



ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE
4133^d REGIONAL TRIAL DEFENSE TEAM, WEST REGION
OREGON NATIONAL GUARD
OFFICE OF THE REGIONAL DEFENSE COUNSEL
1776 Militia Way, P.O. Box 14350
Salem, Oregon 97309-5047



REPLY TO
ATTENTION OF

NGJA-OR-TDS

9 June 2010

MEMORANDUM FOR Soldiers responding to notices and determinations of Financial Liability for Property Loss

SUBJECT: 4133d RTDT Information Paper on Responding to FLIPLS (Financial Liability Investigations for Property Loss)

1. If you have received an initial notice of potential financial liability to the Government for property loss, or a notice of determination of liability after the initial notice and a finding then by the Approving Authority of financial liability, then you have a right under AR 735-5 to file a rebuttal to the initial notice, or a request for reconsideration or appeal to a determination after your chance or time for rebuttal has passed and a determination of financial liability has been made. Time is of the essence in your action, and you have a right to consult with a Judge Advocate. *Nothing herein is legal advice, and this memorandum does not replace the advice of a Judge Advocate. FLIPLS can be complicated, and this memorandum cannot address all of the different possible events occurring in a fact pattern supporting a FLIPL or multiple FLIPLS.*

2. You have the right to consult with a Judge Advocate assigned to you as a Legal Assistance Attorney, or from the Trial Defense Service. Under AR 27-3 the Legal Assistance Attorney has the job for providing the consultation, but depending on resources the Trial Defense Service, Trial Defense Counsel, may provide such services. In any case, the referral for the JAG generally comes through the state Office of the Staff Judge Advocate (OSJA), so contacting a JAG individually without a referral is not the correct course of action. The Judge Advocate will review the FLIPL (Financial Liability Investigation of Property Loss) in conjunction with the matters you present to the JAG but you are responsible for preparing your submission to the Approving or Appellate Authority.

3. Typical question facts.

a. **COULD I BE LIABLE FOR LOST, DAMAGED, OR DESTROYED GOVERNMENT PROPERTY?** Yes, under some circumstances soldiers and civilian employees may be required to pay for Army property they lose or damage. DD Form 200, Financial Liability Investigation of Property Loss (FLIPL), is the administrative tool used by the Army to establish liability under Army Regulation (AR) 735-5. To assess financial liability, the approving authority must find:

(1) The person to be held liable had a duty/responsibility to take care of the property;

(2) The person failed to carry out that duty (negligence); and

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(3) The person's failure led to the loss (proximate cause).

b. COULD I BE FINANCIALLY LIABLE FOR DAMAGES TO A GOVERNMENT VEHICLE INVOLVED IN AN ACCIDENT? While drivers of government vehicles can be held liable for damages resulting from an accident, AR 735-5 authorizes the waiver of financial liability for government vehicle accidents caused by "simple negligence." The chain of command can use the FLIPL to document the loss and justify repairing the vehicle without actually having to take money from the soldier or civilian employee involved, or the approval authority can reduce the recommended amount of financial liability. The waiver provision recognizes that accidents happen, and that personnel should not have to lose pay for simple fender benders. Personnel should be sure to ask for the waiver in their rebuttal or request for reconsideration.

c. HOW MUCH MONEY CAN I BE REQUIRED TO PAY IF I AM FOUND TO BE LIABLE? Financial liability ordinarily will not exceed one month's base pay. In certain cases, however, such as the loss of personal arms or equipment, or damage to government housing, liability may equal the full amount of the loss.

d. CAN I SIGN A STATEMENT OF CHARGES INSTEAD OF HAVING A FLIPL INITIATED? A FLIPL is not required in every situation where there is a loss or damage. If the loss is less than one month's base pay, the command may ask the responsible individual to sign a DD Form 362, Statement of Charges/Cash Collection Voucher. This is essentially a voluntary admission of liability for the lost or damaged property and an agreement to pay for it. The command cannot force or coerce someone into signing such a statement. A FLIPL is used in situations where its initiation is mandatory such as where responsibility for the loss is in question, the amount of the loss is greater than one month's base pay, the amount to be assessed is in dispute, or the loss involves a controlled inventory item.

e. WHAT IS THE FLIPL PROCESS?

(1) The FLIPL process starts when the appointing authority, usually a Lieutenant Colonel or above (most often a battalion commander), appoints an investigating officer, also called a financial liability officer, to investigate the facts surrounding the loss. The investigating officer will be a commissioned or warrant officer, a noncommissioned officer with the rank of Sergeant First Class or above, or a civilian employee in the grade of GS-7 or above. The investigating officer must be senior in grade to the individual subject to potential liability unless war or military exigency requires otherwise.

(2) The investigating officer investigates and makes initial findings as to what happened. If financial liability is recommended, a copy of the investigating officer's initial findings is then given to the individual subject to potential liability who has 7 days (15 if the findings are mailed to him or her) to prepare and submit a rebuttal back to the investigating officer. The investigating officer will

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consider the rebuttal along with the findings and make a recommendation to the appointing authority about who should be held liable and in what amount.

f. WHAT HAPPENS AFTER I SUBMIT MY REBUTTAL?

(1) After the investigating officer considers your rebuttal and makes a recommendation to the appointing authority, the appointing authority reviews the FLIPL packet, comments on the investigating officer's recommendation, and forwards it to the approving authority.

(2) The approving authority, usually a Colonel or above (most often a brigade or regiment commander or a division or installation chief of staff), approves or disapproves the investigating officer's recommendation. Before making his or her decision, the approving authority receives a legal opinion regarding whether the findings are legally sufficient and consistent with AR 735-5. The approving authority will notify the person to be charged that financial liability has been assessed. The notification will be in memorandum format and will inform the person they have the right to request reconsideration of the approving authority's decision.

g. WHAT CAN I DO IF I DISAGREE WITH THE APPROVING AUTHORITY'S DECISION TO HOLD ME FINANCIALLY LIABLE? A person held liable has 30 days to request reconsideration of the approving authority decision to assess liability. The request goes back to the approving authority (the investigating officer and appointing authority are not involved). If the approving authority decides to continue liability, he or she will forward the request to the appeal authority. The appeal authority, usually a General Officer, is the next higher commander in the chain of command. The appeal authority will examine all of the facts and the recommendations again. The decision of the appeal authority is final.

h. WHAT ARE MY OPTIONS IF MY REQUEST FOR RECONSIDERATION FAILS? Once the approving and/or appeal authority renders a decision, the person to be held liable still has several options to avoid losing pay including the right to request remission or cancellation of the debt (enlisted personnel only), to request a hearing (civilian personnel only), to request a payment plan with DFAS, or to petition the Army Board for the Correction of Military Records to reverse the chain of command action. These options are not a part of the FLIPL process but are afforded to soldiers and civilian employees under other Army Regulations.

i. WHAT SHOULD I DO AFTER I RECEIVE NOTICE THAT I AM RECOMMENDED FOR FINANCIAL LIABILITY RESPONSIBILITY?

(1) Contact your State National Guard Office of the Staff Judge Advocate (OSJA) to request a consultation with a Legal Assistance Attorney. Ordinarily the OSJA is at your state's military department but in any case should be able to be reached through contact information on your state's website, or the notice you received may have the contact information in it. Remember that you have a limited amount of time to respond.

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(2) Often, arrangements can be made to extend your rebuttal period in order to construct an effective rebuttal. To obtain an extension, typically you will send a written request for an extension to consult with counsel and have further time to prepare your response to the Brigade S4, FLIPL NCOIC, for the Approval Authority to seek more time. You should justify the request and make a reasonable request for specific time in the written request. You should get some notification back of a date by which you must have your response in. If you do not get notification you should contact the FLIPL NCOIC to see what the status of your request is and you should confirm any oral extensions in writing, including email, retaining copies of what you send and what you get.

(3) *The one thing you should not do is get a consultation scheduled for a JAG and then figure the JAG has it covered for you. You have work to do and part of that is preparing your case. The JAG is going to advise you, and does not have to directly engage the command to get an extension, or prepare your response.*

4. The attachment is a template that can be used and edited for use as a response for rebuttal or request for reconsideration or appeal.

a. Templates are necessarily limited in their scope and nothing is going to replace a good solid written statement of facts or circumstances meriting no liability or mitigation from liability, supported by as many concise statements as you can get in support. As drafted the template really contemplates a response as to your 'legal' position to the FLIPL but your own statement must support the legal issues and present the factual reasons that say you are not responsible or should not be held responsible even if the facts and law support your liability.

b. Brevity, clarity and concise preparation of a response without resorting to nonsensical and often whimsical beliefs about how the whole Army is out to get you and this is not another indicator of that should be avoided. Stick to the facts of your case, and do not digress in to grievances on other issues, collateral problems with command (real or perceived). The FLIPL and the response go often through an entirely different chain of command for financial determination and airing other issues is not going to be helpful or relevant. If what you are saying is not going to make you less likely to be legally liable, or less likely to be held financially liable even if you are responsible, then there is no reason to discuss the issues in a FLIPL.

5. Loss and Liability for a Loss. Whether someone can be held liable for an apparent 'loss' is first a legal question of whether the facts support responsibility, and culpability for a loss or loss of accountability as to government property, and that the loss is out of the natural course of events your responsibility (proximate cause). As a matter of course, there may or may not actually be a loss, but the loss of accountability (where the equipment is unknown) also creates a basis responsibility for that 'loss'. "Loss" means loss of, damage to, or destruction of, property of the U.S. Government. Loss includes a loss from accountability. Property is considered lost when it cannot be found or accounted for by the last responsible person in the audit trail.

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6. Responsibility. Responsibility is the obligation of an individual to ensure Government property and funds entrusted to his or her possession, command, or supervision are properly used and cared for, and that proper custody, safekeeping, and disposition are provided. Once responsibility is determined then the question is whether there is culpability. There are five different types of responsibility:

a. Command responsibility. The obligation of a commander to ensure all Government property within his or her command is properly used and cared for, and that proper custody, safekeeping, and disposition are provided. Command responsibility is inherent in command and cannot be delegated.

b. Supervisory responsibility. The obligation of a supervisor to ensure all Government property issued to, or used by his or her subordinates is properly used and cared for, and that proper custody, safekeeping, and disposition are provided. It is inherent in all supervisory positions, is not contingent upon signed receipts or responsibility statements and cannot be delegated. It arises because of assignment to a specific position and includes

c. Direct responsibility. The obligation of a person to ensure all Government property for which he or she has receipted, is properly used and cared for, and that proper custody, safekeeping, and disposition are provided. Direct responsibility results from assignment as an accountable officer, receipt of formal written delegation, or acceptance of the property on hand receipt from an accountable officer. Commanders, and/or directors of separate TDA activities will determine and assign in writing those individuals who will have direct responsibility for property.

d. Custodial responsibility. The obligation of an individual for property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for, and ensure proper custody, safekeeping, and disposition of the property are provided. Custodial responsibility results from assignment as a supply sergeant, supply custodian, supply clerk, or warehouse person, and is rated by and answerable directly to the accountable officer or the individual having direct responsibility for the property.

e. In preparing your response if you are not responsible, then you need to outline WHY. You may be also reviewing WHO else might be really more responsible than you and again WHY (connect responsibility, culpability and why proximate cause attaches to someone else).

7. Culpability. Before a person can be held financially liable, the facts must show that he or she, through negligence or willful misconduct, violated a particular duty involving the care of the property.

a. *Simple negligence* is the absence of due care, by an act or omission of a person which lacks that degree of care for the property that a reasonably prudent person would have taken under similar circumstances, to avoid the LDD of Government property.

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b. *Gross negligence* is an extreme departure from due care resulting from an act or omission of a person accountable or responsible for Government property which falls far short of that degree of care for the property that a reasonably prudent person would have taken under similar circumstances. It is accompanied by a reckless, deliberate, or wanton disregard for the foreseeable loss or damage to the property.

c. *Willful misconduct* is any intentional wrongful or unlawful act or omission relating to Government property.

d. In preparing your response if you are not culpable by simple negligence, gross negligence or willful misconduct you need to address WHY. If the loss was caused by someone else's culpability then you need to describe WHO and WHY.

8. Proximate Cause. Proximate cause is the final thing necessary after loss, responsibility and culpability before holding a person financially liable for a loss to the Government, the facts must clearly show that the person's conduct was the "proximate" cause of the LDD (loss, damage, destruction). That is, the person's acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the LDD, and without which the LDD would not have occurred. Proximate cause has several components that relate to whether it exists. First and most clearly is whether the natural and continuous sequence of event, unbroken by a new cause, produced the LDD, and without which the LDD would not have occurred. In addressing proximate cause, you should consider whether there were intervening events, and other things that actually caused the LDD.

a. Additionally, however, how timely the FLIPL is may have some effect on proximate cause. IAW AR 735-5, para 13-8, FLIPLs are to be initiated within 45 days of the loss being discovered, or on the date an AWOL Soldier is dropped from the roles. IAW para 13-6 "under normal circumstances" the total processing time is not to exceed 150 days. IAW para 13-9, when within 6 months of discharge an extra copy of the DD 200 will be sent to FAO (finance and accounting office). IAW para 13-6, (see also DA PAM 735-5, para 1-8) where there is delay past the allowed processing time, the person responsible will prepare a memorandum of explanation for the FLIPL. While not clearly set forth, such timelines are generally established for the benefit of the Government. In DA PAM 735-5, para 8-1 and 8-6, a consideration of proximate cause is whether the regulation has been followed in inventory losses. Similarly, the failure of command to timely process a loss, particularly after discharge, ought to be considered as a break in the chain of circumstances creating proximate cause given the facts and circumstances of the particular FLIPL.

b. Thus, if your FLIPL is not timely you should consider such things as your ability to defend, and the prejudice you have received from that inability caused by the passage of time (usually outside the contemplated processing times), and state specific examples of evidence that you can no longer develop in support of your response.

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c. If the FLIPL is being processed after discharge, there are a whole different set of issues that arise, and if one was AWOL then that generally will negate the lack of timeliness. AR 735-5 is unclear as to what is supposed to happen if a FLIPL is processed after discharge. AR 735-5, para 14-27 (b)(3) discusses processing FLIPL regarding those AWOL or stops participating in drills. No time lines are discussed on when this can be processed. One section, however, paragraph 12-4 c (2) gives guidance in that it essentially states that Commanders will not sign clearance documents until a Soldier submits a DD 362 Statement of Charges. Essentially, prior to ETS or Change of Duty Station, and prior to the Commander signing the DD 4187, the Commander's duty is to ensure that the Soldier clears Supply and that requires a turn in, a statement of charges or the initiation of a FLIPL. The absence of this action essentially constitutes a breach by the Commander, and by signing the DD 4187 releasing the Soldier for discharge assumes greater Command Responsibility for the property loss. Therefore, you may wish to address the lack of the command or supplies action in ensuring that you cleared supply and turned in your assigned gear, otherwise placing the potential responsibility on the command and supply for their breach of duty.

9. The findings and conclusions of liability. In addressing the elements discussed above, the other avenue of addressing the FLIPL is generally that the conclusion of liability is not supported by the findings and evidence, in particular any evidence actually pointing to another conclusion.

a. The financial liability officer's findings and recommendations must be supported by evidence in the FLIPL and the findings must exclude personal speculation, suspicion, or opinion not supported by evidence. Findings which rely on a self-serving statement made by a person who was personally responsible for the property listed on a financial liability investigation of property loss at the time of the loss tend to not be credible and the financial liability officer's findings must explain how that person's statement is confirmed by other independently documented evidence, if available, or by any other evidence of reliability that the financial liability officer considers relevant. Also, if the financial liability officer's findings rely on evidence which conflicts with other evidence, the financial liability officer must explain how the conflict was resolved. To the extent that the findings do not develop natural and logical conclusions you need to address WHY and WHAT the evidence otherwise points to, and otherwise why the evidence presented should not carry weight or value based on speculation, bias, or self serving statements (eg the supply sergeant who declines to recall the equipment being turned in, even though there are statements to the contrary).

10. Supervisory Responsibility, Command and the Supply Sergeant. As a special matter for consideration, if you are being held liable in your role as the supply sergeant or commander then:

a. As it pertains to holding a Supply Sergeant or Commander liable for losses, the assessment should ordinarily be complete, considering the factors for custodial and command responsibility. IAW DA PAM 735-5 para 2-1 (b)(4), A supply sergeant will have custodial responsibility, that being the obligation of an individual for property in storage, awaiting issue or turn-in, to exercise reasonable and prudent actions to properly care for, and ensure proper custody, safekeeping and disposition of the property are provided. Responsibilities include—

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(1) Ensuring the security of all property stored within the supply room and storage annexes belonging to the supply room or Supply Support Activity (SSA) is adequate.

(2) Observing subordinates to ensure their activities contribute to the proper custody, care, and safekeeping of all property within the supply room and storage annexes belonging to the supply room or SSA.

(3) Enforcing all security, safety, and accounting requirements.

(4) When unable to enforce any of these, reporting the problem(s) to their immediate supervisor.”

b. The Commander has responsibility also, that being the responsibility to ensure all Government property within his or her command is properly used. This includes providing for the proper custody, safekeeping and disposition of the property. Command responsibility is inherent in all positions of command and cannot be delegated. It is evidenced by assignment to a command position at any level. Command responsibility includes—

(1) Ensuring that security is provided for all property within the command, whether the property is in use or in storage.

(2) Observing subordinates to ensure their activities contribute to the proper use, care, custody, safekeeping and disposition of all property within the command.

(3) Enforcement of all security, safety, and accounting requirements.

(4) Taking administrative and/or disciplinary actions when necessary.” DA PAM 735-5 para 2-1 (b)(1).

c. The FLIPL should directly consider the elements for culpability, and the matters addressing why a supply sergeant (custodial) or commander (command) was negligent, and is then the proximate cause of the loss. Liability requires responsibility, negligence, a loss (typically a given), and proximate cause (the facts must clearly show that the person’s conduct was the "proximate" cause of the LDD. That is, the person’s acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the LDD, and without which the LDD would not have occurred). Considering for instance, had the Supply Sergeant (DA PAM 735-5 para 2-1 (b)(4)), or Commander (DA PAM 735-5 para 2-1 (b)(1)) properly done their job to the expected and required level, would the Soldier assigned the equipment still not turned it in? The finding needs to avoid a determination of liability that is conclusionary. The findings and conclusions that from the facts must develop the rationale for holding the respondent liable. In holding someone liable other than the hand receipt holder, the FLIPL must establish alternative findings and conclusions which support appropriate responsibility, culpability, loss and proximate cause during the time period for the loss.

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See para 13-32; 13-36; 13-37. Finally, often these cases include multiple allegations and with that then the appointing authority must consider whether the multiple FLIPLS are really part of one 'incident' IAW AR 735-5, para 13-41, "When two or more financial liability investigations of property loss are processed that involve the same incident, financial liability is limited to 1 month's basic pay." In the event that no liability is found, the commander can still consider "other administrative or disciplinary actions against the individual(s) committing the negligent act(s) or willful misconduct."

d. These are extensive issues to be considered for the respondent and should be developed in detail in any response.

11. Amount of Liability. Aside from depreciation issues, once the issues of whether there is a loss, whether you have responsibility, whether you are culpable are addressed, or if those issues are simply clear and you want to try to get relief on general grounds, then you need to address 'mitigation' based on the circumstances, and otherwise grounds why you should not be held fully responsible.

a. Liability for other than personal arms and equipment (para 12-1) is generally limited to one month's AD pay, and if "(3) When two or more financial liability investigations of property loss are processed that involve the same incident, financial liability is limited to 1 month's basic pay" (para 13-41). Where there is a loss of personal arms or equipment there is no one month limit. Where there are multiple respondents then the amount of loss is divided "The total dollar amount of the loss is divided by the number of respondents. The amount derived from this equation is the maximum amount each respondent will be assessed. For soldiers and DOD civilian employees, the amount of financial liability assessed will be the amount derived from the above equation or 1 month's base pay, whichever is less." (Para 13-41). The regulation does not expressly address the combination of one incident losing both equipment without a limit and things with a maximum limit, however, based on 12-1 and 13-41 it is clear that the equipment loss has no limit, and the other loss is limited by one month's pay. Since the regulation does not limit either by some factor of the other, even if part of the same incident the two determined loss values are added together. An exception to the consolidation for liability of multiple FLIPLS can be the type and character of the property, so if the property is Title 10 and other property is Title 22, then that can be a separate FLIPL and separate liability for each. *This is a pretty complicated area, but if you have multiple FLIPLS and they arise out of one event, or there are other persons responsible but not considered, or the amounts are simply wrong, then you need to address these issues for consideration in a clear manner.*

b. There are three stages at which the command considers the extent of liability, the pre-rebuttal stage where notice has been given by the appointing authority of potential liability under para 13-42, the post rebuttal stage where the soldier receives notice of liability, after which the Soldier may file a request for reconsideration which if relief is not granted essentially becomes an appeal to the next level commander in the chain responsible for appeals. *Which stage are you at now? That makes a difference in how you will develop your response.*

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(1) Initially the Soldier is noticed for potential liability and may file a rebuttal. Thereafter, after legal review, the approving authority considers the FLIPL and a notice of determination of liability is provided to the Soldier.

(2) Thereafter, the Soldier may submit a request for reconsideration. The approving authority will, after review and determination that liability should continue, forward requests for reconsideration to the next commander in the chain of command as an appeal under para 13-52 (b). Under para 13-44, “The approving authority, upon receipt of a request for reconsideration, will review any new evidence offered, and make a decision to either reverse the previous decision assessing financial liability against the individual or recommend the continuation of the assessment of financial liability. A request for reconsideration will be reviewed only on the basis of legal error (that is, the request must establish that the facts of the case do not support an assessment of financial liability). The approving authority thereafter also has further ‘equitable power’ under Paragraph 13-41 to “reduce in whole or in part the amount of the individual’s financial liability when the approval authority determines that the evidence documented in the investigating officer’s findings indicates that the amount should be reduced because of the nature and circumstances surrounding the damage or loss.” *This is an area in the request for reconsideration where the underlying facts can again be addressed to seek relief even though the FLIPL is to be considered only for legal error.* The assessment for legal error should occur first and then any equitable adjustment thereafter. If relief is not granted and liability continues (the regulation does not make clear that even if relief is granted and a lower amount is determined, that the request for reconsideration should not continue forward as an appeal though para 13-42 (a) (3) implies that it is forwarded to the appeal authority only if relief is ‘denied’).

(3) If relief is denied, then the approving authority forwards the FLIPL and the request for reconsideration as an appeal to the appellate authority, generally the Assistant to The Adjutant General – Army (ATAG). Once the request for reconsideration is forwarded to the appellate authority, under para 13-52 (b), the appellate authority may “[r]eview requests for reconsideration only on the basis of legal error (though the appeal authority has the same equitable power as the approving authority as further discussed below). That is, the request must establish that the facts of the case do not support an assessment of financial liability. In that review the ATAG considers the FLIPL to determine if the evidence, to include any new evidence offered by the respondent, provides grounds to relieve them from financial liability. After review, the appeal authority may—

i. Direct the approving authority to reopen the financial liability investigation of property loss and conduct further investigation to clarify matters specified by the appeal authority.

ii. Grant relief of financial liability in whole or in part based on the facts and evidence contained in the file (this is essentially equitable relief that should come after any consideration of legal error). Direct the approving authority to reopen the financial liability investigation of property loss, to reverse an assessment of financial liability, and to arrange for repayment of collections erroneously received.

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iii. Deny relief of financial liability to the individual.

(4) Otherwise, thereafter, under para 13-42, the Soldier maintains a right to '[r]equest remission or cancellation of the indebtedness (enlisted personnel only) under the provisions of AR 600-4, paragraphs 1-6, 1-7 and 1-11. (6) Request extension of the collection period. (7) Submit an application to the Army Board for Correction of Military Records (ABCMR) under the provisions of AR 15-185.' *If you want to take advantage of any of these, in particular the cancellation or extension of the collection period, you need to submit a memorandum of request through your FLIPL chain to the USPFO for approval. The request for cancellation of indebtedness requires submission of forms, affidavits and supporting materials IAW AR 600-4 and that process is outside the scope of this memorandum. The request to ABCMR is a long shot and is the last thing to do but must be timely applied for.*

12. Summary.

a. In preparing your response you need to understand whether you are responding to the initial notice of potential liability and therefore filing a rebuttal, or whether you are responding to a determination of liability and therefore filing a request for reconsideration, and or appeal. Once you do that, essentially you are going to address the factual and legal reasons why you should not be held liable, that being there being

- (1) no loss,
- (2) no responsibility or the loss being the responsibility of other(s),
- (3) no culpability or the culpability of others, and or
- (4) no proximate cause.

b. In each instances you need to address WHY, not just make conclusionary statements. After that, you should consider addressing why you should not be held financially liable, or why liability should be reduced, even if you are determined liable by the approving authority or the appellate authority. Your response should be in military memorandum format, clear and concise and attach statements or exhibits in your support. To the extent possible draft your response timely for your JAG advisor to review and edit for your final correction and submission. When in doubt, submit the response by certified mail and email pdf or regular mail, and make sure you copy your JAG with the final response.

13. This and the attachment do not constitute legal advice, but merely guidance to help you with your response to the FLIPL. You may contact JAG for assistance, but must work hard to develop your own case in response.

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14. For Oregon FLIPLS, POC is the Office of the State Judge Advocate, 503-584-3571, and request to see a JAG regarding a FLIPL you have received. Please tell the staff the date you received the FLIPL, and the date you have to respond, your unit and the unit presenting the FLIPL, and whether you have requested an extension of time to respond yet (you should have at this point or will after the call and you should generally request at least 45 days to allow one intervening drill to lapse so that the JAG can have scheduled duty time to review the documents AND review your draft response). Additionally, the staff will need full information on your contact info, name, rank, address, telephone and email addresses. The JAG will contact you or you will be given a method of contacting the assigned JAG. You will need to provide to the JAG what information you have on the FLIPL in writing and be prepared to start work on your response while the JAG reviews the actual FLIPL (if you don't have a copy then typically JAG can get a copy from the command). Do not contact TDS directly as JAG reviews for FLIPLS are assigned out of OSJA not TDS though a TDS JAG may get the assignment.

15. POC is the undersigned for the 4133 RTDT, email: NGOR.JAG.4133.TDS@ng.army.mil.

Original Signed

Encl: FLIPL Template

DANIEL J. HILL
COL, JA
Regional Defense Counsel

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MEMORANDUM FOR APPROVING AUTHORITY/APPELLATE AUTHORITY, via _____
Brigade S-4, FLIPL NCOIC, Unit, address

SUBJECT: FLIPL # _____ REBUTTAL/REQUEST FOR RECONSIDERATION OR APPEAL

1. I am the respondent in the above FLIPL and hereby submit my rebuttal request for reconsideration and appeal of the notice I have received.
2. I have have not been assisted by JAG counsel.
3. In this matter I received did not receive notice; received did not receive demands to return any military property; was discharged before the notices, the amount of time between my discharge and the notice was _____ days.
4. I object to the notice of potential liability determination of liability, in that I do not believe that the evidence, direct and circumstantial, support my responsibility, my culpability for the loss, that proximate cause is lacking, that the recommendations and or findings of the Financial Liability Officer/Appointing Authority are not supported by the evidence, for the following reasons:

Discuss the matters which negate liability, requests for consolidation of FLIPLs, direct liability to another, discuss combat losses, etc.

5. Even if I am determined to be liable, then IAW the power of the Approving Authority under Paragraph 13-41 to “reduce in whole or in part the amount of the individual’s financial liability when the approval authority determines that the evidence documented in the investigating officer’s findings indicates that the amount should be reduced because of the nature and circumstances surrounding the damage or loss”, I request relief by reduction or elimination of financial liability; or if denied (*para 13-42 (a) (3)*), then I request that the Appellate Authority, IAW para 13-52 (b), grant relief of financial liability in whole or in part based on the facts and evidence contained in the file; and otherwise Direct the approving authority to reopen the financial liability investigation of property loss, or to reverse an assessment of financial liability, and to arrange for repayment of collections erroneously received.

Therefore, I request that the Approving Authority or Appellate Authority greatly reduce the liability for the reasons that:

Discuss facts which mitigate why you should not be held liable for the full amount.

NGJA-OR-TDS

SUBJECT: 4133d RTDT Information Paper on Responding to FLIPLS (Financial Liability Investigations for Property Loss)

6. Otherwise, to the extent held liable I request [] remission or cancellation of the indebtedness (enlisted personnel only) under the provisions of AR 600-4, paragraphs 1-6, 1-7 and 1-11, know that I must submit additional forms and documents in support thereof IAW AR 600-4; or [] in the alternative an extension of the collection period.

7. POC is Soldier, unit, personal address, personal telephone, email addresses.

Encl:

IMA SOLDIER
RANK, US ARMY

CF: