

Remission or Cancellation of Debt

1. AR 600-4, paragraph 1-6 allows Soldiers to apply for reduction or cancellation of their debts to the U.S. Government if these debts were incurred due to injustice. Soldiers may also apply to reduce or cancel debts to end extreme hardship or undue suffering resulting from the recoupment of the indebtedness. Applications must be based on injustice, hardship, or both.

a. Injustice: AR 600-4, paragraph 1-13 covers debts arising because a Soldier has been erroneously overpaid. Injustice entails wrongs or misrepresentation on the part of the Government caused by persons acting in their official capacity. To prove an injustice took place, the Soldier must show that he did not know and could not have known of the payment errors. The Soldiers must also prove that he or she made appropriate inquiries to the proper authority but was informed that the payment was correct. Debts arising from recoupment for fraudulent conduct and debts arising from Article 15 and court-martial punishments may **not** be remitted under this regulation. Debts arising from liability established in a Financial Liability Investigation of Property Loss (FLIPL) conducted under AR 735-5 may qualify for cancellation or remission of indebtedness under some circumstances.

b. Hardship: AR 600-4, paragraph 1-14 discusses the cancellation of a debt to the government based solely on hardship. The regulation defines hardship as repayment that greatly affects the welfare of a Soldier, his or her Family Members, or both. Hardship also exists if repayment causes undue suffering to the Soldier and his Family. When applying for reduction or cancellation for hardship, the Soldier acknowledges the debts as valid but that payment would result in extreme hardship to the Soldier and his or her dependents. Soldiers seeking a remission or cancellation of indebtedness based on hardship must document their financial hardship with impact statements and full financial disclosure on their application. Expenses caused by excessively high standards of living or by mishandling of personal finances are not a basis for a hardship remission or cancellation of debt.

2. Debts that may be remitted or cancelled: AR 600-4, paragraph 2-2 lists the type of debt that may be considered for remission or cancellation. These include, but are not limited to: basic allowance for subsistence (BAS); basic allowance for housing (BAH); cost of living allowance (COLA); family separation allowance (FSA); excess leave excess weight of Household goods (HHG); temporary duty (TDY); and temporary lodging allowance (TLA).

3. Debts that will not be remitted or canceled: AR 600-4, paragraph 1-8 lists debts that may not be remitted or cancelled. This includes: when a Soldier's pay is not reduced promptly in connection with forfeiture of pay imposed by a court-martial sentence or under Article 15 of the Uniform Code of Military Justice (UCMJ); after discharge unless the Soldier has reenlisted; if a Soldier will receive less than an honorable discharge at time of separation; when a Soldier is held liable for damage or loss of property to

another branch of service; when debts are due to loss of public funds obtained or converted to own use through fraud, larceny, embezzlement, or other unlawful means; when debts are due to fines imposed by court-martial sentence; and when The amount is \$150 or less and based on hardship only.

4. AR 600-4, chapter 2, covers the Soldier's role in in the application process. Soldiers should complete and promptly submit a DA Form 3508, Application for Remission or Cancellation of Indebtedness. In addition, AR 600-4, paragraph 2-4 lists required and recommended enclosures that a Soldier should include with his or her DA Form3508. When completing this application, Soldiers should be encouraged to seek help from their immediate commanders or a legal assistance attorney.

5. Further, certain retirees and members of the uniformed services may be eligible for the waiver of collection of erroneous payments of pay and allowances under the authority at 10 U.S.C. § 2774. For waiver approval, collection must be determined to be against equity and good conscience and not in the best interest of the United States. Department of Defense Instruction (DoDI) 1340.23 sets out the standards for waiver determinations.

For appointments concerning this and other personal legal matters, please contact the Legal Assistance Branch of the Office of the Staff Judge Advocate located at Building 358, Buffalo Soldier Trail, Defense Language Institute, Presidio of Monterey (831-242-5084 or DSN 768-5084).

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