

## **Understanding Your Financial Obligations Under Army Regulation 608-99**

Couples going through a separation experience a great deal of anxiety especially due to the potential financial impact. If a couple ultimately divorces, the final divorce order will establish any financial obligations. However, parties may physically separate weeks, months, or even years before a divorce is finalized.

There are interim options for establishing financial support, such as negotiating a separation agreement or seeking interim support orders from a court. However, these methods take time and may delay or prevent the parties from physically separating which may be in the best interests of the family unit.

The Army addresses this gap through Army Regulation (AR) 608-99, Family Support, Child Custody, and Parentage Regulation, dated November 30, 2020. This regulation, among other things, sets forth the Army's policy, responsibilities, and guidance on financial support for a Soldier's family members in the event of a physical separation.

Below are some answers to common questions regarding AR 608-99.

### ***When do the financial support obligations under AR 608-99 apply?***

Where no court order or signed separation agreement exists, AR 608-99's financial support obligations apply once a Soldier and their spouse are no longer living in the same dwelling. (AR 608-99, para. 2-7).

For Servicemembers that are geographically separated from their family members (e.g., deployments, unaccompanied PCS moves, etc.), the financial support obligations apply once a family member or an authorized representative complains that the Soldier is not providing the proper support (AR 608-99, para. 2-1).

### ***If the regulation applies, am I obligated to pay? What happens if I don't pay?***

Yes. If you and your spouse are living in separate dwellings and there is no written agreement or court order addressing financial support, then you are obligated to pay. (AR 608-99, para. 2-5). Additionally, failure to comply with AR 608-99 is punitive and is considered a violation of Uniform Code of Military Justice (UCMJ) Article 92 (Failure to Obey Order or Regulation).

### ***Can my command really order me to pay?***

Yes. AR 608-99, para. 3-4 states that if a commander determines that the Soldier has failed to comply or indicates an unwillingness to comply, the commander will order the Soldier to comply. If you have been receiving allowances on behalf your dependents without supporting them, the commander is to notify finance so that those allowances can be stopped and recouped.

If you fail to comply after receiving an order from your commander, it is a violation of UCMJ Article 90 (Willfully Disobeying Superior Commissioned Officer).

### ***How much will I owe?***

If you think AR 608-99 might apply to your situation reach out to your local Legal Assistance Office for assistance in calculating the proper amount. However, AR 608-99, para. 2-6 prescribes the following formula to calculate a Soldier's pro-rata obligation.

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

This formula provides the required support per family member. For practical purposes, if the Soldier has a single-family unit, then the monthly amount will be the entire BAH RC/T – WITH rate.

In addition to the above formula, CONUS-stationed Soldiers are obligated to provide Enhanced Interim Financial Support (EIFS) in connection with the first payment. This amount is equal to an additional 25% of the non-locality BAH W/RCT for the Soldier's rank. Note, EIFS is calculated differently for OCONUS-stationed Soldiers.

AR 608-99, para. 2-6 lists several factors that may impact a Soldier's obligation, including:

- whether the family unit is residing in government housing,
- whether the Soldier has other family members covered by existing court orders,
- if the Soldier is paying the rent, water, or utilities on behalf of the family members, and
- whether the spouse is also a Servicemember.

**To ensure you calculate the proper amount, please contact your local Legal Assistance Office.**

### ***What is BAH RC/T – WITH rate?***

This is the Basic Allowance for Housing Reserve Component / Transit with Dependents Rate. More plainly, this is the BAH rate that does not consider the geographic duty location of the Soldier. Thus, this amount may be higher or lower than the Soldier is receiving as their BAH. (AR 608-99, para. 1-9).

### ***When do I have to pay?***

The first payment is due on the first of the month following the separation and is pro-rated based on the number of days the parties lived separately during the first month. For example, if you or your spouse moves out of the home on 15 September, your first payment

will be due on 1 October and will be pro-rated to cover 15 out of 30 days in September. (AR 608-99, para 2-6, 2-7).

***How long do I have to continue payment?***

Your obligation continues until there is a signed agreement, court addressing financial support, relief is granted under the regulation, or you reconcile with your spouse.

***What if my spouse moves out, but our children remain with me?***

Under AR 608-99, para. 2-6 you are still obligated to pay your spouse as they are a dependent at issue. However, you will not pay the full BAH RC/T – WITH rate. Instead, you will pay a fraction of that based on how many dependents are at issue.

For example, if you have 2 children with your spouse and only your spouse moves out. Your obligation would be calculated as 1/3 of the BAH R/CT – WITH rate because you have 3 dependents (spouse and two children), but only 1 dependent at issue (spouse).

***Do I have options to seek relief from the obligation?***

Soldiers may seek relief under AR 608-99 para. 2-12, 2-13, and 2-14. Generally, relief must be sought from a battalion-level commander or higher. Additionally, before granting relief, the commander must seek a written legal opinion from the servicing Office of the Staff Judge Advocate that the release is legally sufficient and complies with the regulation, any court orders, and any written support agreements.

AR 608-99 provides guidance on situations that may warrant relief, including:

- the spouse making more income than the Soldier,
- the Soldier being the victim of substantial abuse by the spouse,
- regulatory support being provided for 18 or more months, and
- a court with jurisdiction to order financial support for the spouse has issued one or more orders, none of which has a financial support provision. (AR 608-99, para. 2-13).

Soldiers seeking relief should consult with their local Legal Assistance Office for guidance.

**Additional Information or Questions:**

Contact the Aberdeen Proving Ground Client Services Division at 410-278-1583.

Additionally, if your command or unit would like our office to conduct a Q&A session or presentation on this topic, please reach out to our office and we'd be happy to schedule. Any session would be to provide general guidance or information. If you have individual questions, please reach out to our office and schedule an appointment.