

Cyber Center of Excellence and Fort Eisenhower
Office of the Inspector General

Family Support Request (Non Support Complaint) Guide	
Reference: AR 608-99	Title: Family Support, Child Custody, and Parentage
Published: 13 November 2020	
Army Proponent: TJAG	
Purpose: The purpose of this guide is to assist Commanders when presented with a support request regarding a Soldier in his/her command. This recommended procedure is informed by AR 608-99, Family Support, Child Custody and Paternity, dated 13 November 2020. IAW AR 608-99, commanders are responsible for thoroughly and expeditiously investigating claims of non-support against Soldiers in their command. IAW AR 608-99, a Soldier is required to provide financial support to family Members and to obey court orders on child custody. This obligation exists even if the family is separated geographically because of military service. The dollar amount of this support is measured by what is stated in any court orders or written support agreements. In the absence of a court order or written support agreement containing a financial support provision, a Soldier will provide interim minimum financial support which is based upon an amount equal to the Soldier's Basic Allowance for Housing Reserve Component/Transit at the with-dependents rate (BAH RC/T-WITH) for the Soldier's rank.	
Chapter 3 – Command Responsibilities	
Family support, child custody, or parentage inquiries will be directed to the company-level commander of the Soldier concerned.	
3-2 Investigations	
<input type="checkbox"/> a. Upon receipt of an inquiry concerning an assigned Soldier, the commander will determine if additional information is necessary to resolve the issues presented. The commander should consult with his/her servicing Judge Advocate upon receipt of an inquiry or complaint.	
<input type="checkbox"/> b. If additional information is required, the commander will initiate a preliminary inquiry or administrative investigation, whichever is most appropriate under the circumstances, according to the procedures contained in AR 15-6.	
<input type="checkbox"/> c. Alternatively, the commander may inform the Soldier of the nature of the Family support, child custody, or parentage inquiry without conducting an inquiry or administrative investigation, in order to determine whether the Soldier wishes to voluntarily take the requested action, or provide the requested support. <u>*Prior to approaching a Soldier suspected of any criminal offense, the Soldier should be advised of their rights under UCMJ, Art. 31.</u>	
3-3. Standard requirements for all replies	
<input type="checkbox"/> a. The commander will provide complete and accurate information in a timely manner in reply to all inquiries as applicable to dealing with non-support complaints . The responsible commander should send a reply in response to each inquiry within a reasonable time of receipt and/or upon completion . <i>* Reasonable time is defined as NLT 14 calendar days from notification.</i>	
<input type="checkbox"/> b. Each reply to an inquiry should contain the following information (as applicable and with feedback from the command legal advisor):	
(1) The name, rank, organization, and contact information for the responsible commander.	
(2) A statement as to whether the Soldier has authorized the release outside the DoD of information obtained from a system of records. The Soldier's decision regarding the release of information should be recorded on DA Form 5459 (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries).	
(3) If the Soldier consents, a statement as to whether the Soldier admits that they have an obligation to take certain action under this regulation and, if so; the nature of that action and, if not; why not.	

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(4) A statement as to whether the Soldier admits that they have a financial support obligation to the Family Member in question and, if not; why not.

(5) If the commander determines that the Soldier has no financial support obligation under AR 608–99 to the Family Member(s) in question, the commander should advise the person making the inquiry why no financial support is required.

(6) 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 they failed to provide financial support as required by this regulation.

(7) If the Soldier admits the obligation but asserts that they have 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, and the address the payments were mailed to; 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.

(8) If the Soldier admits that they 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.

c. Replies to inquiries should also provide information that is helpful and responsive to all the questions asked to the extent that such information is releasable pursuant to AR 25–22.

3–4. Financial non-support inquiries

a. If an AR 15–6 proceeding is initiated, the investigation or inquiry should address the following, as appropriate:

(1) If a Soldier denies they have an obligation to provide financial support to a spouse or children for any reason, the investigation will determine why the Soldier believes they do not have a financial support obligation to the Family Member(s) in question.

(2) If the Soldier admits the obligation, but asserts that they have been providing financial support as required by the regulation, the investigating officer (IO) should request the Soldier provide proof of such payments. Cancelled personal checks and leave and earnings statements reflecting voluntary allotments are acceptable proof. Bank records showing electronic funds transfers are also acceptable proof, when combined with other evidence showing the Family Member has access to the receiving bank account.

(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 Commander will order the Soldier to comply with this regulation.** The order should specify—

- (a) That financial support is to be provided not later than the first day of the next month.
- (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.
- (d) The method of payment (for example, voluntary allotment, personal check, electronic funds transfer, 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. The commander should also make efforts to eliminate future or continuing violations.

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(5) If a Soldier has been or is receiving allowances on behalf of dependents, without supporting those dependents, **the commander should** notify the appropriate finance office so that excess allowances may be stopped, and recouped IAW DoD7000.14-R.

Chapter 2. The Legal Obligations of Soldiers

Section II. Obligation 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.

b. *Written financial support agreement.* If a signed written financial support agreement exists, the amount of financial support specified in the agreement controls (see para B-2). 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.

(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.

2-4 Financial Support required by court or Child Support Enforcement Agency order (CSEA)

a. **Domestic orders.** Soldiers will comply with the financial support provisions of all State court or Child Support Enforcement Agency (CSEA).

b. Foreign orders – see AR 608-99.

c. **Orders without financial support provisions.** An order without a financial support provision is one that contains no language directing or suggesting that the Soldier provide financial support to some or all Family Members on a periodic or other continuing basis. Court or CSEA orders may be silent as to financial support for one or more Family Members due to jurisdictional or other issues. For example a State child support enforcement agency may have the jurisdiction to order child support but not spousal support. As a result, 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 will** provide support to the un-addressed Family Members according to paragraph 2 – 6, **unless relieved of that obligation by the battalion-level commander.**

2-6. Financial support required in the absence of a financial support agreement or court order

a. This paragraph establishes requirements for interim financial support (paras 2-6d and 2-6e) and enhanced interim financial support for spouses (para 2-6f). **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 paragraphs 2-12 through 2-**

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14. The interim financial support required to be paid by this paragraph does not constitute an “alimony or separate maintenance payment” under Sections 71 or 215 of the Internal Revenue Code (26 USC).

b. See AR 608-99 pages 6-8 (digital page 11-13)

Section IV. Release from Specific Regulatory Requirements

a. A battalion-level commander, or higher, 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.

b. A battalion-level commander, or higher, may reconsider and change any decision they, or a prior commander, has made.

c. Before granting relief

(1) A commander should attempt to contact the affected Family Members for whatever additional information may be necessary to make an informed decision.

(2) A Soldier has the burden of coming forward with sufficient information and documents to establish a basis for a commander’s action.

(3) Prior to granting release, the commander **must obtain a written legal opinion** from the servicing SJA office, 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.

Chapter 3 – Command Responsibilities (cont)

3-8 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.

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 (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) Non-judicial punishment under UCMJ, Art. 15.
- (7) Court-martial.

Guide for addressing allegation of non-support

1. **STEP ONE:** Determine the Soldier’s financial support obligation.

a. Determine whether the Soldier has:

1. A financial support agreement. (See AR 608-99, paragraph 2-3.)

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2. A court order. (See AR 608-99, paragraph, 2-4 and 2-11b (1) & (2).)

b. If the commander finds that there is no support agreement or support order as stated above, the support provisions of AR 608-99, Financial Support Required in the Absence of a Financial Support Agreement or Court Order, paragraph 2-6, apply.

c. If the Soldier states that no financial obligation or support requirements exist, ensure all provided documents have been reviewed by SJA to relieve the Soldier from financial obligation. If the Soldier is receiving BAH at the "With Dependent" rate, you should verify what BAH rate the Soldier is entitled to receive.

d. If it is unclear whether the Soldier has a financial obligation IAW AR 608-99, the commander should contact the Administrative Law Section of the SJA Office and get a legal opinion in writing.

e. If the Soldier admits that he/she has a financial obligation, determine the source of the financial support obligation and verify proof of payment. The following are valid proofs of payment:

1. Money Order receipts with proof of payment or command verification of receipt of payment by the spouse/recipient.

2. Verification of support payment by allotment. (Allotment not available for National Guard.)

3. Cancelled checks with recipient's endorsement on the check.

4. Other monetary payment methods with command verification of receipt of payment.

5. The command will provide details on the verification of payment when responding to the IG or JAG.

2. STEP TWO: Direct compliance by counseling the Soldier in writing.

a. Confirm to the Soldier that a financial obligation to provide support exists.

b. Determine the appropriate form and timing of financial payments IAW AR 608-99, paragraph 2-7.

c. Determine whether the Soldier is in compliance with the support requirements.

1. **Compliance.** Verify that all appropriate documentation that the Soldier provides is IAW AR 608-99. If the Soldier is in compliance, the commander will document this determination and attach all pertinent documentation.

2. **Noncompliance.** For noncompliance, the provisions listed at paragraph 3-10 (Enforcement) apply. Action should be taken to bring the Soldier into compliance with AR 608-99. If the Soldier is not in compliance, the commander will document a complete summary of the Soldier's failure to comply with AR 608-99, as well as what actions will be taken to bring the Soldier into compliance.

3. Note: **Sometimes the Soldier will inform the commander that he/she does not have any money to pay the support or that the Soldier is not drawing BAH and therefore is not required to pay support. These responses are not acceptable.**

4. Note: **The Soldier should make his or her family support payment a priority above all other financial obligations. This is very important, as in many cases there are children involved and the spouse has no money for their basic needs.**

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d. Counsel the Soldier in writing on what his/her support obligation is under AR 608-99. Here are a few things to include as a part of the counseling:

1. Inform the Soldier that he/she has a legal obligation to support his/her family Members, and may seek legal assistance through the SJA office.

2. Inform the Soldier that he/she has not fulfilled his/her obligation and is in violation of AR 608-99.

3. Explain what corrective action is necessary to be in compliance with AR 608-99.

4. Explain accepted forms and timing of payments, IAW AR 608-99, paragraph 2-7.

5. Give him/her an order to comply with the provisions of AR 608-99. Provide a suspense date (use good judgment when assigning – not too long nor too short) for compliance to the Soldier to request written proof of compliance. (See paragraph 3- 6b.)

6. Inform the Soldier of the actions available to the command when dealing with violations of the regulation.

3. STEP THREE: Verify compliance. The commander must verify that the Soldier initiates appropriate financial support. If the Soldier chooses to start an allotment, the commander is responsible for ensuring the Soldier makes interim payments until the allotment is in effect.

4. STEP FOUR: Respond to the requester for the Commander's Inquiry.

a. The responsible commander will send a reply in response to each inquiry within a reasonable time of receipt and/or upon completion.

1. Commanders failing to provide a response may be in a violation of AR 608-99, paragraph 3-5a.

2. The Battalion/Squadron commander will be notified of company commanders who fail to provide a timely response.

3. The Battalion/Squadron commanders must also be informed of any allegation of repeated or continuing violations of AR 608-99 as stated in Paragraph 1-4f(5)(b).

4. For example, a Soldier who seeks to take advantage of a PCS move or change of command to stop support payments, in order to avoid those payments until the new chain of command becomes aware of the problem, could be considered a repeat offender.

b. Also include a statement as to whether the allegation of non-support is either substantiated or not substantiated.

c. Provide copies of supporting documents to show compliance or corrective action taken IAW the provisions of AR 608-99.

d. In accordance with AR 608-99, paragraph 3-6b (5), commanders should notify the appropriate Finance office for BAH recoupment action against a Soldier who is drawing BAH, but is not in compliance and chooses not to pay arrearages. The Finance Office may then ensure that the appropriate BAH is returned to the government.

5. STEP FIVE: Continue to monitor the support requirements of the Soldier in the future months.