



# Kaiserslautern (Kleber Kaserne) Legal Assistance Office

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## Child and Family Support Includes 13 Nov 2020 Revisions to AR 608-99

**Regardless of separation, Soldiers are responsible for managing their personal affairs in a manner consistent with the Army's core values.** The Soldier's responsibilities include: (1) maintaining reasonable contact with family members so that their needs and welfare do not become a matter of concern for the Army; (2) conducting themselves in an honorable manner with regard to parental and spousal commitments and responsibilities; (3) providing adequate financial support to family members; and (4) complying with any court orders or written financial agreements. In an effort to ensure each Soldier fulfills his or her responsibilities, the Army created Army Regulation (AR) 608-99, Family Support, Child Custody, and Paternity.

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

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

**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.

**Obligations to Provide Financial Support to Family Members.** There are two types of financial support agreements, oral and written.

**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 AR 608-99.

**Written financial support agreement.** If a signed written financial support agreement exists, the amount of financial support specified in the agreement controls. A written financial support agreement is any written document (such as a separation agreement or property settlement

agreement, a letter, email, or a series of letters or emails) evidencing an intent to create a binding financial support agreement. Ordinarily, informal forms of written communication (for example, text messages and social media posts) do not demonstrate an intent to create a binding agreement. If a written agreement is silent on an amount of financial support, the financial support requirements of AR 608-99 apply (in the absence of a court order or other written financial support agreement that does require a specific amount of financial support).

**Commander's Responsibilities.** Commanders will apply the terms of the agreement as written and will avoid making interpretations that depart from the clear meaning of the agreement. Commanders may rely on other existing documents to determine the specific financial support obligation; that is, if the agreement requires the Soldier to "pay the rent," the commander may consult the lease agreement to determine the amount of the support obligation. Additionally, in order to be enforceable under this regulation, there must be no major dispute as to the meaning of the material terms of the agreement. If portions of the agreement are so ambiguous that the intent of the parties cannot be determined, or if it is clearly apparent that there was no meeting of the minds, the commander is not required by this regulation to enforce the contested provisions. Depending on the individual facts and circumstances of the case, the commander may also find that the entire agreement is unenforceable. These types of disputes are best resolved by state courts – not Army commanders.

**Once Divorce is granted by the Court.** 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: 1) A Soldier is not required to provide financial support to a former spouse unless required to do so by court order; 2) A Soldier is not required to provide financial support to their children beyond the amount required in AR 608-99, para 2-6, unless required to do so by court order. 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.

#### **Financial support required by court or Child Support Enforcement Agency order.**

**Domestic orders.** Soldiers are required to comply with the financial support provisions of all state court or CSEA orders. Failure of a Soldier to comply with a financial support or related provision of a state court or CSEA order (for example, provision of a court order directing a division of property or payment of a particular expense) may also be the basis for a lawful order from a commander to comply with such provision. Orders that are silent regarding support, should not automatically be interpreted to mean that financial support was considered, but rejected. Accordingly, when a court or CSEA order is silent regarding the support requirements for one or more Family members, the Soldier is required to provide support to the un-addressed Family members according to AR 608-99, para 2-6, unless relieved of that obligation by the battalion-level commander pursuant to AR 608-99, para 2-12 through 2-14.

**Foreign orders.** North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) Supplementary Agreement with Germany creates an independent international legal requirement for U.S. Army commanders to secure compliance with German civil judgments and

legally enforceable decisions by German government authorities relating to Soldiers stationed in the FRG. Accordingly, with regard to Soldiers assigned to and present for duty within the FRG, commanders are required to enforce FRG court orders for financial support as well as voluntary acknowledgements of support submitted to German government agencies that have equal effect to a court order under German law.

A Soldier cannot fall into arrears without violating this regulation. Although the collection of arrearages based on violations of AR 608-99 may be enforced in court, there is no legal means to collect arrearages based on violations of subparagraph 2-5a(3). Nevertheless, in all cases, Soldiers should be encouraged, but not ordered, to pay arrearages. Additionally, a Soldier who falls into arrears **may be punished under the provisions of UCMJ, Art. 92 for failing to make the support payment** required by AR 608-99, para 2-5a(1), 2-5a(2), or 2-5a(3) at the time that the support obligation was originally due. Punishment in such instances is based on failure to provide financial support when due, not for failure to pay arrearages.

**Financial support required in the absence of a financial support agreement or court order.** AR 608-99 para 2-6 establishes requirements for **interim financial support** and **enhanced interim financial support for spouses**. Both types of support only apply in the absence of a financial support agreement or a court order containing a financial support provision and until such an agreement is signed or such an order is issued. Allegations or even proof of desertion, adultery, or other marital misconduct, or criminal acts on the part of a spouse will not excuse a Soldier's obligation to comply with the provisions of this regulation unless a battalion-level commander, or higher, has released the Soldier under the provisions of AR 608-99, para 2-12 through 2-14.

**Interim Financial Support.** Under AR 608-99, para 2-6, when the term "pro-rata share" is used with regard to BAH RC/T – WITH, the amount of each such share of BAH RC/T – WITH is calculated using the equation below:

$$\text{Pro Rata Share} = \frac{1}{\text{Total \# of supported family members}} \times \text{Applicable BAH RC/T – WITH Rate}$$

For example, if a Specialist (E-4) has a child from a previous marriage living with the other biological parent and still has to support the current spouse, the formula would be as follows:

$$\text{Pro Rata Share} = \frac{1}{2} \times \$818.40 = \$424.20/\text{month each}$$

### **Single Family units.**

**Family unit not residing in government Family housing.** Except in the situations addressed in AR 608-99, para 2-6d(1)(a), 2-6d(1)(b), and 2-6d(1)(c), the Soldier will provide financial support in an amount equal to the Soldier's BAH RC/T – WITH to the Family unit. When a Soldier stationed overseas receives BAH solely on behalf of unaccompanied Family members who reside in the United States, the actual amount of BAH paid to the Soldier on behalf of those dependents will be used to calculate the support requirement for those dependents, if it is greater than the BAH RC/T – WITH rate. Where one member of the Family unit has a court or CSEA order for support (frequently issued by a local CSEA that has no jurisdiction to order spousal support), and the other members of the Family unit are not addressed in that or any other support order, the Soldier must comply with the court order regarding support to that

Family member. The remaining Family members will be provided a pro-rata share of the BAH RC/T – WITH. The pro-rata share will be paid to the other Family members even if they reside with the Family member receiving support pursuant to a court or CSEA order, and even if the court or CSEA ordered amount is in excess of BAH RC/T – WITH. Where the Soldier has been released by their commander from the regulatory requirement to provide financial support to one or more dependents of the Family unit pursuant to AR 608-99, para 2-12 through 2-14, the amount of support required by para 2-6d(1) will be reduced by the pro-rata share of each Family member whom the Soldier has been released from supporting.

***Family unit residing in government Family housing.*** While the Soldier's Family members are residing in government Family housing, the Soldier is not required to provide additional financial support unless required by AR 608-99 para 2-6f (enhanced interim financial support for spouses). When the supported Family member(s) move(s) out of government Family housing, the Soldier will provide BAH RC/T – WITH.

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

***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:

**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. **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. **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.

***Multiple Family units.*** A Soldier will provide financial support for each Family unit and Family member in the following manner: Family members covered by court orders will be provided financial support in accordance with those court orders. Family members covered by financial support agreements will be provided financial support according to those agreements. Family members residing in government Family housing who are not covered by either a court order or a financial support agreement will not be provided additional financial support unless required by AR 608-99, para 2-6f (enhanced interim financial support for spouses). Each Family member not residing in government Family housing and who is not covered by a court order or a financial support agreement will be provided a pro-rata share of BAH RC/T – WITH. When a Soldier stationed overseas receives BAH solely on behalf of unaccompanied Family members who reside in the United States, the actual amount of BAH paid to the Soldier on behalf of those dependents will be used to calculate the support requirement for those dependents, if it is greater than their pro-rata share of BAH RC/T – WITH. If the Soldier's present spouse is on active duty in one of the military services, the requirements of AR 608-99, para 2-6d(4) apply. 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.

**Enhanced interim financial support for spouses.** Enhanced financial support is temporary and designed to provide for sustenance and additional necessary expenses that initially arise when the Soldier and spouse separate, or when the time to obtain a court order is prolonged because of a lack of access to appropriate courts of competent jurisdiction. Enhanced interim financial support for spouses will be provided by the Soldier in addition to the interim support required by AR 608-99, para 2-6d and 2-6e. Enhanced interim financial support payments will not be made to spouses who are Servicemembers of any component while serving on active duty. Enhanced interim financial support payments will be made in an amount equal to 25% of the BAH RC/T – WITH for the following periods: For those spouses residing in a location subject to the jurisdiction of a state court able to order financial support, the Soldier will make a one-time transitional support payment in conjunction with the first 30 days of interim support provided pursuant to AR 608-99 para 2-6d or 2-6e. If the Soldier fails to make this one-time payment when due, the Soldier's commander is authorized to order the Soldier to make this payment when the command becomes aware of the deficiency. For all other spouses, the Soldier will make this enhanced interim support payment for the period of time the Soldier is providing support pursuant to AR 608-99 para 2-6d or 2-6e and the spouse does not have access to a state court with jurisdiction to order spousal support. Soldiers may not satisfy enhanced interim support payment requirements by directly paying non-government housing expenses on behalf of spouses pursuant to AR 608-99 para 2-9d or by any other in-kind financial support without the written approval of the supported spouse. AR 608-99 para 2-8 applies to enhanced interim financial support. However, the support will only apply to a 30 day period for those spouses residing in a location subject to the jurisdiction of a state court able to order financial support. The spouse may elect to receive two proportional payments over two months, or one lump sum payment on the first of the month for the previous month.

#### **Initiation and termination of financial support obligations.**

*Initiation.* Unless otherwise required by a court order, court-ordered support will be effective as of the date of the order. 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. 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, either party voluntarily leaving the residence, or the Soldier being ordered out of the residence. 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. A Soldier's obligation to pay BAH RC/T – WITH to the Family members will begin on the date that the Family members vacate government Family housing. The obligation to make this support payment begins even if the Soldier has not cleared government Family housing and is not entitled to draw BAH – WITH.

*Termination.* Any obligation to pay court-ordered support will terminate only in accordance with the terms of the court order. Any obligation to pay support pursuant to the terms of a written financial support agreement will terminate only in either of the following events: pursuant to the terms of the agreement or upon the effective date of a court order terminating the marriage or establishing a financial support obligation. Support provided pursuant to the requirements of AR 608-99 para 2-6 will terminate upon any of the following events: upon the effective date of a financial support agreement; upon the effective date of a court order terminating the marriage or

establishing a financial support obligation; by the action of a commander relieving the Soldier of a support obligation under AR 608-99, para 2-12 through 2-14 (such termination will be effective upon the date release is granted); or upon the date the Soldier and supported Family member elect to no longer live apart.

**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.

**Form and timing of financial support payments.** 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 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: 1) Cash, 2) Check, 3) Money order, 4) Electronic fund transfer, 5) Voluntary allotment, 6) Involuntary allotment, or 7) Garnishment (or wage assignment).

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 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. 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, will be deposited in the U.S. mail with proper postage affixed, properly addressed and postmarked no later than the first day of the month following the month to which the financial support payment pertains. *As an exception to AR 608-99, para 2-9a, a Soldier may comply with the financial support requirements of para 2-6d and 2-6e (but not paragraph 2-6f, absent written approval by the supported spouse) by directly paying non-government housing expenses on behalf of Family members if the Family members are residing in non-government housing. Non-government housing expenses are limited to: rent (including payments to privatized housing on a military installation); the principal and interest payments due on any outstanding loan secured by a mortgage on a home in which the Family is residing and the real property taxes and property insurance due under an escrow agreement covering the same property; and essential utilities such as gas, electricity, and water. Non-government housing expenses do not include expenses described in AR 608-99 para 2-9d(1) for which the Soldier is not legally responsible by reason of contract, lease, or loan agreement. Authorized expenses also do not include other housing costs, such as telephone or cable television charges, regardless of whether or the Soldier is legally responsible for their payment.*