



FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office
Keeping You Informed On Personal Legal Affairs

Army Regulation 608-99: Family Support, Child Custody, and Paternity

1. PURPOSE: To explain Army policy, procedures, and individual responsibilities concerning financial support of military family members, child custody, and paternity claims.

2. FACTS:

a. Introduction. AR 608-99, "Family Support, Child Custody, and Paternity," (29 October 2003), outlines Army policy regarding the obligation of Soldiers to support their family members.

b. Soldier Responsibilities. Soldiers shall manage their personal affairs in a manner that does not bring discredit upon themselves or the Army. This responsibility includes: maintaining reasonable contact with family members so that their needs and welfare do not become official matters of concern for the Army; conducting themselves in an honorable manner with regard to parental responsibilities; providing adequate financial support to family members; and compliance with all court orders.

c. Commander Responsibilities. Commanders enforce AR 608-99. Battalion and Company commanders must respond in writing to all inquiries from public officials and private individuals. Generally, commanders may release the following information concerning a Soldier: name; rank; past, present, and future duty assignments; duty address and phone number; and ETS, PCS, retirement, or promotion dates. The following information may not be released: home address and phone number; names of family members; marital status; social security number; or date of birth. Commanders must counsel Soldiers and take other appropriate actions in response to all child custody, paternity, and support inquiries received. This includes investigating the legitimacy of the alleged obligation, seeking advice from the Staff Judge Advocate, and referring the Soldier to Legal Assistance for counseling.

d. General Support Requirements. If there is a written support agreement, court order, or their functional equivalent, the Soldier must provide financial support to his or her dependents as stated in such documents. Absent a court order or written support agreement between the spouses, a Soldier separated from his or her family members shall pay them, at a minimum, the BAH II-WITH rate each month (See chart on page 5). *This obligation is unrelated to whether the Soldier receives BAH or not.*

e. Specific Support Requirements.

- **Court Order:** The amount of support required and specified by a court order must be paid.
- **Written Agreement:** The amount of support agreed to in a written agreement must be paid.

- **Oral Agreement:** If there is an oral agreement and it is being followed, no action is required. If a dispute arises, however, the Soldier will be advised to provide the agreed upon amount. If the Soldier refuses to comply, the Soldier will be required to send the amount of financial support outlined below. Oral agreements can also be problematic because either party can deny that the agreement was made. If possible, always put agreements in writing.
- **Single family unit living on post** (civilian spouse): No additional support is required.
- **Single family living off-post** (civilian spouse): The Soldier's full amount of BAH II-WITH.
- **Multiple family units** (excluding spouses in the military): Each family member is entitled to a pro-rata share of the Soldier's BAH II-WITH. The pro-rata share is determined with the following equation:

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

- **Both spouses are in the Armed Forces:**
 - (a) **If there are no children of the marriage.** No support obligation.
 - (b) **If all the children of the marriage are in the custody of one spouse.** 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.
 - (c) **If custody of the children is split between the two parents.** Neither parent owes a support obligation to the other.

f. Paternity Requirements. Soldiers must comply with the support provisions of court orders in which they are found to be the biological father of a child. If the court order establishing paternity is silent as to support, a Soldier is still be obligated to comply with the support requirements of AR 608-99. If there is no court order identifying a Soldier as the father of a child, a male Soldier has no obligation under AR 608-99 to provide support to such child if it is alleged to be born to him and the child's mother out of wedlock. A Soldier who admits paternity and agrees to provide financial support may, under certain circumstances, obtain BAH-DIFF.

g. Child Custody and Visitation Requirements. Soldiers must comply with all court orders and state laws regarding child custody and visitation, regardless of the age of the children concerned.

h. Penalties for Noncompliance. This regulation is punitive. A Soldier may be punished under the UCMJ or by adverse administrative action for violating: child custody court orders; written financial support agreements, support court orders, or in the absence of the former, support obligations under AR 608-99. A violation of this regulation is 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. Provisions of this regulation may also be the basis for a commissioned, warrant, or noncommissioned officer to issue a lawful order to a Soldier. A Soldier who falls into arrears violates AR 608-99. Punishment for such violations may be based on a failure to provide financial support when due, not for failure to pay arrearages. Although commanders cannot force a Soldier to pay arrearages due to his or her family member(s), Soldiers should be encouraged, but not ordered, to pay them. Commanders shall inform the Soldier, however, that if he or she received BAH and did not use it to support his or her family member(s), DFAS can recoup those past payments

from the Soldier's pay. The Soldier's failure to comply with court ordered support might be the basis for a lawful order to comply with such order.

i. Release from Specific Regulatory Requirements. Battalion commanders may release Soldiers from specific requirements of AR 608-99 in the circumstances listed below. Before such a release is approved, however, the servicing SJA must determine that the release is legally sufficient and complies with AR 608-99, applicable laws, court orders, written financial support requirements, or functional equivalents.

- **The Court had no Jurisdiction** to issue the order *and* the Soldier has, at all times, complied with the financial support provisions of another court order, a written financial agreement, or AR 608-99.
- **The court order is silent regarding the Soldier's obligation to provide financial support to family members** on a periodic or other continuing basis. If that is the case, a battalion commander may release the Soldier from AR 608-99 provided all its other requirements are met. Orders directing only nominal financial support, or directing support without stating an amount, are not silent. In the latter case, the Soldier will provide support in accordance with AR 608-99. (See above)
- **The Supported Spouse's Monthly Income Exceeds that of the Soldier.** If that is the case, a battalion commander may release a Soldier from the support requirements of AR 608-99 if the Soldier is not receiving BAH-WITH solely to provide financial support to that spouse, *and* there is no court order or written agreement for financial support. This does not relieve the Soldier from the responsibility of providing financial support to a dependent child.
- **The Soldier is the Victim of Substantiated Physical Abuse by the Supported Spouse.** A battalion commander may release a Soldier from the support requirements of AR 608-99 if the abuse is substantiated by a family advocacy case manager or a court has issued a temporary or permanent restraining order; the physical abuse does not involve a mutual affray or act of physical abuse by the Soldier; *and* the Soldier is not receiving BAH-WITH solely on the basis of providing support to the spouse. This exception does not relieve the Soldier from providing support to dependent children.
- **The supported family member is in jail *and* the Soldier is not receiving BAH-WITH solely on the basis of providing support to the family member concerned.**
- **The supported child is in custody of another who is not the lawful custodian.** A battalion commander may release a Soldier from the support requirements of AR 608-99 if the Soldier is the lawful custodian of the child; and the child is in the custody of another who is not his or her lawful custodian without the consent of the Soldier; and the Soldier is diligently pursuing legal means to obtain physical custody of the child.
- **Support under AR 608-99 has been provided to the spouse for 18 months.** A battalion commander may release a Soldier from the support requirements of AR 608-99 as to his or her spouse, but not as to his or her children if (a) through (e), below, **all** apply—
 - (a) The husband and wife have been separated for 18 months.
 - (b) The Soldier has paid support required by AR 608-99 for the entire 18 months
 - (c) Civilian courts are available and would have jurisdiction to order financial support.
 - (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 to provide financial support to that spouse or agrees to terminate such BAH-WITH upon the date released from the support obligation.

This provision 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.

j. What is BAH RC/T?

BAH RC/Transit, referred to as BAH-II in AR 608-99, is the equivalent to what used to be Basic Allowance for Quarters (BAQ). It does not vary by geographic location. It is the housing allowance, or is used to calculate the housing allowance, for members in particular circumstances, such as reservists on active duty less than 20 weeks, members with court-ordered child support, and members in confinement. Source: www.dod.mil.dfas.

i. What is BAH-DIFF?

BAH-DIFF is the housing allowance amount for a member who is assigned to single-type quarters and who is authorized a basic allowance for housing solely by reason of the member's payment of child support. A member is not entitled to BAH-DIFF if the monthly rate of that child support is less than the BAH-DIFF. BAH-DIFF is determined by the SECDEF. The original BAH-DIFF amounts were determined by calculating the difference between BAH-II with dependents and BAH-II without dependents for the member's grade. The amounts, originally calculated in 1997, are updated annually based on changes in the Basic Pay tables. For more information contact your finance office or consult Section 260416, Chapter 26 FMR.

k. Questions on AR 608-99. For Soldiers and family members requiring additional information on AR 608-99, please contact the Fort Riley Legal Assistance Office at 239-3117. **Commanders** should contact the Fort Riley Administrative Law Division at 239-2717, or trial counsel.

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FROM COUNSEL is distributed by the Fort Riley Office of the Staff Judge Advocate, Legal Assistance Office, located in Bldg 216, Clausen Hall. **Consult an attorney for specific legal advice for your particular situation.** Our office hours are: 0900 – 1600, Mon – Thur, and 0900 – 1500 on Fri. Call 239-3117 for an appointment. See <http://www.riley.army.mil/Units/Staff/StaffJudgeAdvocate/LegalAssistance.aspx>

2016 Non-Locality BAH Rates

Effective 1 January 2016

Pay Grade	Partial	BAH RC/T*		Differential*
		Without Dependents	With Dependents	
O-10	\$ 50.70	\$ 1,616.70	\$ 1,988.70	\$ 333.60
O-9	\$ 50.70	\$ 1,616.70	\$ 1,988.70	\$ 333.60
O-8	\$ 50.70	\$ 1,616.70	\$ 1,988.70	\$ 333.60
O-7	\$ 50.70	\$ 1,616.70	\$ 1,988.70	\$ 333.60
O-6	\$ 39.60	\$ 1,482.30	\$ 1,790.10	\$ 283.50
O-5	\$ 33.00	\$ 1,427.40	\$ 1,725.90	\$ 274.20
O-4	\$ 26.70	\$ 1,322.40	\$ 1,521.00	\$ 182.40
O-3	\$ 22.20	\$ 1,060.50	\$ 1,258.50	\$ 182.10
O-2	\$ 17.70	\$ 840.30	\$ 1,074.00	\$ 214.80
O-1	\$ 13.20	\$ 721.20	\$ 961.20	\$ 232.20
O3E	\$ 22.20	\$ 1,144.50	\$ 1,353.00	\$ 190.80
O2E	\$ 17.70	\$ 973.50	\$ 1,220.70	\$ 228.30
O1E	\$ 13.20	\$ 846.60	\$ 1,128.30	\$ 267.60
W-5	\$ 25.20	\$ 1,344.00	\$ 1,469.10	\$ 114.00
W-4	\$ 25.20	\$ 1,193.10	\$ 1,346.70	\$ 140.40
W-3	\$ 20.70	\$ 1,003.50	\$ 1,234.50	\$ 211.80
W-2	\$ 15.90	\$ 890.40	\$ 1,134.00	\$ 223.80
W-1	\$ 13.80	\$ 746.70	\$ 981.90	\$ 216.60
E-9	\$ 18.60	\$ 979.80	\$ 1,292.10	\$ 285.90
E-8	\$ 15.30	\$ 900.30	\$ 1,191.90	\$ 267.90
E-7	\$ 12.00	\$ 829.80	\$ 1,106.10	\$ 310.20
E-6	\$ 9.90	\$ 766.80	\$ 1,021.80	\$ 300.00
E-5	\$ 8.70	\$ 689.70	\$ 919.50	\$ 255.30
E-4	\$ 8.10	\$ 600.00	\$ 799.20	\$ 220.50
E-3	\$ 7.80	\$ 557.70	\$ 743.10	\$ 180.90
E-2	\$ 7.20	\$ 531.60	\$ 708.30	\$ 241.50
E-1 >4	\$ 6.90	\$ 531.60	\$ 708.30	\$ 285.90
E-1 <4	\$ 6.90	\$ 531.60	\$ 708.30	\$ 285.90

*BAH RC/Transit rates are adjusted by the average change in housing costs; BAH-DIFF rates are adjusted by the amount of the basic pay raise.