*a.* Soldiers will comply with the financial support provisions of all court orders (see para 2-5a(1) and app B, para B-3).

*b.* Failure of a soldier to comply with a financial support or related provision of a court 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.

*c.* A soldier is not required by this regulation to comply with a foreign court order on financial support except in either of the following situations:

(1) The foreign court order has been recognized and enforced by a court within the United States.

(2) 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. (For the purpose of this provision, this regulation enforces court orders on financial support issued by FRG courts with regard to soldiers assigned to and present for duty within the FRG.)

*d.* Nevertheless, a soldier who fails to comply with the financial support provisions of a foreign court order, regardless of whether it is enforced by this regulation, does so at his or her 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.

*e.* 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 he or she is providing financial support in an amount required by the foreign court order or by this regulation, whichever is less.

## 2-5. Punitive provisions regarding financial support

a. Soldiers will not violate any of the following:

- (1) The financial support provision of a court order.
- (2) The financial support provision of a written financial support agreement 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 3-10).

c. A soldier cannot fall into arrears without violating this regulation. Although the collection of arrearages based on violations of subparagraphs a(1) and (2) above may be enforced in court, there is no legal means to collect arrearages based on violations of subparagraph a(3) above. 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 Article 92 UCMJ for failing to make the support payment required by subparagraph a(1), (2), or (3) above 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 applies 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 commander or a SPCMCA has released the soldier under the provisions of paragraphs 2-14b(4) and (5) or 2-15.

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

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$$\text{pro-rata share} = \frac{1}{\text{total number of supported family members}} \times \text{Applicable BAH II-WITH rate}$$

Figure 2-1. Pro-rata share equation

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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 his or her commander from the regulatory requirement to provide financial support pursuant to paragraph 2-13 or 2-15.

d. *Single-family units.* (See app B, para B-4.)

(1) *Family unit not residing in Government family housing.* The soldier will provide financial support in an amount equal to the soldier's BAH II-WITH to the family unit.

(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. When the supported family member(s) move(s) out of Government family housing, the soldier will provide BAH II-WITH.

(3) *Family members within the family unit residing at different locations.* The soldier will provide a pro-rata share of BAH II-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 app B, 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.

(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 II-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 app B, para B-5a).

## **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 II-WITH to the family members will begin on the date that the family members vacate the Government quarters. The obligation to make this support payment begins even if the soldier has not cleared Government quarters 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 paragraph 2-13 or 2-15. Such termination will be effective upon the date release is granted.

## **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 (1) through (7) below 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 *b* and

c. A soldier seeking to make payment by allotment must make payments by alternative means until the allotment takes affect.

- (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 *a* above, 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 3–6*b*(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 *b* above, will be deposited in first-class mail with proper postage affixed, addressed to the individual identified in paragraph *a*, 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 *a*, a soldier may comply with the financial support requirements of paragraph 2–6 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 a contractor-managed housing area (see app B, para B–4*g*).

(b) The principal and interest payments due on any outstanding loan secured by a mortgage on the non-Government housing 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 *d*(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 his or her supported family members, payment for any shortfall will be made as required by paragraph *a*, above. 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 *d*(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 *d*.

### **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 3–8*b*(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 SPCMCA or battalion commander 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. A SPCMCA may release a soldier in any appropriate case under the provisions of paragraph 2-15. However, a battalion commander may release a soldier from a requirement imposed by this regulation only in one of the situations listed in paragraph 2-14.

b. Before granting relief—

(1) A commander, or an officer acting in his or her 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 paragraph 2-13 or 2-15. This burden may also be met if, in reply to a personal letter or telephone call from the commander or an officer acting in his or her behalf, a spouse refuses to provide the documents in his or her 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 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.

(a) Before a request for relief by a battalion commander can be granted, the legal opinion must indicate that the request for release meets one of the grounds for release set forth in paragraph 2-14.

(b) Before a request for release by the SPCMCA can be granted pursuant to paragraph 2-15, the legal review must indicate that the standards set forth in this paragraph and paragraph 2-15 have been met.

c. Notwithstanding the nature of a commander's actions or SJA advice under this regulation, a soldier who fails to comply with the financial support, child custody or visitation, paternity, or related provisions of a court order does so at his or her own peril. A soldier may be arrested and charged with crimes by civil authorities for failing to comply with such provisions or held in contempt of court. Nothing contained in this regulation affects the authority of civil courts to take such actions.

#### **2-13. Authority of the battalion commander to release a soldier from regulatory requirements**

Pursuant to paragraphs 1-4f(7) and 1-4g(6), a battalion commander may release a soldier under his or her command from specific requirements of this regulation in the situations listed in paragraph 2-14. A battalion commander may reconsider and change any decision he or she, or a prior commander, has made under paragraph 2-14. A battalion commander has no authority to release a soldier from a requirement of this regulation in any situation not listed in paragraph 2-14.

#### **2-14. Situations warranting release from regulatory requirements**

a. This paragraph alone lists those situations in which a battalion commander may release a soldier from certain specific requirements of this regulation (see app B, para B-6 for examples).

b. Before granting a request for relief, a battalion commander must comply with the general requirements listed in paragraph 2-12. A battalion commander may release a soldier under his or her command from the cited provisions of this regulation in the following situations:

(1) *An order issued by a court without jurisdiction.* With regard to the regulatory requirement to comply with a court order establishing paternity (para 2-2a) or regarding child custody (para 2-11a), a battalion commander may release a soldier from either of these regulatory requirements if the court issuing the order clearly was without jurisdiction to do so. A battalion commander may release a soldier from the regulatory requirement to comply with a court order regarding the financial support of family members. See paragraphs 2-4 and 2-5a(1) if—

(a) The court issuing the order clearly was without jurisdiction to do so; and

(b) The soldier, with regard to those supported family members, at all times has been complying with any of the



following: the financial support provisions of another court order; the financial support provisions of a written financial support agreement; or the financial support requirements of paragraph 2–6.

(2) *A court order without a financial support provision.* A court order without a financial support provision is one that contains no language directing or suggesting that the soldier provide financial support to family members on a periodic or other continuing basis. An order that directs only nominal financial support to family members on a periodic or other continuing basis is not silent. An order that directs financial support on a periodic or other continuing basis, but does not mention an amount, is not silent. (For example, "John Jones will provide financial support to his children, Mary and James.") Where financial support is directed, but an amount is not indicated in a court order, the soldier will provide financial support in accordance with paragraph 2–6 (or as otherwise required by a written financial support agreement or by another court order). If, however, a court order is silent as to the obligation of a soldier to provide financial support to his or her family members, the battalion commander may release a soldier from the regulatory requirement to provide financial support for those family members (see paras 2–4 and 2–5a(1)) if each of the following is true:

(a) A judicial proceeding concerning the marriage (for example, legal separation, divorce, annulment), or a child, or the children from that marriage (for example, for financial support, child custody, visitation) has been initiated.

(b) The court has personal jurisdiction over the soldier and the spouse or other person having custody of the children and the authority to order financial support of the family members concerned.

(c) The court has issued one or more orders, none of which contains a financial support provision.

(d) There is no written financial support agreement or other court order requiring financial support of the family members concerned.

(e) The soldier is not receiving BAH–WITH based solely on the financial support of the family members concerned or agrees to terminate such BAH–WITH effective upon the date released from the support obligation.

(3) *The income of the spouse exceeds the military pay of the soldier.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement (under paras 2–5a(3) and 2–6) to provide financial support to his or her spouse but not from the requirement to provide financial support to the children from that marriage. This does not give the battalion commander authority to release a soldier from the requirement to provide support required by a court order or a written financial support agreement. With regard to the regulatory requirement to provide financial support for a spouse, a battalion commander may release a soldier from this requirement if both paragraphs (a) and (b), below, apply.

(a) The monthly income of the supported spouse exceeds the monthly military pay of the soldier.

(b) The soldier is not receiving BAH–WITH solely on the basis of providing financial support to that spouse or agrees to terminate such BAH–WITH effective upon the date released from the support obligation.

(c) For this purpose, military pay refers to the basic pay authorized under the law for a soldier based on his or her pay grade and time in service before deductions are taken for taxes, voluntary and involuntary allotments, garnishment, and other such matters. Military pay does not include military allowances or wages from off-duty employment. The income of the non-service member spouse will be based on his or her wages before deductions are taken for taxes, voluntary allotments, and garnishments, together with income from all other sources, such as interest, dividends, and profits derived from property in that spouse's possession.

(4) *This soldier has been the victim of substantial abuse.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement to provide financial support to his or her spouse (see paras 2–5a(3) and 2–6) but not from the requirement to provide financial support to the children from that marriage. This does not give the battalion commander authority to release a soldier from the requirement to provide support required by a court order or a written financial support agreement. With regard to the regulatory requirement to provide financial support for a spouse, a battalion commander may release a soldier from this requirement if paragraphs (a) through (c), below, all apply—

(a) An instance of abuse committed by the supported spouse against the soldier has been substantiated by either of the following:

1. A family advocacy case management team, acting pursuant to AR 608–18.

2. A court as evidenced by a judgment amounting to a conviction or by the issuance of a permanent restraining order (or a temporary restraining order then in effect) against the supported spouse.

(b) The instance of abuse did not involve a mutual affray or an act of physical abuse by the soldier against his or her spouse (substantiated by a family advocacy case management team or court judgment or order).

(c) The soldier is not receiving BAH–WITH solely on the basis of providing financial support to that spouse or agrees to terminate such BAH–WITH effective upon the date released from the support obligation.

(5) *The supported family member is in jail.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement to provide financial support to a family member who is incarcerated in any penal institution, regardless of the reason for his or her incarceration. This does not give the battalion commander authority to release a soldier from the requirement to provide support required by a court order or a written financial support agreement. With regard to the regulatory requirement to provide financial support for family members (see paras

2-5a(3) and 2-6), a battalion commander may release a soldier from this requirement regarding a particular family member if both paragraphs a and b, below, apply—

(a) The family member presently is in jail.

(b) The soldier is not receiving BAH-WITH solely on the basis of providing financial support to the family member concerned or agrees to terminate such BAH-WITH effective upon the date released from the support obligation.

(6) *Regulatory support has been provided to the spouse for 18 months.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement to provide financial support to his or her spouse (see paras 2-5a(3) and 2-6) but not from the requirement to provide financial support to the children from that marriage. This does not give the battalion commander authority to release a soldier from the requirement to provide support required by a court order or a written financial support agreement. With regard to the regulatory requirement to provide financial support for a spouse, a battalion commander may release a soldier from this requirement if paragraphs (a) through (e), below, all apply—

(a) The husband and wife have been separated for 18 months.

(b) The soldier has made the financial support required by this regulation for the entire 18 months

(c) Civilian courts are available and would have jurisdiction to order financial support. A foreign court will meet this requirement only if its judgment would have continuing effect even if the soldier leaves the jurisdiction (see para 2-4c).

(d) The soldier has not acted in any manner to avoid service of process or otherwise to prevent a court from ruling on the issue of support.

(e) The soldier is not receiving BAH-WITH solely on the basis of providing financial support to the family member concerned or agrees to terminate such BAH-WITH effective upon the date released from the support obligation.

(7) *The supported child is in custody of another who is not the lawful custodian.* This subparagraph authorizes a battalion commander to release a soldier from the regulatory requirement to provide financial support to his or her child if the child is in the custody of another person who is not the lawful custodian of that child. With regard to the regulatory requirement to provide financial support for family members (see paras 2-5a(3) and 2-6), a battalion commander may release a soldier from this requirement regarding a particular child if—

(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 then the lawful custodian of the child; and

(c) The soldier is diligently pursuing legal means to obtain physical custody of the child.

## **2-15. Authority of the Special Court-Martial Convening Authority to release a soldier from regulatory requirements**

a. Pursuant to paragraphs 1-4e(4), 1-4f(8), and 1-4g(6), a SPCMCA may release a soldier under his or her 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 SPCMCA 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) A reduction in the amount of monthly support requirement.

(3) A credit towards the regulatory support requirement.

c. A SPCMCA 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. Prior to granting a release, the SPCMCA must obtain a written legal opinion that a release is legally sufficient and complies with the requirements of this regulation (see para 2-12b(3)).

d. These cases will depend on the unique facts for each individual case; accordingly, it would not be appropriate to provide examples in appendix B.

## **Chapter 3 Command Responses to Inquiries**

### **3-1. General**

a. For purposes of this regulation, an inquiry is any telephone call, letter, facsimile transmission, e-mail, 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, paternity, 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. Inquiries received under provisions of this regulation will be directed to the company commander of the soldier concerned. An inquiry alleging a repeated or continuing violation of this regulation will be referred to the battalion commander for appropriate action. Each inquiry under provisions of this regulation will be considered individually by the soldier's company or battalion commander, as appropriate.

c. The person receiving an inquiry will acknowledge, by letter, e-mail, or telephone call followed by a confirmatory letter, the receipt of any inquiry that contains insufficient information upon which to base a reply. The acknowledgment should indicate the information that is needed before a complete reply may be provided. For example, if the person making the inquiry has provided insufficient information to identify the soldier who is the subject of the inquiry, the person making the inquiry should be asked to furnish the soldier's social security number (SSN) or full name and present unit of assignment. If, on the other hand, there is a dispute over the terms of a separation agreement or court order, the family member should be asked to provide the agreement or order so that it may be reviewed.

d. The company commander will personally review each inquiry concerning a soldier assigned to his or her command. The commander will personally sign each written reply to an inquiry (see para 1-4g(5)) except those required to be signed by the battalion commander (see para 1-4f(6)). The content and timing of the reply will comply with this chapter (see paras 3-5 through 3-9).

e. If the person who is the subject of the inquiry is not assigned to, or has been reassigned from, the command receiving the inquiry, the company commander of the unit receiving the inquiry will notify the writer of the new unit of assignment and will forward the inquiry to the commander or department having authority to take action.

(1) If the inquiry concerns a soldier who has been reassigned, the inquiry will be forwarded to the company commander of the soldier's new unit of assignment. Also, the company commander of the unit receiving the inquiry will inform the person making the inquiry within 14 days of its receipt that his or her inquiry has been forwarded. The person making the inquiry will also be informed of the soldier's new unit of assignment and reporting date.

(2) Inquiries about persons other than active duty soldiers and their family members will be answered in the following manner:

(a) *Reserve, retired, or discharged soldiers.* The person making the inquiry will be provided general information on the procedures to follow in locating the Reserve, retired, or discharged soldier and on resolving the matters raised in the inquiry.

(b) *Other military members.* Inquiries concerning military members of the Air Force, the Navy, the Marine Corps, or the Coast Guard will be forwarded to the appropriate military department for reply.

### 3-2. Release of information

a. AR 340-21 contains procedures for releasing information from personnel records. This paragraph contains additional guidance on releasing information in response to inquiries under provisions of this regulation.

b. Before being questioned or counseled in response to an inquiry under provisions of this regulation, soldiers will be given the opportunity to complete DA Form 5459 (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries).

c. No information may be released from a soldier's personnel records without his or her consent except as follows:

(1) *To personnel within the Department of Defense (DOD) with an official need to know that information in the actual performance of their duties.* Information released to such officials will not be further disclosed except as authorized by AR 340-21 and this paragraph.

(2) *Pursuant to the written request of the head of a law enforcement agency.* The authority to make such a request on behalf of an agency head may be delegated, but Army officials will not accept a request signed below "section chief." Any release of information under this provision must first be coordinated with the SJA office.

(3) *To Congress or a committee thereof.* This provision only applies to requests by a congressional committee or subcommittee. It does not apply to requests by individual members of Congress. Any material to be released under this provision should be forwarded through appropriate channels to the Office, Chief of Legislative Liaison, for release to Congress.

(4) *Pursuant to an order from a court of competent jurisdiction.* The order must be signed by a judge; an order signed by an attorney, court clerk, caseworker, or such other official is not acceptable. Any release of information under this provision must first be coordinated with the SJA office.

(5) *In the case of a bona fide emergency affecting the health or safety of an individual.* In such a case, the information released will be limited to that necessary to handle the emergency; the official releasing the information should take all reasonable steps to verify the identity of the person making the request. Any release of information under this provision should be coordinated with the SJA office.

(6) *As otherwise required by the Privacy Act (5 USC 552a(b)).* The official acting on the request will obtain legal advice from the SJA prior to such release.

(7) *Information that would constitute a "clearly unwarranted invasion of personal privacy."*

(a) The following information generally may not be released:

1. Home addresses and telephone numbers.
2. Names of spouses, children, or other relatives.

3. Marital status, race, ethnic group, religion, or date of birth.
4. Social security number.
5. Height, weight, or physical or medical data.

(b) The official acting on a request will obtain legal advice from the SJA before releasing any information from a personnel file that deviates from the foregoing guidance or that includes facts from those files not discussed in this guidance.

d. A soldier may obtain access to his or her own information contained in files, records, or forms maintained pursuant to this regulation.

### **3-3. Questioning soldiers**

a. When an inquiry under this regulation is received, the company or battalion commander, as appropriate, will counsel the soldier who is the subject of the inquiry.

(1) Since most inquiries provide a basis for suspecting a potential violation of this regulation, and therefore a violation of UCMJ, Art. 92 (which prohibits violations of lawful general regulations), soldiers should be advised of their rights under UCMJ, Art. 31 before they are questioned (or counseled) about such inquiries.

(2) The content of an inquiry may also provide a basis for suspecting a soldier of violating other punitive provisions of the UCMJ. These suspected violations, for which a UCMJ, Art. 31 rights advisement should also precede any questioning, include, but are not limited to, the following:

- (a) Assaulting or willfully disobeying a superior commissioned officer, UCMJ, Art. 90.
- (b) Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer, UCMJ, Art. 91.
- (c) False official statements, UCMJ, Art. 107.
- (d) Carnal knowledge, UCMJ, Art. 120.
- (e) Uttering a check without sufficient funds, UCMJ, Art. 123a.
- (f) Fraud against the United States, UCMJ, Art. 132.
- (g) Conduct unbecoming an officer, UCMJ, Art. 133.
- (h) Adultery, UCMJ, Art. 134.
- (i) Bigamy, UCMJ, Art. 134.
- (j) Wrongful cohabitation, UCMJ, Art. 134.
- (k) Dishonorably failing to pay debts, UCMJ, Art. 134.

(3) The content of an inquiry may also provide a basis for suspecting a soldier of violating applicable state laws that prohibit the abduction of children by a parent or the financial nonsupport of family members in violation of existing court orders. Since these laws may apply to soldiers under UCMJ, Art. 134, and The Assimilative Crimes Act, 18 USC 13, soldiers suspected of such violations should first be advised of their rights under UCMJ, Art. 31, before questioning.

(4) Since this regulation provides a basis for ordering a soldier to take, or refrain from taking, certain actions (for example, to initiate a voluntary allotment in response to previous violations of this regulation, to return a child to his or her lawful custodian), UCMJ, Art. 31, rights advisement should precede any questioning of a soldier when the content of an inquiry provides a basis for suspecting a soldier of violating the order of a superior commissioned or noncommissioned officer under UCMJ, Art. 90 or 91, respectively.

b. If a soldier asserts his or her right to remain silent under UCMJ, Art. 31 the commander should refrain from questioning the soldier further and consider other available evidence before taking the actions required under this regulation.

### **3-4. Counseling and related actions**

a. Upon receipt of an inquiry about an assigned soldier, the company or battalion commander, as appropriate, will inform the soldier about the nature of the inquiry.

b. Before responding to the inquiry, the commander will gather information to determine whether or not a violation of this regulation or other applicable laws has occurred. A commander will also question the soldier who is the subject of the inquiry (see para 3-3). Based on the information obtained from all sources, including, in appropriate cases, legal advice from the servicing SJA office, the commander will determine—

- (1) The type of counseling, if any, the soldier should receive.

(a) At a minimum, the company or battalion commander, as appropriate, will counsel the soldier regarding any substantiated violation of this regulation and the soldier's legal obligations under this regulation. In counseling the soldier, the commander will explain the applicable provisions of this regulation and the actions the soldier must take to comply with this regulation.

- (b) In appropriate cases, the commander may refer a soldier to an attorney for legal assistance.

(2) The content of orders or warnings, if any, to be given to the soldier to foster compliance with this regulation in the future.

(3) The type of action, if any, to be taken against the soldier based on any past or continuing violation of this regulation or applicable laws in the past (see paras 3–3*a* and 3–10).

(4) The content of the reply to be made to the inquiry (see paras 3–5 through 3–9).

### **3–5. Standard requirements for all replies**

*a.* The company or battalion commander, as appropriate, will provide complete and accurate information in a timely manner in reply to all inquiries under provisions of this regulation (see paras 1–4*f*(1) and 1–4*g*(1)).

(1) The responsible commander will send a reply in response to each inquiry within 14 days of its receipt.

(2) Any local coordination requirement that may exist within a particular command should not delay the timeliness of a required reply.

*b.* Each reply to an inquiry will contain the specific information required by paragraphs 3–6 through 3–9, as appropriate, together with the following information:

(1) The name, rank, and organization of the commander who personally counseled the soldier who is subject of the inquiry, together with the following information regarding the commander:

(*a*) Postal mailing address (this may include an e-mail address).

(*b*) Commercial telephone number (and defense switch network (DSN) telephone number if the reply is sent to a person within the military).

(2) A statement as to whether the soldier has authorized the release outside the DOD of information obtained from a system of records (see para 3–2). The soldier’s decision regarding the release of information should be recorded on DA Form 5459.

(3) If the soldier consents, a statement as to whether the soldier admits that he or she has an obligation to take certain action under this regulation and, if so, the nature of that action and, if not, why not.

*c.* All replies to inquiries will also provide information that is helpful and responsive to all the questions asked to the extent that such information is releasable pursuant to paragraph 3–2. Replies to inquiries from family members, or persons or agencies acting on behalf of family members, should include advice on other courses of action (beyond enforcement of this regulation) that may be taken in obtaining the relief on the particular subject of the inquiry.

(1) Depending on the nature and source of an inquiry, family members may initially be advised to consult a legal assistance attorney, a lawyer in private practice, or a child support enforcement agency.

(2) Family members already receiving legal or other help may also be advised, depending on the nature of the relief being sought, that they may initiate legal actions in court to obtain child support, alimony, a division of marital property, child custody or visitation, or to garnish military pay, or to have military pay and allowances involuntarily allotted.

(3) A commander will enforce this regulation against soldiers without regard to other courses of action that may be available to family members in obtaining the relief they are seeking (see para 3–10).

### **3–6. Financial nonsupport inquiries**

*a.* The company or battalion commander, as appropriate, will fully investigate every inquiry alleging financial nonsupport on the part of a soldier and provide complete, accurate, and timely information to the individual making the inquiry. The commander should seek legal advice from the servicing SJA office if in doubt as to the requirements or application of this regulation in a particular case. This advice should not come from a legal assistance attorney who advocates the client’s interests.

*b.* In the course of the investigation, the commander will take the following actions as appropriate:

(1) If a soldier denies he or she has an obligation to provide financial support to a spouse or children for any reason, the commander will determine why the soldier believes he or she does not have a financial support obligation to the family member(s) in question.

(2) If the soldier admits the obligation, but asserts that he or she has been providing financial support as required by this regulation, the commander should request the soldier to provide proof of such payments. Cancelled personal checks and leave and earnings statements (LESs) reflecting voluntary allotments are acceptable proof. Postal or bank money orders receipts accompanied by a sworn statement from the soldier that the money orders were sent to the family member(s) are also acceptable. Receipts signed by the recipient or other proof that cash payments were made are also acceptable. In appropriate cases, the commander should ask the soldier to present evidence indicating that the family member(s) in question cashed the money orders. The commander should seek legal advice from the servicing SJA office if in doubt as to whether the soldier has presented enough proof to support his or her assertion that financial support payments were made.

(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 company or battalion commander, as appropriate, will order the soldier to comply with this regulation. The order should specify—

(*a*) That financial support is to be provided not later than a specified date (no later than 30 days following receipt of the inquiry).

(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, including the address to which payment will be sent.

(d) The method of payment (for example, voluntary allotment, personal check, 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 3-10).

(5) If a soldier has been or is receiving BAH-WITH or BAH-DIFF and not paying financial support to a dependent on whose behalf BAH is received, the commander should notify the appropriate MPO so that excess BAH payments to which the soldier is not entitled may be stopped and excess BAH payments to which the soldier was not entitled may be collected (see para 1-7c and DODFMR para 260406B).

(6) In appropriate cases, the commander should recommend that the soldier talk with a legal assistance attorney if the soldier is mistaken or in doubt as to his or her obligation under this regulation.

c. In replying to an inquiry alleging financial nonsupport, the commander will provide the information required by paragraph 3-5 and, to the extent permitted by paragraph 3-2, the following:

(1) A statement as to whether the soldier admits that he or she has 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 he or she failed to provide financial support as required by this regulation.

(a) If the soldier admits the obligation but asserts that he or she has 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; 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, and the complete address of the payee.

(b) If the soldier admits that he or she 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. The commander should provide the dates and amounts of the checks or money orders to be sent to the family member; or if the voluntary allotment will be initiated on behalf of the family member, the date the allotment was or will be initiated, the amount and effective date of the voluntary allotment, and the complete address of the payee. If a voluntary allotment will be initiated, the special arrangements that the soldier has made to provide immediate financial support during the interim period pending receipt of the first voluntary allotment check should be indicated. The commander should state whether the soldier has been ordered to comply with this regulation in the future and, if so, the details of the order (see para 3-6b(3)).

### **3-7. Paternity inquiries**

a. The company or battalion commander, as appropriate, will fully investigate every inquiry alleging paternity on the part of a soldier and provide complete, accurate and timely information to the individual making the inquiry. The commander should seek legal advice from the servicing SJA office if in doubt as to the requirements or application of this regulation in a particular case. This advice should not come from a legal assistance attorney who advocates the client's interests.

b. The commander will follow the procedures in paragraph 3-6 in responding to inquiries where a court order already exists identifying the soldier as the father.

c. In the course of the investigation, the commander will take the following actions as appropriate:

(1) A commander will inform a soldier who is the subject of a paternity inquiry of his legal and moral obligations, if any, and refer him to an attorney for legal assistance if he has questions about his legal rights. A referral to legal assistance is appropriate regardless of whether the soldier admits paternity. A commander will urge the soldier to provide financial support to the child if, after legal consultation, the soldier admits paternity.

(2) In cases where a soldier admits paternity and agrees to provide financial support, the commander will—

(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. The soldier must present the MPO with proof of parentage (a birth certificate, a court order establishing paternity, or a signed statement of parentage from the soldier (see DODFMR, para 260412A)).

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

(c) Assist the soldier or mother of the child in obtaining a military identification card for the child (see AR 600-8-14, para 4-9).

(d) Consistent with military requirements, allow the soldier to take ordinary leave in order to marry the mother of the child, if leave is requested for this purpose. The expense of any travel, including travel to and from military installations located outside the United States, is the responsibility of the soldier.

(3) In cases where a soldier has provided financial support for the child in the past but now denies paternity or has stopped or decreased the amount of financial support being provided, the commander should follow the procedures in paragraph 3-6b(5).

d. In replying to an inquiry alleging paternity, the commander will provide the information required by paragraph 3-5 and, to the extent permitted by para 3-2, the following:

(1) In cases where a soldier refuses to answer questions about a paternity inquiry, denies paternity, or admits paternity 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 paternity and financial support can only be resolved in a court having jurisdiction over the soldier.

(2) In cases where a soldier admits paternity 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 (for example, voluntary allotment, monthly check).

### **3-8. Child custody inquiries**

a. The company or battalion commander, as appropriate, will fully investigate every inquiry about a child custody, visitation, or related matter and provide complete, accurate, and timely information to the individual making the inquiry. The commander should seek legal advice from the servicing SJA office if in doubt regarding the requirements or application of this regulation in a particular case. This advice should not come from a legal assistance attorney who advocates the client's interests.

b. In the course of the investigation, the commander will take the following actions as appropriate:

(1) If the soldier denies that he or she, or someone acting on the soldier's behalf, has physical custody of the child(ren) in question, the commander will 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 commander will determine why the soldier believes he or she does 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 3-10).

(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 3-9c).

(5) In appropriate cases, the commander should recommend that the soldier talk with a legal assistance attorney if the soldier is mistaken or in doubt as to his or her obligation under this regulation.

c. In replying to an inquiry about child custody, visitation, or a related matter, the commander will provide the information required by paragraph 3-5 and, to the extent permitted by paragraph 3-2, the following:

(1) A statement as to whether the soldier admits that he or she, 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 in the soldier's behalf has physical custody of the child(ren) in question, the commander will inform the person making an inquiry of his or her determination.

(3) If the soldier or someone acting in his or her 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 in his or her behalf has the legal right to physical custody of the child(ren), the commander should advise the person making the inquiry of his or her determination.

### **3-9. 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 3-10, 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 3-10b(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 3–10*b*(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.* A reply to an inquiry on matters related to financial support, child custody, or paternity (for example, location of the soldier or family member, visitation with the child, payment of arrearages on court-ordered financial support, court-ordered blood tests) will, depending on the nature of the inquiry, follow the general guidance provided in paragraphs 3–5 through 3–8.

### **3–10. 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 paternity 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 his or her advance return to the United States.

(*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 for filing in soldier's military personnel records jacket or official military personnel file (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 3–10*b*(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.

## **Chapter 4**

### **Requests For Assistance From Government Officials Based On Court Orders**

#### **4–1. General**

*a.* This chapter implements DOD Directive 5525.9, but only with regard to soldiers and family members stationed or residing outside of the United States on requests for assistance from U.S. Federal, state, and local government officials based on court orders arising from financial support, child custody and visitation, paternity, and related cases. With



regard to a family member residing outside of the United States, this chapter applies regardless of whether the family member is command sponsored by the Army or one of the other military departments.

*b.* This regulation does not apply to requests for assistance from Government officials based on court orders concerning DOD or DA civilian employees who are not also family members. Guidance on responding to DA appropriated and nonappropriated-fund civilian employees and members of their families should be obtained from the servicing civilian personnel advisory center (CPAC) for the employee's command; or, the Assistant G-1 for Civilian Personnel Policy, 111 Army Pentagon, Washington, DC 20310-0111, as appropriate.

*c.* This regulation also does not apply to requests for assistance concerning criminal offenses not arising from a financial support, child custody or visitation, paternity, or a related case. For example, a request for assistance on a criminal offense involving rape, carnal knowledge, or larceny is not governed by this regulation. Guidance on responding to such requests should be obtained from the Security Force Protection and Law Enforcement Division, Deputy Chief of Staff, G-3, ATTN: DAMO-ODL, 400 Army Pentagon, Washington, DC 20310-0400 (see AR 190-9 and AR 630-10).

#### **4-2. Content of a request for assistance**

*a.* A request for assistance from a Government official based on a court order is any request for help from a court, or a U.S. Federal, state, or local government official, concerning a soldier or family member stationed or residing outside of the United States who has been charged with, or convicted of, a felony in a court, has been held in contempt by a court for a failure to obey the court's order, or has been ordered to show cause why he or she should not be held in contempt for failing to obey the court's order. The felony, contempt, or order to show cause must arise from a financial support, child custody or visitation, paternity, or related case.

*b.* The request must be based on an order issued by a court of competent jurisdiction that appears valid on its face and is signed by a judge.

*c.* The request for assistance must request help, not just information from the Army. The help requested need not be realistic, warranted, or possible in order to require action under this chapter. Requests for assistance include, but are not limited to, requests for the following:

(1) Return of the soldier or family member to the jurisdiction of the court in question, or to any location within the United States, such as a port of entry.

(2) Reassignment of the soldier to any location within the United States.

(3) Curtailment of a military assignment outside of the United States or a denial of a request to extend the period of such an assignment.

(4) Removal of command sponsorship for family members, including removal from a position of employment with DA or one of the other military departments.

(5) Compliance by the soldier or family member with any court order.

*d.* An inquiry that is not from a Government official or that is not based on a court order as described in this chapter will be handled in accordance with other applicable provisions of this regulation.

#### **4-3. Responding to a request for assistance**

*a.* A request for assistance requires action in accordance with this chapter as soon as it is received by HQDA or a subordinate Army command or activity.

*b.* Any commander or SJA receiving or responding to a court-related request for assistance will promptly take the actions required by this chapter.

*c.* Consistent with mission requirements, applicable international agreements, ongoing military investigations, or courts-martial, commanders, in close consultation with their servicing SJA's office, will—

(1) Afford the subject of the request the opportunity to provide evidence of legal efforts to resist the court order or to otherwise show legitimate cause for noncompliance.

(2) Attempt to resolve the matter to the satisfaction of the court without the return or other action affecting the soldier or family member.

*d.* If the matter cannot be resolved with the court without return of the subject to the United States, the following actions will be initiated or taken:

(1) If the subject of the request is a soldier and—

(a) If the request pertains to a felony, contempt, or order to show cause involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, the company commander will order the soldier (pursuant to UCMJ, Art. 14) to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return providing for transportation, and escort, if desired, of the soldier from such port of entry to the jurisdiction of the party requesting return. Absent unusual circumstances, the company commander will provide at least 10 days notice to the requesting party before the soldier's return to the selected port of entry. The company commander should authorize a military escort for the soldier to the port of debarkation when the requesting party is providing escort from the port of entry. The company commander will promptly report any action taken under this paragraph through command channels to his or her

GCMCA. A request for exception from this requirement, together with supporting reasons, must be promptly forwarded for decision through the GCMCA in accordance with paragraph 4-4.

(b) If the request does not pertain to a felony, contempt, or order to show cause involving the unlawful or contemptuous removal of a child from the jurisdiction of the court, or the custody of a parent or another person awarded custody by court order, the company commander will forward the matter with recommendations to the GCMCA of the soldier for action. The GCMCA will evaluate the facts and circumstances of each particular case in consultation with his or her SJA. Following legal consultation, the GCMCA may, if he or she deems appropriate, order the soldier to return expeditiously to an appropriate port of entry in accordance with paragraph 4-3d(1)(a). If it is determined that the facts of the case have merit but do not warrant the immediate return of the soldier, action will be taken to insure that the soldier neither extends the current assignment nor is transferred to another assignment outside of the United States. This may include the revocation of all such orders already published. These actions may be modified upon the soldier's resolution of the underlying complaint.

(2) If the subject of the request is a family member, the company commander of the soldier involved will forward the matter with recommendations to the soldier's GCMCA for action. The GCMCA will evaluate the facts and circumstances of each particular case in consultation with his or her SJA. Following legal consultation, the GCMCA, or an officer acting on his or her behalf, will strongly encourage the family member to comply with the court order. If the family member fails to comply with the court order, the GCMCA, or other official, as appropriate, may take such actions as may be warranted by the situation, including, but not limited to—

(a) Withdrawal of command sponsorship if the family members of the soldier are command-sponsored.

(b) Adverse action, up to and including removal from the Federal service by a supervisor, if the family member is a DA civilian employee, and provided that the agency is able to demonstrate that the action taken is for such cause as will promote the efficiency of the service. A proposal to take such adverse actions must be worked through the appropriate CPAC and coordinated with the SJA.

(c) Curtailment of the soldier's military assignment outside of the United States, or denial of a request to extend such assignment beyond the normal tour length for that assignment, or denial of a request to transfer to another assignment outside of the United States, including cancellation of all such orders already published.

e. A soldier is entitled to full transportation and per diem allowances to an appropriate port of entry if traveling pursuant to a contempt-of-court or show-cause order, as described in this chapter. However, this does not alleviate the requesting party's requirement to pay travel expenses from the appropriate U.S. port of entry. Any travel expenses received from the requesting party must be deducted from the soldier's entitlement to travel and per diem allowances. The soldier will be returned in a temporary duty (TDY) status, unless a permanent change of station (PCS) move is appropriate.

f. A soldier may be authorized to return to the United States at his or her own expense in a leave status in order to resolve the matter, and should be encouraged to do so if consistent with mission requirements, in the event the requesting party cannot or will not provide transportation to the soldier from the U.S. port of entry to the jurisdiction of the party.

#### **4-4. Requests for delay and exceptions**

a. The GCMCA may request a delay in taking action (not to exceed 90 days) in order to afford the subject of the request for assistance a reasonable opportunity to provide evidence of legal efforts to resist the court order or to otherwise show legitimate cause for noncompliance. The GCMCA must forward the request for delay within 30 days of the date the request for assistance is first received in accordance with paragraph 4-4b.

b. The GCMCA will submit requests for delays and exceptions through the Legal Assistance Policy Division, Office of The Judge Advocate General, 1777 North Kent Street, Rosslyn, VA 22209-2194 to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)), Washington, DC 20310-0111.

(1) The ASA(M&RA) is the approval authority for all requests for delay. The ASA(M&RA) will provide The Under Secretary for Defense (Personnel and Readiness) (USD(P&R)) with a report (copies furnished to General Counsel (GC), Office of the Secretary of Defense (OSD)) of any action taken by ASA(M&RA) on a request for delay received pursuant to this chapter.

(2) The USD(P&R) is the approval authority for all requests for exception. The ASA(M&RA) will forward all requests for exception to USD(P&R), 4000 Defense Pentagon, Washington, DC 20301-4000 (with copies furnished to the GC, OSD) for approval.

#### **4-5. Other actions**

A commander taking action under this chapter is not precluded from taking other actions warranted by the facts or circumstances of a particular case. These actions may include military justice and adverse personnel actions based on violations of the punitive provisions of this regulation or the UCMJ (see para 3-10).

## **Chapter 5**

### **Command Briefings**

#### **5–1. General**

Commanders will periodically brief soldiers on their obligations under this regulation. In addition, soldiers will also be briefed, to the extent warranted by their personal situations, on these obligations during mobilization training, while processing under the Soldier Readiness Program (SRP) and during preparation for overseas movements, and in conjunction with mobilization, deployment, and PCS.

#### **5–2. Content of briefing**

*a.* Commanders will seek assistance from the servicing SJA office on the scope and content of group or individual briefings given on the requirements of this regulation. SJA offices may provide information papers and other materials to be used in informing soldiers of their obligations under this regulation and related laws.

*b.* Briefings should include information on the following:

(1) A soldier's failure to provide financial support to family members on a monthly or otherwise continuing basis is a violation of this lawful general regulation and is punishable under the UCMJ. Violations may be punished even though they may have occurred before a family member makes an inquiry or the soldier has been individually counseled.

(2) A voluntary allotment is the preferred method of providing financial support to family members not residing with the soldier. The allotment should be in an amount not less than that required under this regulation.

(3) A soldier who takes a child or children (including stepchildren) to his or her next duty location station in violation of an existing court order is also violating this lawful general regulation. For such misconduct, a soldier may be punished under the UCMJ for violating this regulation, held in contempt of court and punished for violating the court order, and prosecuted and punished under an applicable state parental kidnapping statute. In addition, the soldier will likely be held responsible for paying the costs of returning any child wrongfully taken to the parent who is the lawful custodian.

(4) Soldiers and family members are required to comply with visitation and all other provisions of court orders.

(5) Each soldier or family member who is living apart from the other parent of his or her child or children, has a responsibility to work out realistic arrangements with the other parent, or to seek an amendment of an existing court order on financial support, child custody or visitation, or related obligations where strict compliance with the provisions of the existing court order may be impractical due to a change in circumstances or residence or because of financial or other reasons.

#### **5–3. Related actions**

In addition to briefing soldiers periodically on the requirements of this regulation, commanders will provide soldiers with the forms needed to initiate voluntary allotments during processing under the SRP and for mobilization, deployment, and PCS. Commanders will also ensure that voluntary allotment forms are promptly processed.

## **Appendix A References**

### **Section I Required Publications**

#### **AR 27-3**

The Army Legal Assistance Program. (Cited in paras 1-9a, b, c, and 1-10a.)

#### **AR 27-26**

Rules of Professional Conduct for Lawyers. (Cited in para 1-9b.)

#### **DOD 7000.14-R**

Department of Defense Financial Management Regulation. (Cited in paras 1-7a, c, and d) (<http://www.dtic.mil/comptroller/fmr/>)

### **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 20-1**

Inspector General Activities and Procedures

#### **AR 25-55**

The Department of the Army Freedom of Information Act Program

#### **AR 25-400-2**

The Army Records Information Management System (ARIMS)

#### **AR 27-40**

Litigation

#### **AR 190-9**

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

#### **AR 340-21**

The Army Privacy Program

#### **AR 600-8-14**

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

#### **AR 600-8-24**

Officer Transfers and Discharges

#### **AR 600-37**

Unfavorable Information

#### **AR 601-280**

Army Retention Program

#### **AR 608-18**

The Army Family Advocacy Program

#### **AR 614-11**

Temporary Duty (TDY)

#### **AR 630-10**

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

## **AR 635–200**

Enlisted Personnel

### **DOD Directive 5525.9**

Compliance of DOD Members, Employees, and Family Members Outside the United States With Court Orders (<http://www.dtic.mil/whs/directives/>)

### **UCMJ**

Uniform Code of Military Justice, Articles 14, 19, 31, 90, 91, 92, 107, 120, 123a, 132–134

### **3 USC**

The President (<http://www.gpoaccess.gov/uscode/index.html>)

### **5 USC 552a(b)**

Privacy Act (<http://www.gpoaccess.gov/uscode/index.html>)

### **10 USC**

Armed Forces (<http://www.gpoaccess.gov/uscode/index.html>)

### **18 USC 13**

The Assimilative Crimes Act (<http://www.gpoaccess.gov/uscode/index.html>)

### **42 USC 651–664**

Title IV of the Social Security Act (<http://www.gpoaccess.gov/uscode/index.html>)

### **20 UST 361**

Hague Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 (<http://www.hcch.net/e/conventions/text14e.html>)

## **Section III**

### **Prescribed Forms**

The following form is available on the Army Electronic Library (AEL) CD-ROM (EM 001) and the USAPA Web site (<http://www.usapa.army.mil>).

#### **DA Form 5459**

Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries. (Prescribed in paras 3–2b and 3–5b(2)).

## **Section IV**

### **Referenced Forms**

This section contains no entries.

## **Appendix B**

### **Examples of Paternity and Support Cases**

#### **B–1. Financial support in paternity cases**

*a. Example 1.* A soldier acknowledged paternity of a child born out of wedlock and had been providing voluntary support. There is no court order or functional equivalent of a court order establishing paternity. 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. However, if the soldier is assigned outside of the United States, the commander (and military personnel officials) should take steps, if consistent with other military requirements, to ensure that the soldier's assignment outside of the United States is not extended and that the soldier is not assigned to another duty assignment outside of the United States (see paras 1–4c and 1–5c(2)). Pursuant to paragraphs 3–6b(5) and 3–7c(3), the commander should contact the appropriate MPO 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 acknowledgement of paternity consisted of his

agreement to being named as the father on the birth certificate when the child was born a year ago. The father 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 the father and not challenging the document within a specified number of days is the judicial equivalent of a court order establishing paternity, then there would be a legal order establishing paternity pursuant to paragraph 2-2b. 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 Federal Republic of Germany (FRG) obtains a judgment in an FRG court as a result of a paternity action declaring a soldier to be the father of the woman's child and ordering him to pay 500 German marks per month in child support. The FRG court acquired jurisdiction over the soldier, who is assigned for duty within the FRG, in accordance with one of the methods indicated in paragraph 1-8a(1). The soldier is required by paragraphs 2-2a, 2-4, and 2-5a(1) to provide financial support to the child in the dollar equivalent of 500 German marks per month. In addition, while stationed in Germany, the soldier may have the dollar equivalent of 500 German marks 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 status of forces 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 paternity remains valid; however, the financial support portion of the order will not be enforceable (see para 2-4c). 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 soldier feels that the German court did not have jurisdiction to establish paternity, he may apply to the battalion commander for release of this obligation under paragraph 2-14. 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.

*e. Example 5.* A woman who has a child born out of wedlock subsequently marries a soldier she claims is the father of the child. There was no court order or functional equivalent of a court order regarding paternity of the child prior to the marriage. The soldier and his wife subsequently separate, and the wife and child move into a private apartment. The soldier claims that he is not the biological father of the child. The soldier's subsequent marriage to the mother of the child has no effect on the soldier's obligation to provide financial support to that child under this regulation. The soldier has no obligation to provide financial support to the child in the absence of a court order or legal adoption of the child (see para 2-2).

## **B-2. Financial support by financial support agreement**

*a. Example 1.* A soldier's wife and child move out of Government family quarters. There is no court order. She and the child move into her parents' home in another state. In a letter to the soldier's commander, the wife complains that the soldier orally agreed to provide her 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 wife BAH II-WITH.

*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 wife in which he offered to pay his wife an amount less than BAH-WITH. Unless the soldier can present a signed letter from his wife 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 wife 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 wife and two children reside in Government family quarters. The soldier and his wife have both signed a marital separation agreement in which the soldier has agreed to pay his wife spousal and child support in an amount equal to twice his BAH-WITH. The soldier now refuses to pay the full amount of support stated in the agreement because his family has not yet vacated Government family quarters. The wife complains to her husband's commander. The commander should direct the soldier to pay the amount stated in the agreement. The soldier's failure to move his family out of Government family quarters is unrelated to his financial support obligation in the absence of a provision in the marital separation agreement to the contrary.

*d. Example 4.* A soldier and his wife 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 wife 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 wife 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 wife 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. She returns, together with their one child, who was born in Virginia, to the home of her parents in the FRG. The soldier obtains a divorce from his wife in the United States. The court does not order financial support, and there is no written financial support agreement. She now requests through her husband's commander in Virginia that she be provided BAH-WITH for herself and their child. The soldier has one family member (the child) to support. In accordance with paragraph 2-6b, c, and d(3), the commander should direct the soldier to provide his child BAH II-WITH.

*b. Example 2.* Assume the same facts as in example 1, except in this case the wife 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 paragraph 2-4(e), 2-6b, c, and d(3), the commander should direct the soldier to pay BAH-WITH unless the FRG court order has been recognized and enforced by a court within the United States. (See the definition of a court order in the glossary, and para 2-4c.)

### **B-4. Financial support in single family units**

*a. Example 1.* Husband and wife, both soldiers, have three children. One child resides with the husband and two reside with the wife. 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 husband, and the wife, 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 wife must pay BAH-DIFF to her husband on behalf of the children. If the wife fails to pay this amount, she 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 wife separates from her soldier husband on 15 June and moves out of Government family housing into an apartment of her 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 wife with one-half (15/30 as the pro-rata calculation) of his BAH II-WITH for the month of June and the full amount of the BAH II-WITH for the subsequent months. It does not matter that the soldier will not be eligible for BAH-WITH until 1 August. The soldier must mail a check or money order for an amount equal to no less than one-half of his BAH II-WITH to his wife for the month of June not later than the first day of July. If he decides to pay her in cash, he must personally deliver the cash to her not later than the first day of July (see paras 2-5a(3), 2-6d(1), 2-7a(3)(a) and (5), 2-8, and 2-9b and c.).

*d. Example 4.* A civilian husband separates from his soldier wife on 1 April and moves out of their non-Government housing into an apartment of his own. Their child is in the temporary custody of the wife's mother. There is no court order or written financial support agreement. The soldier must mail or deliver an amount equal to no less than one-half of her BAH II-WITH to her husband and one-half of her BAH II-WITH to her mother on behalf of the child not later than the first day of May (see paras 2-5a(3), 2-6b and d(3), and 2-9b and c).

*e. Example 5.* A civilian wife separates from her soldier husband and moves out of Government family housing into an apartment she shares with another man. The wife and husband have two children. One child resides with the wife and the other with the husband. There is no court order or written financial support agreement. The soldier has a total of three family members. Under paragraph 2-6a, the soldier's battalion commander may not release the soldier from the requirement of this regulation to provide financial support to his wife because of alleged (or established) marital misconduct on the part of the wife. The soldier must provide two-thirds of BAH II-WITH to his wife for her support and their child who resides with her (see paras 2-5a(3), and 2-6b and d(3)).

*f. Example 6.* A soldier and his wife decide to separate. They have one child. There is no agreement, and the wife and child continue to reside in Government quarters. The soldier has no financial support obligation to either the wife or child under this regulation (see para 2-6d(2)).

*g. Example 7.* Assume the same facts as in example 6 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. If the soldier's BAH is equal to, or more than, the BAH II for his grade, he has no financial support obligation to either the wife or child under this regulation (see para 2-9d). If the BAH is less than the appropriate BAH II, the soldier must pay that difference to the spouse.

## **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 wife. 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 II-WITH of family members.) In accordance with the court order, the soldier must pay a total of \$400 to his former wife and to the children from that marriage. He must also provide financial support to his present wife and their child in an amount equal to two-fifths of BAH II-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.

*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 II-WITH, and the current spouse should receive 3/4 of the BAH II-WITH as support for herself and the two children (see paras 2-5a(3) and 2-6b, c(1), and e(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 financial support obligation to his spouse and the children from his present marriage since they reside in Government family housing (see paras 2-5a(1) and (3) and 2-6e(1)).

*e. Example 5.* A soldier is married to a woman in the Air Force. They have two children from this marriage, both of whom reside with the wife 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 wife, and she is not counted in determining the pro-rata shares of the supported children. The financial support obligation of the wife 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)).

## **B-6. Release from regulatory requirements**

*a. Example 1.* A married soldier claims that her husband has physically abused her. There has been no investigation of this claim. They have no children. She moves out of their rented apartment and into another apartment of her own. He now seeks financial support from her through her commander. She is required by paragraphs 2-5a(3) and 2-6d(1) to provide BAH II-WITH to her husband each month. Under paragraph 2-6a and 2-14b(4), the alleged misconduct of the husband is not a basis for the soldier to refuse to provide financial support to her husband. Pursuant to paragraph 2-9d, she may, if she signed the lease of the apartment in which her husband is now residing, pay all or part of the rent on that apartment, up to the BAH-WITH amount, instead of making direct financial support payments to her husband. To the extent that the rent is less than BAH II-WITH, she would have to pay the difference to her husband.

*b. Example 2.* Assume the same facts as in example 1. However, in this example, a family advocacy case management team has substantiated an instance of physical abuse by the husband against the soldier. Based on this finding, the battalion commander may, pursuant to paragraph 2-14b(4), release the soldier from the requirement to provide financial support to her husband. The battalion commander, however, must first ascertain that the soldier is not drawing any more than BAH-WITHOUT. If she is receiving BAH-WITH based solely on the support of her husband,



she must either continue to provide BAH II–WITH to her husband or agree to terminate the BAH–WITH effective the date that the commander approves the request for release.

*c. Example 3.* Assume the same facts as in example 1. However, in this example, the husband’s monthly income exceeds the monthly military pay of the soldier. If the commander is satisfied by a preponderance of the evidence based on his or her review of the evidence (for example, pay vouchers, a copy of the family’s joint income tax return) that the husband’s monthly income exceeds the soldier’s monthly military pay, he or she may, pursuant to paragraph 2–14b(3), release the soldier from the requirement to provide financial support to her husband. The commander, however, must first ascertain that the soldier is not drawing any more than BAH–WITHOUT. If she is receiving BAH–WITH based solely on the support of her husband, then she must either continue to provide BAH II–WITH to her husband or agree to terminate the BAH–WITH effective the date that the commander approves the request for release.

*d. Example 4.* Assume the same facts as in Example 1. However, in this example, the soldier has obtained a restraining order against her husband based on his alleged abusive behavior toward her. The battalion commander may, pursuant to paragraph 2–14b(4), release the soldier from the requirement to provide financial support to her husband if the commander is satisfied by a preponderance of the evidence that the husband physically abused the soldier, that this abuse is the basis for the restraining order against the husband, that this instance of abuse did not involve a mutual affray or an act of physical abuse by the soldier against the husband (substantiated by a family advocacy case management team or court judgment or order), and that the soldier is not receiving BAH–WITH solely on the basis of providing financial support to that spouse. If she is receiving BAH–WITH based solely on the support of her husband, she must either continue to provide BAH II–WITH to her husband or agree to terminate the BAH–WITH effective the date that the commander approves the request for release. However, if the restraining order is no longer in effect, or the abuse involved a mutual affray, then she must continue to provide BAH II–WITH to her husband.

*e. Example 5.* A soldier is sued by her former husband for custody of their two children. She loses in a contested case. Her former husband now seeks financial support through her commander from her on behalf of their two children. If the battalion commander is satisfied by a preponderance of the evidence based on his or her review of the evidence (for example, review of the court papers following consultation with the SJA) that the husband could have also asked the court for financial support of the children during the child custody proceeding, the commander may, pursuant to paragraph 2–14b(2), release the soldier from the obligation to provide financial support for her children since the court order (that is, the child custody order) does not contain a financial support provision. The commander, however, must first ascertain that the soldier is not drawing any more than BAH–WITHOUT. If she is receiving BAH–WITH based solely on the support of her children, she must continue to provide BAH II–WITH to her husband on behalf of their children or agree to terminate the BAH–WITH effective the date that the commander approves the request for release.

*f. Example 6.* A soldier and his spouse separated in Germany on 1 May. There are no children of the marriage, and the wife returned to the United States without reaching any support agreement. Pursuant to paragraph 2–6, the soldier provided support to his wife in an amount equal to his BAH II–WITH. After 18 months (1 November of the following year), the soldier requested to be released from this support requirement. In his request, the soldier states that the state court where his wife resides could enter a support order, and that he will change his BAH–WITH to BAH–WITHOUT effective on the date that the release is approved. After contacting the spouse to see if she has any information relevant to this request and obtaining a legal review, the battalion commander can approve the request pursuant to paragraph 2–14b(6).

*g. Example 7.* Assume the same facts as in example 6. However, in this example, the spouse responds that she has filed suit for divorce and the soldier has refused to accept service of process. The battalion commander cannot approve the release because the soldier’s actions are preventing a court from hearing the case and determining if support is appropriate (see para 2–14b(6)(d)).

*h. Example 8.* Assume the same facts as in example 7. However, in this example, the soldier has accepted service but is requesting a delay under the provisions of the Soldier’s and Sailor’s Civil Relief Act. Again, the commander cannot approve the request, because the soldier’s actions are preventing a court from hearing the case and determining if support is appropriate (see para 2–14b(6)(d)).

*i. Example 9.* Assume the same facts as in example 1, except in this case the Virginia divorce order also granted the soldier legal and physical custody of his child. The child remains with the mother in Germany. The battalion commander may, pursuant to paragraph 2–14b(7), release the soldier from the obligation to provide financial support to his child if the commander is satisfied, based on the court order, that the soldier is the lawful custodian of the child; the child, without the soldier’s consent, is in the physical custody of another who is not the lawful custodian of the child; and the soldier is diligently pursuing legal means to obtain physical custody of the child.

## **Glossary**

### **Section I**

#### **Abbreviations**

**ASA(M&RA)**

The Assistant Secretary of the Army (Manpower and Reserve Affairs)

**CG**

Commanding General

**CPAC**

Civilian Personnel Advisory Center

**DA**

Department of the Army

**DFAS**

Defense Finance and Accounting Service

**DOD**

Department of Defense

**DSN**

Defense Switch Network

**GC**

General Counsel

**GCMCA**

General Court-Martial Convening Authority

**HQDA**

Headquarters, Department of the Army

**LES**

leave and earnings statement

**MPO**

military pay office

**NATO**

North Atlantic Treaty Organization

**OTJAG**

Office of The Judge Advocate General

**PCS**

permanent change of station

**SJA**

Staff Judge Advocate

**SPCMCA**

Special Court(s)-Martial Convening Authority

**SRP**

Soldier Readiness Program

**SSN**

social security number

**TDY**

temporary duty

**TJAG**

The Judge Advocate General

**UCMJ**

Uniform Code of Military Justice

**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.

**Basic allowance for housing**

A specific amount of money prescribed by law that a soldier, based on his or her pay grade, geographic duty location, and dependency status, is authorized to receive each month under certain circumstances when the soldier or his or her family member(s) are not occupying Government family or other Government housing. Basic allowance for housing is authorized at either the with-dependents rate or at the without-dependents rate. Except as indicated in this regulation, the authorization or receipt of basic allowance for housing, or the occupancy or nonoccupancy of Government-family housing or other Government housing, has no effect on the obligation of soldiers to provide financial support to their family members under this regulation.

**Basic allowance for housing, table II**

The basic allowance for housing without the geographic duty location factor. This may be at either the with-dependent rate or at the without-dependent rate.

**Battalion commander**

The officer in the soldier's chain of command who is in command of an Army battalion or battalion-size, or equivalent, unit or activity. Such officer usually exercises summary court-martial jurisdiction and/or field-grade Article 15, UCMJ authority over assigned or attached soldiers. With regard to soldiers assigned or attached for duty to U.S. Navy, U.S. Air Force, or other U.S. military installations, or to joint activities, the battalion commander is the officer exercising field-grade Article 15, UCMJ authority over those soldiers.

**Child custody**

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

**Command sponsorship**

Personal transportation, transportation of household goods, Government family housing, banking privileges, dependent schools, post exchange and commissary privileges, and other logistical support (except for medical care) provided by the Army, or one of the other military departments, to a soldier's family members residing outside of the United States because the soldier is assigned to a military unit outside of the United States.

**Company commander**

The first officer in the chain of command who could exercise Article 15, UCMJ authority over the soldier.

**Continuing violation**

A violation of any provision of this regulation by a soldier that has not been resolved by the company commander within a reasonable period of time.

**Court order**

As used in this regulation—a. 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, on any of the following or related matters: (1) Directing or denying financial support, or that is silent on the issue of financial support. (2) Granting or denying child custody or visitation as well as restraining orders and injunctions preventing contact with present (or former) spouses and other family members. (3) Identifying a person as the father of a child or directing that person to provide financial support on behalf of the child. (4) Directing a person's arrest, finding a person in contempt of court, or directing a person to show cause why he or

she should not be held in contempt of court, for a violation or other conduct relating to any of the foregoing matters. b. A court order also includes a stay of a court order on any of the foregoing matters. c. With regard to financial support or paternity, a court order also includes an order, recognized as valid and enforceable under applicable state law, issued by an authorized official of a child support enforcement agency. d. With regard to paternity, 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 the father on a birth certificate, or acknowledging paternity in an affidavit will have the legal affect of a court order if the alleged father fails to challenge the document within a specified number of days. In those cases, the documents will be treated as a court order establishing paternity. e. A court order also includes an order signed by a judge directing the release of information from a system of records. f. Unless the context indicates otherwise, a court order does not include a foreign court order except in the following situations: (1) The foreign court order has been recognized and enforced by a court within the United States. (2) The United States has agreed in a treaty or international agreement to honor valid court orders entered by courts of a particular foreign nation. (For the purpose of this provision, a court order includes one issued by an FRG court with regard to a soldier assigned for duty within the FRG, or a family member residing within the FRG.) g. Notwithstanding the foregoing, a foreign court order adjudging a divorce, even though not recognized and enforced by a court within the United States or honored as valid by treaty or international agreement, is presumed valid, for the purpose of this regulation, with regard to the divorce and the termination of any obligation to provide financial support to a former spouse in accordance with this regulation. This presumption is rebutted if the foreign court order of divorce has been declared invalid by a court within the United States. h. A court order is effective on the date of the order unless otherwise indicated in the order or by applicable law or court rule. i. A court order is presumed valid in the absence of evidence to the contrary.

### **Divorce**

A final decree of divorce or dissolution of marriage that completely severs the marital relationship, as opposed to limited divorce, legal separation, or so-called divorce from table and bed or bed and board. A divorce includes an annulment.

### **Divorce decree**

A court order granting a divorce.

### **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. A soldier's minor children from the present marriage.
- c. A soldier's children by any former marriage if the soldier has a current obligation to provide support to that child. This may include children legally adopted by the soldier. (A family member does not include the child of a soldier who has been legally adopted by another person.)
- d. Minor children born out of wedlock to—(1) A female soldier. (2) A male soldier if evidenced by a court order, or the functional equivalent of a court order, identifying the soldier as the father or if the soldier is providing support to the child under the terms of this regulation.
- e. Any other person (for example, parent, stepchild) for whom the soldier has a legal obligation to provide financial support under the applicable law. This includes court orders directing the soldier to provide financial support to a child 18 years of age or older or to some other person. 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.

### **Felony**

A criminal offense that is punishable by incarceration for more than one year, regardless of the sentence that is actually imposed for commission of that offense.

### **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 nonmarital property between spouses or former spouses or financial payments made as part of a property settlement.

### **Financial support agreement**

An oral or written agreement between husband and wife to provide financial support. There is no requirement that the written financial support agreement appear in any specific form. Any signed document, or group of documents, that evidences the party's agreement to the terms of support will be sufficient. Examples of a written financial support

agreement include, but are not limited to, a separation agreement or property settlement agreement, a letter or a series of letters signed and evidencing an agreement to provide financial support. A written financial support agreement also includes a written agreement expressly relieving a soldier of the obligation to provide financial support to a spouse.

### **Financial support provision**

The provision in a court order or separation agreement directing the soldier to provide financial support to a family member or denying or waiving such support.

### **Financial support requirement**

The amount of financial support a soldier is required to pay to his or her 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 his or her 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 his or her family members for which, because of such occupancy, the military member loses entitlement to BAH under the Department of Defense Financial Management Regulation. This does not include on-post housing that the soldier leases from a Government-approved private contractor.

### **Interlocutory order**

Any court order, such as a provisional or temporary order, that is not a final decision on the whole controversy.

### **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 his or her 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.

**Repeated violation**

A second or subsequent violation of any particular provision of this regulation within a twelve-month period by a soldier who has been previously counseled or punished for violating this regulation.

**Service of process**

The delivery by authorized means of notice to an individual that a legal action has been initiated against them.

**Soldier**

As used in this regulation, the term "soldier" includes all male and female commissioned officers, warrant officers, and enlisted personnel serving in the U.S. Army; it also includes cadets at the U.S. Military Academy and Army personnel confined at the U.S. Disciplinary Barracks or other confinement facilities who are receiving full or partial pay and allowances.

**Soldier Readiness Program**

An Army program that establishes a set of administrative requirements that must be met before individual soldier or unit movement during peacetime and mobilization. This program replaces the preparation of replacements for overseas movement qualification.

**Special court-martial convening authority**

The Army officer who, by virtue of command, exercises special court-martial convening authority over the soldier.

**Sponsor**

A soldier whose family members are entitled to command sponsorship.

**Staff Judge Advocate**

The principal legal advisor on the staff of an Active Component commander who possesses general court-martial convening authority. As used in this regulation, this term also includes command judge advocates and post judge advocates, and other attorneys officially acting in their behalf. This term does not include an attorney providing legal assistance to that client.

**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.

**System of records**

A group of records under the control of DA from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual.

**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-DIFF**

difference in amount between table II basic allowance for housing at the with-dependents rate and table II basic allowance for housing 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

**BAH II**

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

**BAH II-WITH**

basic allowance for housing, table II at the with-dependents rate

**BAH II-WITHOUT**

basic allowance for housing, table II at the without-dependents rate

**BAQ**

basic allowance for quarters

**DODFMR**

Department of Defense Financial Management Regulation

**FRG**

Federal Republic of Germany

**OSD**

Office of the Secretary of Defense

**USD(P&R)**

The Under Secretary for Defense (Personnel and Readiness)

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