

U.S. ARMY ADMINISTRATIVE INVESTIGATIONS

TABLE OF CONTENTS

I.	REFERENCES.....	3
II.	JOINT INVESTIGATIONS	4
III.	R.C.M. 303 PRELIMINARY INQUIRY.....	5
IV.	AR 15-6 INVESTIGATIONS.....	6
	Friendly Fire Mishaps.....	9
	Hostile Death Investigations.....	11
	Suspected Suicides	11
	Hazing and Bullying	12
V.	AR 385-10 ACCIDENT INVESTIGATIONS.....	19
VI.	AR 638-34 ARMY FATAL INCIDENT FAMILY BRIEF PROGRAM.....	25
VII.	AR 600-8-4 LINE OF DUTY INVESTIGATIONS.....	29
VIII.	AR 735-5 FINANCIAL LIABILITY INVESTIGATIONS OF PROPERTY LOSS (FLIPL) (CHAPTERS 13 AND 14).....	36
IX.	INSPECTOR GENERAL INVESTIGATIONS.....	50
X.	CONSCIENTIOUS OBJECTION	56
XI.	BOARD OF INQUIRY TO DETERMINE STATUS OF PERSONNEL MISSING AS A RESULT OF HOSTILE ACTION.....	61
XII.	MISCELLANEOUS INVESTIGATORY REQUIREMENTS.....	72
	A. INTELLIGENCE INTERROGATION INCIDENT	72
	B. QUESTIONABLE INTELLIGENCE ACTIVITY.....	72
	C. ACTUAL OR POTENTIAL COMPROMISE OF CLASSIFIED INFORMATION ...	73

D. LAW OF WAR VIOLATIONS (DETAINEE ABUSE) 75

E. COUNTERINTELLIGENCE INVESTIGATIONS. 76

F. INFORMATION SYSTEM SECURITY INCIDENTS..... 77

April 2015

I. REFERENCES.

- A. 50 U.S.C., App §456(j), Military Selective Service Act.
- B. DODD 7050.06, Military Whistleblower Protection, 23 July 2007.
- C. DODI 1300.06, Conscientious Objectors, 31 May 2007.
- D. DODI 2310.05, Accounting for Missing Persons—Boards of Inquiry, 31 January 2000 (w/change 1, 14 March 2008).
- E. DODI 6055.07, Mishap Notification, Investigation, Reporting, and Record Keeping, 6 June 2011.
- F. AR 15-6, Procedure for Investigating Officers and Boards of Officers, 2 October 2006.
- G. AR 20-1, Inspector General Activities and Procedures, 29 November 2010 (w/RAR 3 July 2012).
- H. AR 385-10, The Army Safety Program, 27 November 2013.
- I. AR 638-8, Army Casualty Program, 23 July 2015.
- J. AR 600-8-4, Line of Duty Policy, Procedures, and Investigations, 4 September 2008.
- K. AR 638-34, Army Fatal Incident Family Brief Program, 19 February 2015..
- L. AR 600-43, Conscientious Objection, 21 August 2006.
- M. AR 735-5, Policies and Procedures for Property Accountability, 10 May 2013 (w/RAR 22 August 2013)
- N. Army Directive 2010-01, Conduct of AR 15-6 Investigations Into Suspected Suicides and Requirements for Suicide Incident Family Briefs, 26 March 2010.
- O. Army Directive 2010-02, Guidance for Reporting Requirements and Redacting Investigations Reports of Deaths and Fatalities, 26 March 2010.
- P. DA Pam 735-5, Financial Liability Officer's Guide, 9 April 2007.
- Q. The Assistance and Investigations Guide, The U.S. Army Inspector General School, October 2014. [http://tigs-online.ignet.army.mil/tigu_online/PDFs/Assistance%20and%20Investigations%20Guide%20\(October%202014\).pdf](http://tigs-online.ignet.army.mil/tigu_online/PDFs/Assistance%20and%20Investigations%20Guide%20(October%202014).pdf)

R. AR 600-20, Army Command Policy, 6 November 2014.

II. JOINT INVESTIGATIONS.

- A. All of the Services have specific procedures for various types of administrative investigations. In the absence of more specific regulatory guidance, the Army uses AR 15-6, Procedure for Investigating Officers and Boards of Officers. AR 15-6 contains the basic rules for Army regulatory boards. If an investigation is appointed under a specific regulation, that regulation will control the proceedings.
- B. Some of the more likely types of investigations that Army judge advocates (JA) may encounter include: accident investigations (including friendly fire incidents), which may require both a Safety Accident Investigation and a Legal Accident Investigation under AR 385-10 and AR 638-34; Line of Duty Investigations under AR 600-8-4; and Financial Liability Investigations under AR 735-5. If an accident results in death of a Soldier, judge advocates might also assist with the family briefing to the next-of-kin under AR 638-34. While deployed, judge advocates must be familiar with the friendly fire reporting and investigation requirements as well as the hostile death investigation requirement of AR 600-8-1. With the dramatic increase in joint operations, Army judge advocates should also be familiar with the basic regulations relied upon by the other Services.
- C. The Air Force has no single general regulation or instruction governing command-directed investigations similar to the Army's AR 15-6. Instead, the Air Force relies solely upon a commander's inherent authority to investigate matters under their responsibility. While some types of investigations are governed by specific instruction (e.g., *AFI 91-204, Safety Investigations and Reports*, 12 Feb 14; *AFI 36-2910, Line of Duty (Misconduct) Determinations*, 4 Oct 02, w/Change 2: 5 Apr 10), command-directed investigations use AFI 90-301, *Inspector General Complaints Resolution*, 23 Aug 11, w/Change 1: 6 Jun 12, as a guide, but its provisions are not mandatory.
- D. The Navy and Marine Corps rely upon JAGINST 5800.7F, *The Manual of the Judge Advocate General*, 26 Jun 12, also known as the "JAGMAN," for guidance regarding command investigations. It divides administrative investigations into more specific types than does AR 15-6, to include litigation report investigations, courts and boards of inquiry, and command investigations. The JAGMAN also covers line of duty/misconduct investigations and loss of government property investigations, as well as a variety of other required investigations.

- E. The Coast Guard reference for investigations is COMDTINST M5830.1A, *Administrative Investigations Manual*, September 2007. Like the JAGMAN, it includes a “preliminary inquiry,” an informal inquiry directed by a commander to assist the commander determine what type of investigation, if any, is warranted by the situation.
- F. Administrative investigations in all services follow similar basic concepts. Detailed analysis of Air Force, Navy, and Coast Guard Investigation requirements is beyond the scope of this outline. Reference to those Services’ policies is for clarification only. Legal advisors should turn to the appropriate Service authorities for detailed guidance when dealing with Service specific investigations.
- G. There is currently no joint publication governing investigations (although DODI 6055.07, *Mishap Notification, Investigation, Reporting, and Record Keeping*, provides guidance on joint accident investigations). In the event an investigation is required in a joint environment, judge advocates should determine which Service’s regulation is most applicable and then an investigation under that regulation should be conducted. When determining which Service’s regulation is most applicable consider the possible uses of the investigation, whether a particular Service requires a certain investigation, which Service has the most at stake in the outcome of the investigation, any local or command guidance regarding joint investigations, and other matters that would contribute to an informed decision. Since investigations in all services follow similar basic concepts and will result in a thorough investigation if conducted properly, the regulation ultimately used is not as important as is choosing and following a particular authorized regulation. Under no circumstances should regulations be combined and a “hybrid” investigation created. Pick a regulation and follow it! The Services are shown great deference in regards to administrative matters as long as regulations are followed correctly.

III. R.C.M. 303 PRELIMINARY INQUIRY.

- A. If a commander receives information that a member of his or her command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander is required to make or cause to be made a preliminary inquiry into the charges or suspected offenses.

- B. The R.C.M. 303 preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report or other summary of expected evidence. In other cases a more extensive investigation may be necessary. Although the commander may conduct the investigation personally or with members of the command, in serious or complex cases the commander should consider whether to seek the assistance of MPI/CID (see AR 195-2, *Criminal Investigation Activities*, Appendix B, for criminal offense investigative responsibility among CID, MPI, and unit commanders).
- C. The commander should gather all reasonably available evidence on:
 - 1. Guilt or innocence;
 - 2. Aggravation; and
 - 3. Extenuation and Mitigation.
- D. A person who is an "accuser" under Article 1(9), UCMJ, may not convene a special or general court-martial [R.C.M. 504(c)(1)]. Therefore, any commander who is a special or general courts-martial convening authority should appoint another officer in the command to conduct the preliminary inquiry and allow others to prefer charges, if necessary.
- E. This inquiry is not the same as an Article 32 (UCMJ) investigation. Nor should it be confused with the preliminary inquiry authorized under USN/USMC and Coast Guard regulations. Those regulations authorize a commander to conduct a preliminary inquiry into a matter in order to determine whether more detailed investigation is required and if so, what type. Commanders may also decide that further investigation is not required. Preliminary inquiries under USN/USMC and Coast Guard regulations typically have a three-day suspense. Army regulations do not provide for this type of basic inquiry, although in practice commanders often conduct "commander's inquiries."

IV. AR 15-6 INVESTIGATIONS.

- A. AR 15-6, PROCEDURES FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS
 - 1. Applicability. Applies to the Active Army, the Army National Guard, and the U.S. Army Reserve, unless otherwise stated within the regulation.
 - 2. Purpose.

- a) Establishes procedures for investigations and boards of officers not specifically authorized by any other directive. AR 15-6 or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment (i.e., AR 635-200, Active Duty Enlisted Administrative Separations, authorizing formal separation boards IAW AR 15-6 for enlisted Soldiers.) In case of a conflict between the provisions of AR 15-6, when made applicable, and the provisions of a specific directive authorizing the investigation or board, the specific regulation governs.
 - b) Even when not specifically made applicable, AR 15-6 may be used as a general guide for investigations or boards authorized by another directive, but in that case, its provisions are not mandatory (i.e. AR 385-10, *The Army Safety Program*, authorizes safety accident investigations but does not incorporate AR 15-6.)
3. Function of an AR 15-6 Investigation. An AR 15-6 investigation is used to ascertain facts and report them to the appropriate appointing authority. It is the duty of the investigating officer or board to ascertain and consider the evidence on all sides of each issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

B. TYPES OF INVESTIGATIONS AND BOARDS.

- 1. Formal or Informal, Investigation or Board of Officers.
 - a) When deciding whether to use formal or informal procedures, consider the purpose of the inquiry, seriousness of the subject matter, complexity of the issues involved, need for documentation, and desirability of providing a hearing for persons whose conduct is being investigated.
 - b) Investigations: Proceedings that involve a single officer using informal procedures.
 - c) Board of officers: Proceedings that involve more than one investigating officer using formal or informal procedures or a single officer using formal procedures.
- 2. Formal (Chapter 5).

- a) Generally, formal boards are used to provide a hearing for a named respondent. The board offers extensive due process rights to respondents (notice and time to prepare, right to be present at all open sessions, representation by counsel, ability to challenge members for cause, to present evidence and object to evidence, to cross examine witnesses, and to make argument).
 - b) Formal boards include a president, voting members, and a recorder who presents evidence on behalf of the government. A Judge Advocate (JA) is normally appointed as recorder but is not a voting member. If a recorder is not appointed, the junior member of the board acts as recorder and is a voting member. Additionally, a non-voting legal advisor may be appointed to the board.
 - c) Formal AR 15-6 investigations are not normally used unless required by regulation. Examples: Officer and enlisted separation boards (AR 600-8-24 and AR 635-200) and Flying Evaluation Boards (AR 600-105).
3. Informal (Chapter 4).

- a) Informal investigations may be used to investigate any matter, to include individual conduct. The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual. Even if the purpose of the investigation is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other regulations or by higher authority.
- b) Informal investigations provide great flexibility. Generally, only one investigating officer (IO) is appointed (though multiple officers could be appointed); there is no formal hearing that is open to the public; statements are taken at informal sessions; there is no named respondent with a right to counsel (unless required by Art 31(b), UCMJ); and there is no right to cross-examine witnesses; etc.

C. APPOINTING AUTHORITY. (Para. 2-1)

- 1. Formal proceedings. Must consult with JA or legal advisor prior to appointing a formal board.
 - a) Any general court-martial or special court-martial convening authority.
 - b) Any general officer.
 - c) Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level.

- d) Any state adjutant general.
 - e) A DA GS-14 or above civilian supervisor assigned as a division or department chief.
2. Informal proceedings.
- a) Any officer or supervisor authorized to appoint a formal board.
 - b) A commander at any level.
 - c) A principal staff officer or supervisor in grade of major or above.
3. Special cases. Only a General Court-Martial Convening Authority (GCMCA) can appoint investigation or board if:
- a) Property damage of \$1,000,000 or more.
 - b) Loss or destruction of Army aircraft or missile.
 - c) Injury or illness likely to result in death or permanent total disability.
 - d) Death of one or more persons.
 - e) Death of one or more persons by friendly fire.
4. Friendly Fire Mishaps.
- a) DoDI 6055.07, defines friendly fire as a circumstance in which members of a U.S. or friendly military forces, U.S. or friendly official government employees, U.S. DoD or friendly national contractor personnel, and nongovernmental organizations or private volunteer organizations, who, while accompanying or operating with U.S. Armed Forces, are mistakenly or accidentally killed or wounded in action by U.S. or friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force. (Definition also includes incidents where only damage or destruction of U.S. or friendly military property occurs).
 - b) DoDI 6055.07 states that the Combatant Commander *or his or her designee* will convene a legal investigation for all incidents of friendly fire. U.S. Central Command has delegated this authority to: Service Component Commanders, General Officer/Flag Officer in command of subordinate Joint Command or Joint Task Force, and General Officer/Flag Officer commanders with GCMCA. (CENTCOM Commander Policy - Friendly Fire Reporting, Investigation, and Dissemination, 14 June 2013).

- c) AR 638-8 requires commanders to complete an AR 15-6 investigation of all friendly fire incidents that result in the death **or** wounding of a Soldier.
- d) AR 638-8 requires all AR 15-6 investigations into friendly fire incidents be convened by the GCMCA. This includes injury cases as well as fatality cases. (NOTE: In practice, this does not conflict with DODI 6055.07 since the Combatant Commander will or has delegated authority to a GCMCA to convene the investigation.)
- e) In May 2007, the Army Vice Chief of Staff published detailed guidance regarding the reporting and investigation requirements for all incidents of friendly fire. Units must follow the following procedures for all friendly fire incidents, whether resulting in death or injury, as soon as personnel on the ground suspect that a friendly fire incident has occurred:
 - (1) The unit must provide immediate telephonic notice through the Casualty Assistance Center to the Army Casualty and Mortuary Affairs Operation Center (CMAOC). For time sensitive assistance contact the CMAOC Operations Center at 800-626-3317 COMM: 502-613-9025. DSN: 983-9025. OCONUS dial country code 001 or OCONUS DSN code (312).
 - (2) Generate an initial casualty report IAW AR 638-8, approved by a field grade officer, through command channels to the Combatant Commander.
 - (3) Initiate an AR 15-6 investigation (Appointed by GCMCA; approved by Combatant Commander *or his or her designee* IAW DODI 6055.07 and AR 638-8. See discussion above).
 - (4) Contact USACR/SC (COMM: (334) 255-2660/3410, DSN: 558) and initiate safety investigation based upon CRC guidance.
 - (5) Contact the local Criminal Investigation Division. They will provide forensics assistance to the AR 15-6 Officer or conduct investigation if criminal action or negligence is suspected or substantiated.
 - (6) Provide the name and contact information of a knowledgeable field grade officer to CMAOC as the unit POC. This POC will provide the CMAOC status updates of the investigative report(s) at 30 day intervals until the investigation report is complete.
 - (7) Once approved by the Combatant Commander *or his or her designee*, submit the AR 15-6 proceedings to the CMAOC.
 - (8) Continue coordination with the CMAOC to provide an AR 638-34 family presentation for fatality cases.

- f) DODI 6055.07 also requires units to furnish the Commander, U.S. Joint Forces Command (USJFCOM), with completed privileged friendly fire safety investigations. USJFCOM is the lead agent for friendly fire mishap analysis. It maintains a joint database of pertinent causal factors and is responsible for developing plans designed to prevent or mitigate future friendly fire mishaps.
 - g) DODI 6055.07 authorizes combatant commanders to delegate their authority to subordinates. These delegations should be reviewed prior to any deployment.
5. Hostile death investigations.
- a) AR 638-8 requires AR 15–6 investigations for all hostile deaths.
 - b) Hostile deaths are those resulting from a terrorist activity – such as by an IED or VBIED - or casualties caused “in action” – such as a direct-fire engagement with an opposing force.
 - c) IAW AR 15-6, the GCMCA may, in writing, delegate appointing/approval authority to a subordinate commander exercising SPCMCA for hostile death cases only. This authority may not be further delegated.
 - d) If evidence is discovered during a hostile death investigation, convened pursuant to this delegation, that indicates that the death(s) may have been the result of friendly fire, the investigating officer will immediately suspend the investigation and inform the appointing authority and legal advisor. The next action to be taken is to comply with the friendly fire reporting and investigation requirements . This requires the GCMCA to appoint a new investigation into the friendly fire incident. The GCMCA may appoint the same officer who was conducting the hostile death investigation if the officer is otherwise qualified. Any evidence from the hostile fire investigation should be provided to and considered by the investigating officer or board conducting the friendly fire investigation.
6. Suspected Suicides.
- a) AR 638-8 requires AR 15-6 investigations for all suspected suicides. This requirement does not apply to suicide attempts.
 - b) The appointing authority is a GCMCA, as in most other investigations into deaths.

- c) The investigation should focus on suicide prevention: “The purpose of an AR 15-6 investigation into a suspected suicide is to identify the circumstances, methods, and contributing factors surrounding the event. The investigations should examine the Soldier’s behavior before the event; actions by the chain of command; and potential improvements to the unit’s, installation’s, or Army’s suicide prevention program. The completed investigations should provide clear, relevant, and practical recommendation(s) to prevent future suicides.”
- d) The AR 15-6 investigation will serve as the basis for the Suicide Incident Family Brief that must be offered to the primary NOK (and to the parents of the decedent when they are secondary NOK, when practical) for confirmed cases of suicide that occur on or after 15 April 2010. The Suicide Incident Family Brief should be conducted utilizing the procedures for the Army Fatal Accident Brief to the Next of Kin described in AR 638-34 (see *infra* Part VI of this outline).

7. Hazing and Bullying.

- a) Hazing is any conduct whereby a Servicemember or members regardless of service, rank, or position, and without proper authority, recklessly or intentionally causes a Servicemember to suffer or be exposed to any activity that is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to participate in any such activity is also considered hazing.
- b) Bullying is any conduct whereby a Servicemember or members, regardless of service, rank, or position, intends to exclude or reject another Servicemember through cruel, abusive, humiliating, oppressive, demeaning, or harmful behavior, which results in diminishing the other Servicemember’s dignity, position, or status.
- c) Commanders will immediately report allegations of criminal behavior in violation of this paragraph to law enforcement. All other hazing or bullying allegations that are reported to a commander will be investigated as possible violations of Article 92 of the UCMJ in accordance with the informal board procedures set forth in AR 15–6 or as a commander’s inquiry.

D. METHOD OF APPOINTMENT – The Memorandum of Appointment. (Para. 2-1)

- 1. Formal. Must be in writing but, when necessary, may be appointed orally and later confirmed in writing.

2. Informal. Orally or in writing. Written memorandum of appointment is preferred.
 3. Memorandum of appointments should specify purpose and scope of investigation and nature of findings and recommendations required. The appointing authority should include any special instructions or guidance for the investigating officer. AR 15-6 includes examples of memorandums of appointment but the examples provided are minimal. The memorandum of appointment is important and should include enough detail as is necessary to fully inform and guide the investigating officer. Any subsequent changes to the scope of the investigation should be documented in writing.
- E. WHO MAY BE APPOINTED – The Investigating Officer. (Para. 2-1)
1. Only those **best qualified for the duty by reason of education, training, experience, length of service, and temperament should be appointed** as investigating officers (IO) and board members.
 2. Must be a Commissioned or Warrant Officer, if civilian aGS-13 or higher.
 3. Investigating officers and voting board members must be senior to any individual whose conduct is under investigation, unless military exigencies make this impracticable. Non-voting members (i.e., legal advisor, judge advocate recorder) do not have to be senior.
 4. Specific regulations may require additional qualifications (i.e., officers, professionally certified, security clearance.)
- F. CONDUCTING THE INFORMAL INVESTIGATION. (Chapters 3 &4)
1. Before starting. The IO must review all written materials provided by the appointing authority and meet with the legal advisor prior to beginning an informal investigation. The legal advisor should explain the rules and legal concerns for AR 15-6 investigations and assist the IO develop an investigation plan. The investigative plan is extremely important to the success of the investigation. Make sure the IO gets an Investigating Officer Guidebook with checklist and has access to AR 15-6 and other applicable regulations.
 2. Investigation Plan.
 - a) Purpose of the Investigation. What are the questions that need answering? What specific findings and recommendations must be made? What is the timeline? The memorandum of appointment should address these matters.
 - b) Facts known and gaps (and more importantly how to fill the gaps.).

- c) Potential witnesses and order of interviewing.
- d) Physical and documentary evidence required.
- e) Possible Criminal or Counter-Intelligence implications? Article 31 Uniform Code of Military Justice (UCMJ) warnings? Privacy Act requirements?
- f) Regulations and laws involved.
- g) Chronology (of investigation as well as incident under investigation).
- h) Coordinate with the MPs or CID if applicable.

3. Rules of Evidence.

- a) Generally, an IO is not bound by the Military Rules of Evidence (MREs).
- b) Anything that in the minds of reasonable persons is **relevant and material** to an issue may be accepted as evidence. All evidence is given such weight as circumstances warrant.

For example, medical records, counseling statements, police reports and other records may be considered regardless of whether the preparer of the record is available to give a statement or testify in person.

- c) Limitations.
 - (1) Privileged communications. The rules in section V, part III, MCM, concerning privileged communications between lawyer and client (MRE 502), privileged communications with clergy (MRE 503), and husband-wife privilege (MRE 504) apply.
 - (2) Polygraph tests. The person involved in the test must consent to the use of any evidence regarding the results, or regarding the taking or refusing of a polygraph.
 - (3) "Off the record" statements are not allowed. Findings and recommendations cannot be based on statements not contained in the report of investigation.

(4) Statements regarding disease or injury. A Soldier cannot be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury. Any such statement against interest is invalid under 10 USC 1219 and may not be considered on the issue of the origin, incurrence, or aggravation of the disease or injury.

d) Ordering witnesses to testify.

(1) Investigating officers, generally do not have subpoena power to compel witnesses to appear and testify. Commanders and supervisors may order military personnel and civilian employees to appear and testify.

(2) No military witness can be compelled to incriminate himself or herself (UCMJ Article 31) or to make a statement or produce evidence that is not material to an issue that might tend to degrade them.

(3) No witness not subject to the UCMJ can be required to make a statement or produce evidence that would violate the 5th Amendment to the U.S. Constitution.

(4) If a witness invokes UCMJ Article 31 or the 5th Amendment, the IO must stop questioning and contact the legal advisor. The legal advisor should assist the IO determine if the invocation is well taken. This may require sending the witness to see a legal assistance or Trial Defense Service attorney for advice. If the IO, in consultation with the legal advisor, determines that the invocation is not well taken, the IO may order military and civilian employee witnesses to testify, or they may contact the witness' supervisor for assistance.

(5) Weingarten rights (5 U.S.C. 7114(a)(2)(B)) may be necessary for bargaining unit member employees.

(a) If a civilian employee who is a member of a certified bargaining unit represented by a labor organization reasonably believes that he or she might be disciplined as a result of an interview; and requests union representation, then the employee is entitled to have a union representative present during the interview.

(b) If a bargaining unit member requests union representation, the IO should consult with the legal advisor. The IO's options are to grant the request, discontinue the interview, or offer the employee the choice between continuing the interview unaccompanied by a union representative and having no interview at all.

- e) Involuntary admissions. A confession or admission obtained by unlawful coercion or inducement likely to affect its truthfulness will not be accepted as evidence.
- f) Bad faith unlawful searches. If members of the Armed Forces acting in their official capacity conduct or direct a search that they know is unlawful, evidence obtained as a result of that search may not be accepted or considered against any respondent whose personal rights were violated by the search. Such evidence is acceptable only if it can reasonably be determined by the legal advisor or, if none, by the investigating officer or president that the evidence would inevitably have been discovered. In all other cases, evidence obtained as a result of any search or inspection may be accepted, even if it has been or would be ruled inadmissible in a criminal proceeding. This exclusionary provision is applicable only when a respondent is involved, in other words, during a formal investigation.

G. FINDINGS AND RECOMMENDATIONS. (Para. 3-10 thru 3-13)

1. Findings.

- a) Clear concise statement of fact readily deduced from evidence in record. Includes negative findings (evidence does not establish a fact). Should not exceed scope of appointment. Should refer back to evidence gathered in the investigation such as "Statement of LTC Y," or "Exhibit 1."
- b) Standard is preponderance of the evidence: findings must be supported by greater weight of evidence than supports a contrary conclusion. Weight not determined by number of witnesses but by considering all evidence and factors such as demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indicators of veracity.
- c) Investigating Officer should work with the legal advisor to develop the findings based on the record of investigation facts, the commander's appointment memorandum, and any applicable regulation.

2. Recommendations.

- a) The recommendations must be consistent with the findings. They can be negative (e.g., no further action taken). The legal advisor should ensure that the recommendations make sense and are supported by the record of investigation.
- b) Investigating officers and boards make recommendations according to their understanding of the rules, regulations, and customs of the service, guided by fairness both to the Government and to individuals.

3. Deliberations and Voting (Boards of Officers).
 - a) Deliberations are conducted in private. Only voting members of the board may deliberate and vote. If consultation with non-voting member is required, named respondent, if any, has right to attend consultation.
 - b) Board with more than one member reaches decisions by voting. Majority vote controls. In the event of a tie, president's vote determines.

H. LEGAL REVIEW. (Para. 2-3.b.)

1. Not all AR 15-6 investigations require a legal review. A legal review is required for serious or complex cases, such as death or serious bodily injury cases; or where findings and recommendations may result in adverse administrative action or will be relied upon by higher HQs.
2. Determines whether the investigation complies with requirements in the appointing order and other legal requirements, the effects of any errors in the investigation, whether the findings (including findings of no fault, no loss, or no wrongdoing) and recommendations are supported by sufficient evidence (preponderance of the evidence), and whether the recommendations are consistent with the findings.
3. Effects of errors.
 - a) Appointing errors. If the appointing authority does not have the authority to appoint the particular investigation, the proceedings are a nullity unless an appropriate authority ratifies the appointment.
 - b) Substantial errors. Errors that have a material adverse effect on an individual's substantial rights. If the error can be corrected without substantial prejudice to the individual concerned, the appointing authority may return the investigation to the same IO or board for correction. If respondent fails to point out the error, it may be considered "harmless" (para. 2-3.c.(4)).
 - c) Harmless errors. Defects in the proceedings that do not have a material adverse effect on an individual's substantial rights.
4. There is no inherent conflict of interest or prohibition against the legal advisor conducting the legal review, however, the decision to do so should be a deliberate decision. It is recommended that a second attorney conduct the legal review in high-profile or complex cases.

5. If a judge advocate finds an investigation legally insufficient, he or she should work with the IO to try to remedy the error(s). Negotiation, good advice, and wise counsel should be used by the judge advocate to resolve the legal insufficiencies. Under no circumstances should the legal advisor or the judge advocate conducting the legal review rewrite any portion of the report of investigation without the IO's permission, or try to hide anything from the report from the appointing authority. If the legal insufficiencies cannot be resolved, the judge advocate should prepare an appropriate legal review describing the errors for the appointing authority. Just like the IO's report, however, the appointing authority is not bound by the legal review.
- I. ACTION BY APPOINTING AUTHORITY. (Para. 2-3)
1. Options.
 - a) Approve as is.
 - b) Disapprove, and/or return for additional investigation. May consider all relevant information, even information not considered by IO. Unless otherwise provided by another directive (i.e., AR 635-200, appointing authority bound by board recommendation of retention,) appointing authority is not bound by findings or recommendations; may take action less favorable than recommended.
 - c) Substitute findings and recommendations.
 2. Appointing authority decision can be documented on DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) or can be documented in separate memorandum. If documented on a separate memorandum, the DA Form 1574, if used, should still be annotated and signed by the appointing authority.
 3. Once approved by the appointing authority, the report of investigation becomes an official agency decision thus subject to the provisions of the Freedom of Information Act (5 USC § 552).
- J. ADVERSE ADMINISTRATIVE ACTION. (Para. 1-9) No adverse administrative action may be taken by a commander based on an informal AR 15-6 investigation until the following occurs unless another regulation that action is being taken under provides appropriate due process procedures.
1. Notice is given to the subject of the investigation of the allegations against him or her. The subject is given a copy of the investigation subject to any required redactions.
 2. The subject is given a reasonable opportunity to rebut the allegations (AR 15-6 does not require a specific time period).

3. The Commander must consider the subject's rebuttal to the investigation, if submitted in a timely manner, before taking any adverse action.

K. RELEASE OF AR 15-6 INVESTIGATIVE REPORTS AND MATERIALS.
(Para. 3-18)

1. AR 15-6 documents hold no special, automatic status under either the Privacy Act or the Freedom of Information Act. The individual parts of a report of investigation must be analyzed under both laws to determine suitability for release.
2. No part of a report should be released (unless specifically authorized by law or regulation such as a valid Freedom of Information Act request) without the approval of the appointing authority.
3. **MAINTENANCE AND STORAGE.** Army Records Information Management System (ARIMS) and Record Retention Schedule – Army (RRS-A). www.arims.army.mil. Investigations must be retained by the approving authority for five years, and then destroyed or shipped for permanent storage IAW ARIMS.

V. AR 385-10 ACCIDENT INVESTIGATIONS.

A. AR 385-10, THE ARMY SAFETY PROGRAM (27 November 2013)

1. **Applicability.** Active Army, the Army National Guard, and the U.S. Army Reserve. It also applies to Army civilian employees and the U.S. Army Corps of Engineers and Civil Works activities and tenants and volunteers.
2. **Purpose:** Provides policy on Army safety management procedures. Chapter 3 provides policies and procedures for initial notification, investigating, reporting, and submitting reports of Army accidents and incidents.
3. **Function of an AR 385-10 Accident Investigation (Chapter 3).** To determine the facts and causes of accidents in order to prevent future accidents, and to assess liability to determine the most likely organization to initiate corrective actions. The primary purpose of investigating and reporting Army accidents is prevention. A safety investigation cannot be used as the basis for disciplinary action.

B. WHAT IS AN ACCIDENT? (Para. 3-3)

1. An Army accident is defined as an unplanned event, or series of events, which results in one or more of the following:
 - a) Occupational illness to Army military or Army civilian personnel.

- b) Injury to on-duty Army civilian personnel.
- c) Injury to Army military on-duty or off-duty.
- d) Damage to Army property.
- e) Damage to public or private property, and/or injury or illness to non-Army personnel caused by Army operations

2. Accident classes are used to determine reporting and investigation requirements. (Para. 3-4)

- a) Class A: Damage totaling \$2M or more; accidents involving aircraft destroyed/missing/abandoned; injury/occupational illness resulting in fatality or permanent total disability. Unmanned aircraft system (UAS) accidents are classified based on the cost to repair/replace and not automatically as an "aircraft." Thus, an accidentally destroyed UAS costing less than \$2M is not a class A accident. (Note: friendly fire fatalities must be reported and investigated as a Class A accident.)
- b) Class B: Damage between \$500k - \$2M; injury/occupational illness resulting in permanent, partial disability; three or more personnel hospitalized as in-patients in a single occurrence.
- c) Class C: Damage between \$50k - \$500k; a nonfatal injury/occupational illness that causes one or more days away from work or training beyond the day or shift on which it occurred or disability at any time (that does not meet the definition of Class A or B and is a day(s) away from work case).
- d) Class D: Damage between \$2k - \$50k; a nonfatal injury/occupational illness resulting in restricted work, transfer, medical treatment greater than first aid; needle sticks/cuts from contaminated objects; medical removal under OSHA standard; occupational hearing loss; work-related tuberculosis.
- e) Class E Aviation Accident: Damage less than \$2k.
- f) Class F Aviation Incident: Damage to Army aircraft engines as a result of unavoidable internal or external foreign object damage.

C. INITIAL NOTIFICATION AND REPORTING. (Para 3-5 and 3-8)

- 1. All Army accidents and incidents, including occupational illnesses and injuries, regardless of how minor, are reportable to the unit/local safety office. The unit/local safety office will determine the reporting and investigative requirements for the accident.

2. Immediate notification to the U.S. Army Combat Readiness/Safety Center (USACR/SC) (<https://safety.army.mil/>) All Class A, all Class B, and Class C Aviation accidents and incidents (includes in-flight and on-ground, and unmanned aerial systems.)

D. CATEGORIES OF ACCIDENT INVESTIGATION REPORTS. (Para. 3-10)

1. Limited-Use Safety Accident Investigation Reports.

- a) Close-hold, internal communications of DA whose sole purpose is prevention of subsequent DA accidents. To encourage open and frank discussion of the accident, the Army will use its best efforts to prevent disclosure of statements provided under a promise of confidentiality.
- b) Required for all flight/flight related and fratricide/friendly fire accidents and accidents involving other systems, equipment, or military-unique items, operations or exercises and also when the determination of causal factors is vital to the national defense as determined by Cdr, USACR/SC.
- c) These reports cannot be used as evidence or to obtain evidence for disciplinary action, in determining the misconduct or line-of-duty status of any person, before any evaluation board, or to determine liability in administrative claims for or against the government.
- d) Witnesses may be given the option of making their statement under a promise of confidentiality if they are unwilling to make a complete statement without such a promise and the investigation board believes it is necessary to obtain a statement from a witness.
- e) Confidential witness interviews and accident board findings, recommendations, and analysis are privileged. Only the Freedom of Information Act Initial (FOIA) Denial Authority for safety investigations, Cdr, USACR/SC, may release that information. Excerpts from safety investigation reports composed purely of factual material may be released to other investigators and to the public under FOIA.

2. General-Use Safety Accident Investigation Reports.

- a) These reports are prepared to record data concerning all recordable DA accidents not covered by the Limited-Use Safety Accident Investigation Report.
- b) Intended for accident prevention purposes only. May not be used as evidence in any disciplinary, administrative, or legal action (punitive).

- c) Promises of confidentiality cannot be made that information will be treated as exempt from mandatory disclosure in response to a request under the FOIA.
 3. Both limited use and general use reports contain privileged information. Federal courts have recognized the need to protect certain information within these reports to further accident prevention within the military and to protect national security. In both types of accident reports, the board's findings, analysis, and recommendations are privileged and protected from release under FOIA. Within a Limited Use Accident Report, the confidential witness statements are also protected from release. The Supreme Court upheld the privilege for confidential witness statements in U.S. v. Weber Aircraft Corp., 465 U.S. 792 (1984).
- E. CONDUCTING THE ACCIDENT INVESTIGATION. (Para. 3-12 thru 3-15)
The type and extent of the investigation depends upon the class and type of accident.
 1. Appointing authority. Commander with general court-martial jurisdiction over the installation or unit responsible for the operation, personnel, or materiel involved in the accident; Commander, U.S. Army Reserve Command, for U.S. Army Reserve units; and State Adjutant General for National Guard units.
 2. Board of Officers. The following accidents must be investigated by a board consisting of at least three members.
 - a) All on-duty Class A and B accidents.
 - (1) Upon notification of a Class A or B accident, the Director of Army Safety (DASAF) will determine whether a Centralized Accident Investigation or a Installation-Level Accident Investigation will be conducted.
 - (2) Centralized Accident Investigation Board. Some members provided by Army Combat Readiness Center and some provided from the local command.
 - (3) Local Accident Investigative Board. Members provided from the local command.
 - b) Any accident that an appointing authority, or Cdr, USACR/SC, believes may involve a potential hazard serious enough to warrant investigation by multimember board.
 3. Single-Officer Board. The following accidents must be investigated by a board consisting of at least one member: Class C Aircraft Accidents.

4. Single-Officer Investigations (does not require formal board appointment orders.) The following accidents will be investigated by one or more officers, warrant officers, safety officers/NCOs, supervisors, or DA safety and occupational health specialists GS 9 or higher.
 - a) All off-duty military accidents.
 - b) Class C and D ground accidents.
 - c) Aircraft Class D, E, and F accidents and Class E and FOD incidents.
 5. Board Composition.
 - a) Must be Army officers or warrant officers, DA safety and occupational health specialist/manager/engineer GS-9 or higher, full-time technicians holding federally recognized officer or warrant officer status, DoD medical officer or DoD contracted medical officers, qualified DoD maintenance personnel, subject matter expert senior NCOs, E-5 and above in MOS 93U, 33U, 52D (UAS accidents), DoD weather officers, any other personnel approved by Cdr, USACR/SC.
 - b) For Class A and B accidents, board members will not be from the same unit that incurred the accident (battalion/ company/battery/troop or detachment.) Rank/grade/specialty requirement varies with type of accident.
 - c) Note special board member requirements of AR 385-10, para. 3-15 (depending on the type or circumstances of incident, the safety board may also require a medical officer or flight surgeon, qualified maintenance officer or technician, weather officer, master or senior aviator, UAS operator, or Army marine warrant officer.)
 6. Joint Safety Investigations. For accidents involving multiple services' property, a single Joint board may be convened. Service safety service commanders decide on board members and president. Board's proceedings will be recorded in the format required by each Service.
 7. Report Timelines. Class A, B, and C on-duty accidents must be completed and submitted to USACR/SC within 90 calendar days. Classes D, E, and F on-duty accidents must be completed and submitted to USACR/SC within 30 calendar days. All off-duty accidents must be completed and submitted to USACR/SC within 30 calendar days.
 8. Review. The USACR/SC will review all accident reports.
- F. LEGAL ACCIDENT INVESTIGATION (LEGAL INVESTIGATION). (Para. 3-10) (Formerly known as the collateral investigation.) See also AR 638-34 for guidance (which current version uses the term "collateral" investigation).

1. Used to obtain and preserve all available evidence for use in litigation, claims, disciplinary action, or adverse administrative action. Such investigations are often conducted simultaneously but independently of the accident safety investigation. They are essential to protect the privileged information of safety reports as they ensure an alternate source of information. Safety personnel may not be used to conduct or assist with the legal investigation, but they are authorized to the entire legal investigation.
2. Legal Accident Investigations are required:
 - a) For all Class A accidents, to include cases of friendly fire;
 - b) As directed by the SJA IAW the claims regulation (AR 27-20);
 - c) On accidents where there is a potential claim or litigation for or against the government or government contractor; or
 - d) On accidents with a high degree of public interest or anticipated disciplinary or adverse administrative action against any individual.
3. Commanders may direct a legal investigation into any other accident. The investigation will normally use AR 27-20 procedures if related to potential claim. If not, AR 15-6 informal procedures should be used.
4. Legal investigations into fatal training/operational accidents must be completed within 30 days of the accident. Upon written request, the appointing authority may grant delays in 10-day increments (AR 638-34, para 3-5).

G. PRIORITY AND SHARING OF INFORMATION. (Para. 3-24 thru 3-27)

1. The safety investigation has priority (collection of evidence/access to scene) over the legal investigation and all other investigations except a criminal investigation conducted by military police or Criminal Investigation Command (CID), which has priority over witnesses and evidence.
2. The safety investigation may obtain all information collected by the legal or MP/CID criminal investigations, as well as medical and personnel records of personnel involved in the accident..
3. Safety Accident Investigation Reports will not be enclosed in any other report unless the sole purpose of the report is accident prevention.
4. Other Army authorized investigators may obtain only factual information from the safety investigation.

5. Information that will not be given to other investigators the legal investigation include (punitive, Article 92 UCMJ):
 - a) Witness statements taken by safety board members.
 - b) Preliminary or final, findings, analysis, and recommendations.
 - c) Voice recordings of intra-cockpit communications without Cdr, USACR/SC authorization.

H. **RELEASE OF INFORMATION FROM ACCIDENT INVESTIGATION REPORTS.** (Para. 3-28 and 3-30)

1. AR 385-10, para. 3-30.i and AR 638-34, para. 4-2(f) make unauthorized disclosure of privileged safety information punishable under Article 92, UCMJ.
2. The U.S. Army Combat Readiness/Safety Center is the repository for Class A, B, C, D, and E accident reports, and Class E and F incident reports.
3. Freedom of Information Act requests for Class A, B, or C safety accident reports must be referred to the USACR/SC.
4. Local safety offices are authorized to release Class D and E general use reports if release otherwise appropriate under the Freedom of Information Act. Units wishing to withhold information from a Class D and E report should send it to the Commander, Combat Readiness Center, who is the initial denial authority for safety reports.

VI. AR 638-34 FATAL INCIDENT FAMILY BRIEFS.

A. **AR 638-34 – ARMY FATAL INCIDENT FAMILY BRIEF PROGRAM.**

1. Applicability. Active Army, Army National Guard, and U.S. Army Reserve.
2. Purpose. Standardize the process for presenting Army Fatal Incident Family Briefs when the Soldier's death results from training, operational and/or friendly fire accident or suicide. This regulation implements guidance published in DODI 1300.18.

3. Function of an AR 638-34 Family Presentation. To provide a thorough explanation of releasable investigative results of fatal training/operational accidents and suicides to the deceased's PNOK; ensure the family understands the circumstances of the incident surrounding the death of a Soldier; and ensure the family is reassured of the Army's concern regarding the tragedy and is aware of the compassion of Army leaders. Information concerning the accident or accident investigation may not be released to Congress, the media, or the public before it is presented to the PNOK.

B. ARMY IMPLEMENTATION.

1. Key definitions.

- a) Fatal training accidents include those accidents associated with non-combat military exercises or training activities that are designed to develop a Soldier's physical ability or to maintain or increase individual/collective combat and/or peacekeeping skills.
- b) Fatal operational accidents are those deaths associated with active duty military exercises or activities occurring in a designated war zone or toward designated missions related to current war operations or other contingency operations, contributing directly or indirectly to the death.
- c) PNOK. The legal next of kin. That person of any age most closely related to the individual according to the line of succession. Seniority, as determined by age, will control when the persons are of equal relationship. For PNOKs under the age of 18 years, the adult custodian will determine the PNOK's ability to receive a face-to-face presentation.

2. Presentations are required for: (Para. 5-1)

- a) All fatal training/operational accidents investigated under AR 15-6, AR 385-10, and AR 638-34.
- b) Special interest cases or cases in which there is probable high public interest, as determined by The Adjutant General.
- c) All suspected cases of Friendly Fire.
- d) In general, fatal accidents that are hostile, but do not occur as a result of engagement with the enemy.

- e) Confirmed Soldier suicides investigated pursuant to AR 15-6, AR 385-10, DODI 6055.07, and AR 638-34 and/or Soldier deaths where the Armed Forces Medical Examiner or civilian equivalent has determined the manner of death to be suicide.
3. Updates to PNOK. If the appointing/approval authority grants an extension of the 30-day requirement to complete the legal investigation, the approval authority is responsible for the release of information from the investigation to the PNOK.
- a) The approving authority's legal office must review each update to ensure that it contains no admission of liability, waiver of any defense, offer of compensation or any statement that might jeopardize the Army's litigation posture.
 - b) The update is provided to the Casualty and Mortuary Affairs Operation Center (CMAOC) who will direct the Casualty Assistance officer (CAO) to provide the update to the family.
4. Preparing the presentation to the PNOK. (Chapter 5)
- a) Once the investigation is complete, the CMAOC contacts the Army command commander and the collateral investigation appointing/approval authority in order to coordinate appointment of the briefer who is a brigade-level commander in the grade of colonel.
 - b) The command is ultimately responsible to provide an O6 to present the briefing as the CMAOC does not provide briefing teams.
 - c) Within 24-hours of completion of the investigation, the CAO must notify the PNOK that the Army is prepared to discuss the results of the investigation with the family.
 - d) The CAO then follows up with the PNOK to arrange for the presentation date and forward the preferred dates (primary and secondary) to the CMAOC.
5. Briefing Team.
- a) At a minimum, the briefing team must consist of the briefer (an O6 from the chain of command), the family's CAO, and a chaplain.
 - b) The briefer must consider including the SJA or legal advisor or PAO representative when it is apparent that a family has invited, or may invite, the local media or a family legal representative will attend the presentation.

- c) The CAO must work with the PNOK to obtain a list of people the PNOK intends to invite to the presentation to enable the presentation team to determine the family's intent to invite media or legal representation.
 - d) NOTE: The Army is prohibited from putting conditions or limitations upon those whom the family wishes to invite to the presentation (para. 5-2.k.).
 - e) The briefer must also consider including an interpreter if the PNOK or other attending family members do not understand English.
6. Conducting the Family Presentation. (Chapter 6)
- a) The briefer's primary responsibility is to meet personally with the PNOK and deliver a thorough open explanation of the releasable facts and circumstances surrounding the accident. At a minimum, the briefer must provide the following:
 - (1) An explanation of the unit's mission which highlights the Soldier's significant contributions to the mission and the Army.
 - (2) An accurate account of the facts and circumstances leading up to the accident, the sequence of events that caused the accident, and a very clear explanation of primary and contributing factors causing the accident as determined by the collateral investigation.
 - (3) Actions taken at the unit level to correct any deficiencies.
 - b) Most PNOK prefer to receive the family presentation in the family home.
 - c) Style of presentation.
 - (1) Dialogue with no notes but with maps and diagrams of training areas. This works best for a briefer who is intimately familiar with the accident and investigation.
 - (2) Bullet briefing charts. These work well as they tend to help the briefer stay focused. Charts must be reviewed and approved in advance by the SJA.
 - (3) Simple notes and an executive summary. Written materials must be reviewed and approved by the SJA and copies should be left with the PNOK if requested.
7. Completion of Family Presentation. Within ten working days of the presentation, the briefer must submit an AAR through the appointing authority and ACOM to the CMAOC.

8. SJA Requirements.

- a) The OSJA is required to review the presentation to ensure that it contains no admission of liability, waiver of any defense, offer of compensation, or any other statement that might jeopardize the Army's litigation posture. This may include review of briefing charts, notes, and executive summaries.
- b) The SJA or legal advisor must provide a non-redacted copy of the collateral investigation report to CMAOC.
- c) The regulation is not intended to provide the PNOK with information not otherwise releasable under the Privacy Act or the Freedom of Information Act.
 - (1) The SJA must redact the collateral investigation report and prepare the required number of copies. At a minimum, the briefer, each team member, and each PNOK will be given a redacted copy.
 - (2) The SJA also must prepare a letter to accompany the redacted version of the report delivered to the family and will explaining, in general terms, the reasons for the redactions.
- d) More detailed guidance concerning redaction of reports of investigation related to deaths is contained in Army Directive 2010-02.

9. Release of the Collateral Investigation. (Para. 4-2) The investigation will be released in the following order:

- a) Interested offices within DOD and DA.
- b) PNOK and other family members designated by the PNOK;
- c) Members of Congress, upon request; and
- d) Members of the public and media (after a valid FOIA request).

VII. AR 600-8-4 LINE OF DUTY INVESTIGATIONS.

A. AR 600-8-4, LINE OF DUTY POLICY, PROCEDURES, AND INVESTIGATIONS

1. Applicability. Applies to the Active Army, the Army National Guard, the U.S. Army Reserve, ROTC Simultaneous Membership Program, cadets of the U.S. Military Academy , Senior ROTC cadets, and applicants for enrollment while performing authorized travel to or from or while attending training or a practice cruise.
2. Purpose. Prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier. Provides standards and considerations used in determining line of duty status.
3. Function of an AR 600-84 Line of Duty Investigation. To determine the duty status of Soldiers who die or sustain certain injuries, diseases, or illnesses, and to determine whether such death, injury, disease, or illness occurred in the line of duty.

B. POSSIBLE OUTCOMES.

1. In Line of Duty (ILD – Soldier in authorized status and injury not proximately caused by intentional misconduct or willful negligence).
2. Not in Line of Duty-Not Due to Own Misconduct (NLD-NDOM – Soldier in unauthorized status but injury not caused by intentional misconduct or willful negligence).
3. Not in Line of Duty-Due to Own Misconduct (NLD-DOM – Soldier's intentional misconduct or willful negligence proximate cause of injuries, regardless of status).

C. IMPACT OF DETERMINATION. (Para. 2-2)

1. In Line of Duty. Soldier may be entitled to:
 - a) Army Disability Retirement or Separation Compensation.
 - b) Department of Veterans Affairs (DVA) Compensation and Hospitalization Benefits.
2. Not in Line of Duty - Not Due to Own Misconduct and Due to Own Misconduct:
 - a) If on active duty, Soldier denied disability retirement or separation compensation.
 - b) If disabled after leaving AD, Soldier may be denied DVA disability or hospitalization benefits.
 - c) May be denied civil service preference.

3. Not in Line of Duty-Due to Own Misconduct:
 - a) Days lost > 1 added to service obligation.
 - b) Days lost > 1 may be excluded from computations for pay and allowances.
 - c) May result in loss of pay where disease (not injury) immediately follows intemperate use of drugs (includes alcohol).

D. TWO-STEP ANALYSIS:

1. Did the Soldier's intentional misconduct or willful negligence proximately cause the injury, illness, or death?
 - a) Injury, illness, or death caused by Soldiers own misconduct can never be in line of duty.
 - b) Violation of a regulation by itself is not misconduct, it is simple negligence. Regulatory violations should be considered in the analysis, however.
2. What was the Soldier's status?
 - a) Duty status refers to an authorized duty status – on leave, on pass, present for duty, versus unauthorized status – AWOL, deserter, DFR. Unless mentally unsound, a Soldier injured while in an unauthorized status will not be found to be ILD. (Para. 4-7)
 - b) It does not refer to worker's compensation or claim's theories of "performing military duties" or "job-related."
3. Examples:
 - a) In Line of Duty. Soldier is injured in car crash while on leave. Crash is caused by another driver's negligence. Soldier is considered to be in the line of duty.
 - b) Not in Line of Duty, Not Due to Own Misconduct: Soldier is AWOL (while mentally sound), but otherwise doing nothing wrong. While walking down the street, Soldier is hit by a car that jumps the curve and is seriously injured. Soldier is considered to be not in the line of duty, but not due to own misconduct. NOTE: NLOD-NDOM may also be based on an existed prior to service (EPTS) condition, not aggravated by service.

- c) Not in Line of Duty, Due to Own Misconduct: Soldier gets drunk at a party and attempts to drive home but is involved in an accident on the way. If the intoxication caused the accident, Soldier is considered to be not in the line of duty due to own misconduct.

E. PROCEDURES.

1. Presumptive Finding of In Line of Duty – No investigation is required when:
 - a) A disease does not involve a factor cited at paragraph 3 below.
 - b) Injury is clearly incurred as the result of enemy action or terrorist attack.
 - c) Death by natural causes or death occurs while a passenger on a common commercial carrier or military aircraft.
 - d) NOTE: See para. I.3. below for additional information for death cases.
2. Informal Investigation (Para 3-1 thru 3-6)
 - a) No misconduct is suspected.
 - b) No negligence is suspected.
 - c) Formal investigation is not required.
 - d) At a minimum, the MTF representative and commander must sign a DA Form 2173. Supporting exhibits should be attached.
 - e) Special court-martial convening authority (SPCMCA) is appointing and approving authority. (National Guard appointing authority is commander of at least battalion or squadron size unit). SPCMCA should approve informal investigation in writing “By Authority of the Secretary of the Army.”
 - f) NOTE: Informal investigation can only result in an ILD determination except in the case where the MTF finds that a condition EPTS. In that event, the status would be NLD-NDOM.
3. Formal Investigation. (Para. 3-7 thru 3-12)
 - a) Appointing Authority is the SPCMCA.
 - b) Final approving authority is the General court-martial convening authority (GCMCA). May be delegated to field grade officer on the GCMCA’s staff.

- c) Investigating officer must be senior in grade to the individual investigated. May be commissioned officer, warrant officer, or commissioned officer of another U.S. military service in joint activities where Army has been designated as the executive agent.
- d) Formal investigations are required when any of the following factors are present:
 - (1) Strange or doubtful circumstances or is apparently due to misconduct or willful negligence.
 - (2) Injury or death involving alcohol or drug abuse.
 - (3) Self-inflicted injuries or possible suicide.
 - (4) Injury or death incurred while AWOL.
 - (5) Training death of a USAR/ARNG Soldier.
 - (6) Injury or death of a USAR or ARNG member while traveling to or from authorized training or duty.
 - (7) Injury or death occurring while en route to final acceptance in the Army.
 - (8) USAR/ARNG Soldier serving active duty tour of 30 days or less is disabled by disease.
 - (9) In connection with an appeal of an unfavorable finding of alcohol or drug abuse.
 - (10) A valid request for formal investigation is made (e.g., requested by the Physical Disability Agency).
- e) Evidentiary standards and presumptions:
 - (1) Soldier is presumed ILD UNLESS refuted by “substantial” evidence contained in the investigation.
 - (2) A finding or determination must be supported by a greater weight of evidence than supports any different conclusion.
 - (3) A reasonable person must be convinced of the truth or falseness of a fact considering equally direct and indirect evidence.
 - (4) KEY: Must use the rules in Appendix B.
 - (5) The general guidance contained in AR 15-6 applies unless AR 600-8-4 provides more specific or different guidance.

4. Timeline.
 - a) Informal: 40 calendar days after incident.
 - b) Formal: 75 calendar days after incident.

F. PROCEDURAL DUE PROCESS REQUIREMENTS.

1. During Evidence Collection: Soldier not required to make a statement against interest. Soldier must be advised that he or she does not have to make a statement against interest. If Soldier is not informed of right not to make statement, or is forced to make statement, it cannot be used in making the LOD determination (10 USC § 1219).
2. Regarding Adverse Findings: Investigating officer must provide Soldier with written notice of proposed adverse finding, a copy of the investigation, and the supporting evidence. Investigating officer must issue warning regarding making statements against interest. Investigating officer must give a reasonable opportunity to reply in writing and to offer rebuttal. If investigating officer receives a response, it must be considered before finalizing findings. If investigating officer does not receive a response, the investigating officer may proceed to finalize the findings.
3. Formal investigations must receive a legal review before a final determination is made. Informal investigations may receive a legal review but it is not required. (Para. 3-9)

G. FINAL APPROVING AUTHORITY (GCMCA OR FIELD GRADE DESIGNEE) DECISION.

1. Final approving authority either approves or disapproves the finding under the authority of the Secretary of the Army.
2. The report must be forwarded to the service member through his command.
3. The transmittal letter must notify the service member of his right not to make a statement against interest and of his appellate rights.

H. APPELLATE RIGHTS. (Para. 4-17)

1. The service member may appeal in writing within 30 days after receipt of the notice of adverse finding.
2. The service member's appeal is to the final approving authority.
3. The final approving authority may only change the finding to "in line of duty," based on substantial new evidence.

I. SPECIAL CONSIDERATIONS.

1. Always consult the rules of Appendix B. The regulation also discusses and provides direction regarding pregnancies, venereal disease, conditions existing prior to service, intoxication and drug use, vehicle accidents, etc. throughout chapter 4.
2. Mental responsibility, emotional disorder, suicide, and suicide attempts.
 - a) Soldier may not be held responsible for acts if, as the result of, mental defect, disease or derangement, Soldier unable to comprehend or appreciate the nature of conduct. These disorders are presumed ILD unless they existed prior to service (EPTS). Personality disorders, by their nature, are considered EPTS.
 - b) Suicide and suicide attempt line of duty investigations must determine whether Soldier was mentally sound. Investigating officer must, therefore, inquire into the Soldier's background. A mental health officer must review the evidence and render an opinion whether the Soldier was mentally sound at the time of the incident. If mentally unsound, the medical officer must determine if the condition existed EPTS.
 - c) Self-inflicted injuries by a mentally sound Soldier should be considered misconduct.
3. Cases Involving Death.
 - a) Prior to 10 September 2001, deaths did not require a line of duty determination. Congress authorized the payment of Survivor benefit Plan benefits to Service members who die on active duty "in the line of duty" regardless of amount of time of service (FY 02 National Defense Authorization Act).
 - b) All active-duty deaths on or after 10 September 2001 require a line of duty determination. An investigation is required for all deaths except death by natural causes, or when death occurs while a passenger on a common commercial carrier or military aircraft, or death as the result of combat, attack by terrorists or other forces antagonistic to the interests of the United States, or in friendly-fire incidents, or while a prisoner of war.

VIII. AR 735-5 FINANCIAL LIABILITY INVESTIGATIONS OF PROPERTY LOSS (FLIPL) (CHAPTERS 13 AND 14)

A. AR 735-5, POLICIES AND PROCEDURES FOR PROPERTY ACCOUNTABILITY.

1. Applicability. Applies to the Active Army, the Army National Guard, and the U.S. Army Reserve.
2. Purpose: Prescribes the basic policies and procedures in accounting for Army property.
3. Tools:
 - a) Financial liability officers should use DA Pam 735-5, Financial Liability Officer's Guide, during their investigation.
 - b) Units must use DA Form 7531, Checklist and Tracking Document for Financial Liability Investigations of Property Loss, to track investigations.
4. Function of an AR 735-5 Financial Liability Investigation of Property Loss.
 - a) A FLIPL is used to document the circumstances concerning the loss, damage, destruction or theft (LDDT) of Government property and serves as, or supports a voucher for adjusting the property from accountable records. It also documents a charge of financial liability assessed against an individual or entity, or provides for the relief from financial liability.
 - b) It is used to enforce property accountability and is not intended as corrective action or punishment. Commanders, however, are not precluded from using administrative or disciplinary measures, such as reprimand or Article 15, if a Soldier's actions contributed to the LDDT of Government property.

B. ALTERNATIVES TO FINANCIAL LIABILITY INVESTIGATIONS.

1. Statement of Charges/Cash Collection Voucher when liability is admitted and the charge does not exceed one month's base pay. (These two functions have been combined on DD Form 362)
2. Cash sales of hand tools and organizational clothing and individual equipment (also completed on a DD Form 362).
3. Unit level commanders may adjust losses of durable hand tools up to \$500 per incident, if no negligence or misconduct is involved.

4. Abandonment order (by O6 or above) may be used in combat, large-scale field exercises simulating combat, military advisor activities, or to meet other military requirements.
 5. Damage statement. Approval authority may sign damage statement when there is no evidence of negligence or misconduct.
 6. Recovery of property unlawfully held by civilians is authorized — show proof it is U.S. property and do not breach the peace.
 7. AR 15-6 investigations and other collateral investigations can be used in conjunction with the DD Form 200 (replaced DA Form 4697) as a substitute for financial liability investigation investigations.
- C. MANDATORY FLIPLs. (Para. 13-3) A unit must initiate to account for LDDT of Government equipment when:
1. An individual refuses to admit liability and refuses to make voluntary reimbursement when negligence or misconduct is suspected.
 2. Property is lost by an outgoing accountable officer, unless voluntary reimbursement is made for the full value of the loss.
 3. The amount of loss or damage exceeds an individual's monthly base pay, even if liability is admitted.
 4. The damage to government quarters or furnishings exceeds one month's base pay.
 5. The loss involves certain bulk petroleum products (exceeding allowable loss and \$1000).
 6. A specified type of controlled item is lost or destroyed (requires AR 15-6 investigation).
 7. A higher authority or other DA regulation directs a financial liability investigation.
 8. Loss involves public funds or other negotiable instruments greater than \$750, or any such loss and the individual does not voluntarily reimburse Army.
 9. Loss or damage involves government vehicle, cost exceeds \$1000, and responsible party not relieved of liability.
 10. Loss resulted from fire, theft, or natural disaster.
 11. Loss involves certain recoverable items.

12. Losses due to combat where equipment is determined captured, abandoned or a physical loss (no residue).
13. Certain ammunition losses require AR 15-6 investigation (See AR 190-11, Appendix E).

D. JOINT FINANCIAL LIABILITY INVESTIGATIONS.

1. Absent a loan agreement stating otherwise, the regulation of the Service that owns the property (property is located on that service's property account) is the appropriate regulation to apply.
2. The Army and Air Force have a reciprocal agreement outlined in paragraph 14-36 of AR 735-5 that explains the process for processing financial liability investigations that find Air Force personnel liable for the loss, damage, or destruction of Army property. Upon completion of the investigation, it should be forwarded to the appropriate Air Force approval authority for final action and possible collection.
3. For all other situations where non-Army personnel are found to be liable for the loss, damage, destruction or theft of Army property, the procedures of AR 735-5, paragraph 14-35 should be followed. Upon completion of the investigation, the respondent will be formally notified and requested to make payment in full. If after 60 days, the respondent fails to pay, the investigation should be sent to the respondent's servicing finance office for processing.
4. Financial liability investigations that find contractors liable should be processed IAW the applicable contract through the contracting office.

E. INITIATING THE FLIPL. (Para. 13-7 and 13-8)

1. Timeline. Upon discovering the LDDT of Government equipment, the hand receipt holder, accountable officer, or person with most knowledge of the incident will initiate a FLIPL within:
 - a) Active Army: 15 calendar days.
 - b) Army Reserve and National Guard: 75 calendar days.
2. AR 15-6 Investigation. Certain losses (controlled items and weapons/ammunition identified in AR 190-11, App E) require an AR 15-6 investigation as the underlying investigative mechanism. A DD Form 200 (FLIPL) will be completed as the adjustment document, but the appointing or approving authority should not conduct a separate FLIPL.
3. Initiation is complete when forwarded to the appointing/approving authority for appointment of a financial liability officer (investigating officer).

4. Government Property Damaged or Lost by Contractors (Para. 13-20).
The approving authority will compile all documentation regarding the LDDT and forward to the contracting officer responsible for monitoring the contract, who will investigate the loss.

F. APPROVING/APPOINTING AUTHORITY. (Para. 13-17)

1. The approving authority is an Army officer, or DA civilian employee authorized to appoint a financial liability officer and to approve financial liability investigations “by authority of the Secretary of the Army.” The approving authority does not have to be a court-martial convening authority. The following personnel are approving authorities for FLIPLs.
 - a) For final loss or damage \$5,000 or less, the first lieutenant colonel (O5) in the rating chain is the approval authority (if delegated) except for equipment classified as communications security (COMSEC), sensitive items, or equipment containing personal identification information (PII).
 - b) For final loss or damage greater than \$5,000 but less than \$100,000, the first colonel (O6) or supervisory GS-15 in the rating chain is the approval authority.
 - c) For final loss or damage \$100,000 or greater, or any final loss of a controlled item, the first general officer or senior executive service civilian in the rating chain is the approval authority.
2. The appointing authority is an officer or civilian employee designated by the approving authority with responsibility for appointing financial liability investigation investigating officers. The approving authority may designate, in writing, a Lieutenant Colonel (O5) (or major in a lieutenant colonel billet) or DOD civilian employee in the grade of GS-13 (or a GS-12 in a GS-13 billet) or above as an appointing authority.
3. Regardless of who initiates the financial liability investigation, it is processed through the chain of command of the individual responsible for the property at the time of the incident, provided the individual is subject to AR 735-5. AR 735-5, para. 13-5.

G. FINANCIAL LIABILITY OFFICER QUALIFICATIONS. (Para. 13-27)

1. The financial liability officer will be senior to the person subject to possible financial liability, except when impractical due to military exigencies.

2. The financial liability officer can be an Army commissioned officer; warrant officer; or enlisted Soldier in the rank of Sergeant First Class (E-7), or higher; a civilian employee GS-07 or above; or a Wage Leader (WL) or Wage Supervisor (WS) employee. In joint commands or activities, any DOD commissioned or warrant officer or non-commissioned officer E-7 or above assigned to the activity or command can be the financial liability officer.

H. CONDUCTING THE INVESTIGATION. (Section VI)

1. The financial liability officer's primary duty is the investigation. He/she will receive a briefing prior to beginning the investigation. The regulation does not mandate who provides the briefing. It should be provided by the unit S4 or a judge advocate.
2. Timeline. The financial liability officer must complete the investigation within:
 - a) Active Army: 30 calendar days.
 - b) Army Reserve and National Guard: 85 (P 91)calendar days.
3. Financial liability officer must:
 - a) Seek out all the facts that surround the LDDT and conduct a thorough and impartial investigation.
 - b) Physically examine damaged property and release it for turn-in or repair.
 - c) Interview and obtain statements from individuals with useful information.
 - d) Resolve conflicting statements and confirm self-serving statements.
 - e) Organize investigation in accordance with the regulation. Paragraph 13-31.
 - f) Determine the cause and value of the LDDT of Government property and determine if assessment of financial liability is warranted.

I. ASSESSMENT OF FINANCIAL LIABILITY. (Para. 13-29)

1. Individuals may be held financially liable for the LDDT of Government property if they were negligent or have committed willful misconduct, and their negligence or willful misconduct is the proximate cause of that LDDT.

2. Loss. Before a person may be held liable, the facts must show that a loss to the Government occurred. The dollar amount of the LDDT will be the actual value at the time of the loss, minus any scrap or salvage value.
 - a) Types of Loss. There are two types of losses which can result in financial liability:
 - (1) Actual loss. Physical loss, damage or destruction of the property.
 - (2) Loss of accountability. Due to loss circumstances, it is impossible to determine if there has been actual physical loss, damage, or destruction because it is impossible to account for the property.
 - b) Fair market value (as determined by a "qualified technician") is the preferred method of valuing the loss. (App. B, para. B-2a)
 - (1) Determine the item's condition item at the time of the loss or damage.
 - (2) Determine a price value for similar property in similar condition sold in the commercial market within the last 6 months.
 - c) Depreciation.
 - (1) Least preferred method of determining the loss to the government. (App. B, para. B-8)
 - (2) Compute charges depending on the type of equipment according to App. B, para. B-2b.
3. Responsibility. The type of responsibility a person has for property determines the obligations incurred by that person for the property. The type of obligation a person has toward property is relevant when determining whether a person was negligent. There must be a finding of either negligence or willful misconduct before an individual may be held liable.
 - a) Command Responsibility.
 - (1) The commander has an obligation to insure proper use, care, custody, and safekeeping of government property within his or her command.
 - (2) Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to command at any level.
 - b) Supervisory Responsibility.

- (1) The obligation of a supervisor for the proper use, care, and safekeeping of government property issued to, or used by, subordinates. It is inherent in all supervisory positions and not contingent upon signed receipts or responsibility statements. It arises because of assignment to a specific position and includes:
 - (2) Providing proper guidance and direction;
 - (3) Enforcing all security, safety, and accounting requirements; and
 - (4) Maintaining a supervisory climate that will facilitate and ensure the proper care and use of government property.
- c) Direct Responsibility.
- (1) The obligation to ensure the proper use, care, custody, and safekeeping of all government property for which the person has receipted.
 - (2) Direct responsibility is closely related to custodial responsibility (discussed below).
- d) Custodial Responsibility.
- (1) An individual's obligation regarding property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for and ensure property custody and safekeeping of the property.
 - (2) Who has custodial responsibility? A supply sergeant, supply custodian, supply clerk, or warehouse person who is rated by and answerable directly to the accountable officer or the individual having direct responsibility for the property.
 - (3) Responsibilities include:
 - (a) Ensuring the security of all property stored within the supply room and storage annexes belonging to the supply room or SSA is adequate.
 - (b) Observing subordinates to ensure they properly care for and safeguard property.
 - (c) Enforcing security, safety and accounting requirements.
 - (d) If unable to enforce any of these, reporting the problems to their immediate supervisor.

- e) Personal Responsibility. An individual's obligations to properly use, care, and keep safe government property in their possession, with or without a receipt.
4. Culpability (negligence or willful misconduct). Before a person can be held liable, the facts must show that he or she acted negligently or engaged in willful misconduct.
- a) Simple negligence. The absence of due care, by 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 LDDT.
 - (1) Remember, a reasonably prudent person is an average person, not a perfect person. Also consider:
 - (2) What could be expected of the person considering their age, experience, and special qualifications?
 - (3) The type of responsibility involved.
 - (4) The type and nature of the property. More complex or sensitive property normally requires a greater degree of care.
 - (5) The nature, complexity, level of danger, or urgency of the activity ongoing at the time of the LDDT of the property.
 - (6) Examples of simple negligence.
 - (a) Failure to do required maintenance checks.
 - (b) Leaving personally assigned equipment in the trunk of a personal vehicle.
 - (c) Driving too fast for road or weather conditions.
 - (d) Failing to maintain proper hand receipts.
 - b) Gross negligence—an extreme departure from the course of action expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act.
 - (1) Reckless, deliberate, or wanton -
 - (a) These elements can be express or implied.
 - (b) Does not include thoughtlessness, inadvertence, or errors in judgment.
 - (2) Foreseeable consequences.

- (a) Does not require actual knowledge of actual results.
 - (b) Does not need to foresee the particular loss or damage that occurs, but must foresee that some loss or damage of a general nature may occur.
- c) Willful misconduct—any intentional wrongful or unlawful act.
 - (1) Willfulness can be express or implied.
 - (2) Includes violations of law and regulations such as theft and misappropriation of government property.
 - (3) A violation of law or regulation is not negligence per se.
 - (4) Examples of willful misconduct
 - (a) A violation of law or regulation is not negligence per se.
 - (b) Soldier throws a tear gas grenade into the mess tent to let the cooks know what he thought about breakfast, and as a result, the tent burns to the ground.
 - (c) Soldier steals a self-propelled howitzer, but he does not know how to operate it. Accordingly, his joy ride around post results in damage to several buildings.
- 5. Proximate cause. Before a person can be held liable, the facts must clearly show that a person's conduct was the proximate cause of the LDDT. Proximate cause is based upon whether the LDDT was foreseeable. If the LDDT of property was a reasonably foreseeable consequence of the respondent's misconduct or negligence, and LDDT to property actually occurred, then that misconduct or negligence is the proximate cause of the LDDT.
 - a) The cause which, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. It is the primary moving cause, or the predominate cause, from which the LDDT followed as a natural, direct, and immediate consequence.
 - b) Use common sense and good judgment to determine.
 - c) Examples of proximate cause.
 - (1) Soldier driving a vehicle fails to stop at a stop sign and strikes another vehicle after failing to look. Proximate cause is the Soldier's failure to stop and look.

(2) Soldier A illegally parks his vehicle in a no parking zone. Soldier B backs into A's vehicle. B did not check for obstructions to the rear of his vehicle. A's misconduct is not the proximate cause of the damage. Instead, B's negligent driving is the proximate cause.

d) Independent intervening cause—an act which interrupts the original flow of events or consequences of the original negligence. It may include an act of God, criminal misconduct, or negligence.

J. CONCLUDING THE INVESTIGATION.

1. Liability not recommended by the financial liability officer. (Para. 13-33) If financial liability is not recommended, the investigation is forwarded through the appointing authority, if any, to the approving authority for action.

a) If the approving authority concurs and does not assess liability, the investigation is complete.

b) If the approving authority does not concur and decides to assess liability, the individual against whom liability will be imposed (respondent) must be given notice and an opportunity to rebut the decision (same procedure as if the financial liability officer initially recommended liability).

2. Liability recommended by the financial liability officer. (Para. 13-34 & 13-35) If financial liability is recommended against an individual, the individual is referred to as the respondent. Respondents have certain rights.

a) The financial liability officer will notify the respondent by memorandum of the proposed recommendation of financial responsibility. The notification includes:

(1) The right to inspect and copy the report of investigation. A copy of the investigation is normally sent with the notification.

(2) The right to obtain free legal advice (military and DA civilians) from the OSJA.

(3) The right to submit a statement and other evidence in rebuttal to the recommendation.

(4) Time limits for submitting rebuttal evidence to the financial liability officer are as follows.

(a) 7 calendar days—when investigation is hand delivered to the respondent.

- (b) 15 calendar days—when respondent is unavailable but in the same country and the investigation is mailed or emailed with delivery receipt.
 - (c) 30 calendar days—when respondent is unavailable and in a different country and the investigation is mailed or emailed to AKO.
 - b) The financial liability officer must consider the respondent's rebuttal, even if received after the submission deadline. Regardless of whether the financial liability officer changes the recommendation, the investigation is forwarded through the appointing authority, if any, to the approving authority for decision.
 - c) The approving authority is not bound by the recommendation of the financial liability officer. The approving authority may decide not to impose liability or to impose liability.
 - d) Note: If financial liability officer recommended no liability and therefore did not provide the individual with notice and opportunity to rebut, the approving authority must do so before he can assess liability.
- 3. Approving authority decides to impose liability.
 - a) The approval authority must notify the respondent of decision to impose liability and that collection efforts will commence in 30 days (NOTE: ARNG affords 60 days). In the memorandum the approval authority must also notify the respondent of the following rights.
 - (1) The right to inspect and copy the file.
 - (2) The right to legal advice from the local legal assistance office.
 - (3) The right to request reconsideration based on legal error.
 - (4) The right to a hearing (for DOD civilians only).
 - (5) The right to request remission of indebtedness UP AR 600-4.
 - (a) Available for enlisted Soldiers only.
 - (b) Only to avoid extreme hardship.
 - (c) Only unpaid portions can be remitted. Suspend collection action long enough for the Soldier to submit his request for remission of the debt.
 - (d) Must request reconsideration before submitting request for remission of indebtedness.
 - (6) The right to request extension of collection time.

(7) The right to petition Army Board for the Correction of Military Records (ABCMR) IAW AR 15-185. Based on unjustness. Can only be made after appeal authority acts on request for reconsideration (see below).

(8) Civilian employees may avail themselves of the grievance/arbitration procedures.

b) Request for reconsideration, a hearing, or remission or cancellation of debt stops all collection action pending outcome of request.

4. Mandatory legal review. (Para. 13-39)

a) Before the approving authority approves a recommendation of liability, a judge advocate WILL review the survey for legal sufficiency of the evidence and propriety of the findings and recommendations. The legal reviews should be completed within 10 days (40 days for USAR and ARNG).

b) Although AR 735-5 states that the legal review is conducted after the approving authority makes his or her decision regarding liability, in practice the legal review is normally conducted prior to review by the approving authority.

c) The approving authority cannot assess liability of the legal review determines that the investigation is insufficient.

K. DECISION BY APPROVING AUTHORITY WITHOUT INVESTIGATION (Short FLIPL). (Para. 13-22 & 13-23)

1. When initial information indicates there was no negligence involved in the LDDT of Government property, the approving authority may relieve all individuals from liability.

2. When initial information indicates that negligence or willful misconduct was the proximate cause of the LDDT of Government property, the approving authority may assess liability by:

a) Notifying the respondent of the intent to hold him/her liable. Notification must include all the facts upon which the decision is based and must include notice of all the respondent rights as outlined above. The respondent has the right to submit a rebuttal.

b) The approving official must consider the rebuttal if submitted and make a determination.

c) The information and rebuttal must receive a legal review.

- d) The approving authority makes a final decision and notifies the respondent accordingly.

L. RELIEF FROM LIABILITY.

1. Request for reconsideration & appeal. (Para. 13-43 and 13-44)
 - a) Must be submitted within 30 days of liability notification.
 - b) Can only be based on legal error.
 - c) Submitted to approving authority. If approving authority does not reverse decision, the request becomes an appeal, which is forwarded to the appeal authority by the approving authority.
 - d) Appeal authority is the next higher commander or DA civilian in the chain of command or supervision. Decision of appeal authority is final.
 - e) Investigation must receive a legal review by the appeal authority legal advisor prior to appeal authority action.
 - f) If appeal is unsuccessful, individuals held liable may also appeal to ABCMR (AR 15-185) or apply for remission or cancellation of debt (AR 600-4).
2. Reopening financial liability investigations. (Para. 13-49)
 - a) Not an appeal.
 - b) Authority to reopen rests with the approval authority.
 - c) May occur:
 - (1) As part of an appeal of the assessment of financial liability.
 - (2) When a response is submitted to the surveying officer from the person charged subsequent to the approving authority having assessed liability.
 - (3) When a subordinate headquarters recommends reopening based upon new evidence.
 - (4) When the property is recovered.
 - (5) When the approving authority becomes aware that an injustice has occurred.

3. Approval authority may reduce or waive liability, in whole or in part, if such action is deemed warranted “by the nature and circumstances” of the loss, damage, or destruction of property (Para. 13-40.d.(3) and para. 13-41b).

M. LIMITS ON FINANCIAL LIABILITY. (Para. 13-41)

1. General rule is that an individual will normally not be charged more than one month’s base pay.
 - a) Charge is based upon the Soldier’s base pay at the time of the loss.
 - b) For ARNG and USAR personnel, base pay is the amount they would receive if they were on active duty.
 - c) For civilian employees it is 1/12 of their annual pay.
2. Exceptions to the general rule (para. 13-41.a). The following individuals/entities will be charged the full amount of the government’s loss:
 - a) Accountable officers;
 - b) Contractors and contract employees:
 - c) Nonappropriated fund activities;
 - d) Persons losing public funds;
 - e) Soldiers losing personal arms or equipment;
 - f) Persons, who lose, damage, or destroy government quarters, and/or provided furnishings and equipment for use in quarters, through gross negligence or willful misconduct.
3. Collective financial liability: Two or more persons may be held liable for the same loss.
 - a) There is no comparative negligence.
 - b) Financial loss is apportioned according to AR 735-5, Table 12-4. Each respondent pays a percentage of the loss in accordance with their percentage of pay when all respondent’s pay is totaled.
 - c) If one of the collective liability respondents is not federally employed, divide the total amount of the loss by the total number of respondents. Each respondent is liable for that amount or their monthly pay, whichever is less.

N. INVOLUNTARY WITHHOLDING OF CURRENT PAY.

1. Members of the armed forces may have charges involuntarily withheld. 37 U.S.C. § 1007.
 2. Involuntary withholding for civilian employees. 5 U.S.C. § 5514, AR 37-1, Chapter 15.
- O. TOTAL PROCESSING TIME. Total processing time is computed by subtracting the approval date from the initiation date minus time used to notify respondent of rights. Under normal circumstances these time constraints are as follows:
1. The Active Army Component: 75 calendar days.
 2. The U.S. Army Reserve and Army NG Components: 240 calendar days.
 3. Contracting Officers: 120 calendar days.

IX. INSPECTOR GENERAL INVESTIGATIONS.

AR 20-1, INSPECTOR GENERAL ACTIVITIES AND PROCEDURES

1. Applicability. Applies to the Active Army, the Army National Guard, and the U.S. Army Reserve. It also applies to Department of the Army civilian employees and nonappropriated fund employees.
 2. Purpose. Prescribes policy and mandated procedures concerning the mission and duties of The Inspector General (TIG). Prescribes duties, missions, standards, and requirements for inspectors general (IGs) throughout the Army. Prescribes responsibilities for commanders; State Adjutants General (AGs); and heads of agencies, activities, centers, and installations for the support of IG activities.
 3. Function of an AR 20-1 Inspector General Investigation. The four IG functions. IGs serve their commanders and their commands by executing the four IG functions—teaching and training, inspections, assistance, and investigations for the specific purpose of enhancing the command's readiness and warfighting capability.
- B. THE INVESTIGATIVE FUNCTION. (Chapter 7) The primary purpose of IG investigations and investigative inquiries is to resolve allegations of impropriety; to preserve confidence in the chain of command; and, if allegations are not substantiated, to protect the good name of the subject or suspect. Standard of proof is preponderance of the evidence.

1. Investigative Inquiry. (most common) Informal fact-finding process to gather information needed to resolve allegations or issues when investigative techniques are appropriate but circumstances do not merit an IG investigation. Inquiries conducted into “improprieties.” If inquiry develops evidence to substantiate misconduct, inquiry ends---matter may be referred to CID, or commander may appoint AR 15-6 investigation, or, in rare instances, it may become an IG investigation. Only substantiated inquiries need to have a written legal review. The conclusions of the investigative inquiry are reported using a ROII (Report of Investigative Inquiry).

2. IG Investigation. Fact-finding examination by detailed IG into allegations, issues, or adverse conditions to provide the directing authority a sound basis for decisions and actions. Normally addresses allegations of wrongdoing by an individual. IG must obtain written directive by appointing authority. Written legal review required. Verbal notification required of the commander/supervisor of nature of allegations against the subject/suspect, and verbal notification of the results to commander/supervisor. Should not contain recommendations for adverse action against suspect/subject. The conclusions of the investigation are reported using a ROI (Report of investigation).

C. ADVANTAGES AND DISADVANTAGES.

1. Advantages. Trained, thorough investigators; keeps matter in-house, at least to start with; useful when there is no skilled, sufficiently senior AR 15-6 IO available.
2. Disadvantages. Restrictions on releasing reports of investigation; cannot use evidence for adverse action without TIG authorization; may be necessary to duplicate IG work with AR 15-6 to obtain usable evidence.

D. JURISDICTION.

1. IGs may investigate or conduct inquiries into:
 - a) Violations of policy, regulations, or law.
 - b) Mismanagement, unethical behavior, fraud, or misconduct.
2. IGs will not normally investigate or conduct inquiries into:
 - a) Allegation that, if true, would amount to criminal misconduct. (NOTE: Many allegations could be construed as dereliction of duty, violation of regulation, or conduct unbecoming. This does not preclude IG inquiry/investigation).

b) Allegation where established means of address already exist to resolve the matter, unless due process violation alleged.

c) Chain of command decides to address the allegations through command investigation/inquiry.

d) Professional misconduct of an Army lawyer, military or civilian, or allegations of mismanagement by a supervisory Army lawyer, military or civilian.

e) Professional misconduct by an Army chaplain referred to supervisory chaplain.

3. Directing Authority.

a) Commanders whose staffs include a detailed IG may direct investigations into activities within their command. Within the Army, this is division level and higher.

b) Only the Secretary of the Army, Under Secretary of the Army, Chief of Staff of the Army (CSA), Vice Chief of Staff of the Army (VCSA), and The Inspector General (TIG) may direct DAIG investigations.

c) Only the Secretary of the Army, Under Secretary of the Army, CSA, VCSA, and TIG may authorize or direct an IG inquiry or investigation into allegations of improprieties or misconduct by general officers, promotable colonels, and civilian employees of SES or equivalent grade or position.

d) A directing authority must approve all allegations substantiated by either an IG investigation or an IG investigative inquiry.

E. IG INVESTIGATION. Formal fact finding that includes:

1. Written directive from directing authority.
2. Written investigative plan.
3. Evidence gathering and sworn or recorded testimony.
4. Written report of investigation (ROI).
5. Written legal review.
6. Directing authority approval of ROI.

7. Notification of results to appropriate commanders, complainants, and subjects.

F. IG INVESTIGATIVE INQUIRY. Less formal inquiry used when full investigation is not warranted. Conducted in the same manner as an IG investigation except:

1. The state or command IG may direct the inquiry.
2. Testimony not required to be sworn or recorded.
3. The state or command IG can approve the report of investigative inquiry (ROI) unless an allegation is substantiated. In that case, the directing authority must approve.

G. The IG Action Process. IGs use the 7-step IGAP outlined in The Assistance and Investigations Guide to perform both investigations and investigative inquiries.

1. Receive the IG Action Request (IGAR).
2. Conduct IG preliminary analysis.
3. Initiate referrals and make initial notifications.
4. IG fact finding.
5. Make notification of results. Notifications to subjects and commanders.
6. Follow-up. Include any subject's response to unfavorable information.
7. Close the IGAR.

H. UNFAVORABLE INFORMATION.

1. If an ROI or ROII will contain unfavorable information about an individual, the individual must be notified and afforded an opportunity to comment on the unfavorable information before the ROI/ROII is finalized.
2. Inspector general records will not be used as the basis for adverse action against individuals, military or civilian, by directing authorities or commanders except when specifically authorized by the SA, the Under Secretary of the Army, the CSA, the VCSA, or TIG. If they are used as the basis for adverse action, the individual may be entitled to additional due process rights (opportunity to review the report and comment). (Para. 3-3)

3. Individuals under IG investigation will normally not be flagged. Individuals may be flagged, however, once commanders/supervisors follow appropriate procedures to seek adverse action against an individual based upon an IG investigation. (Para 3-3).

I. CONFIDENTIAL INFORMATION. (Para. 1-2). 10 U.S.C. §1034 (and DODD 7050.06 and AR 20-1) require IGs to treat information they receive in official communications as confidential and with the utmost discretion, particularly the identity of complainants and witness who specifically request identity protection. The law provides redress to persons who suffer reprisal as a result of release of their identities. When a person provides information about an impropriety or wrongdoing, the IG may disclose the complainant's identity to another IG; the local, supporting legal advisor; and/or the directing authority without the complainant's consent unless the IG determines that such disclosure is unnecessary or prohibited during the course of an investigative inquiry or investigation. The IG must not disclose further the complainant's identity without the complainant's consent unless the IG determines that such disclosure is unavoidable or mandated by a higher authority during the course of an investigative inquiry or investigation.

J. RIGHTS AND EVIDENTIARY CONSIDERATIONS

1. Soldiers retain their Article 31 rights and civilians their 5th amendment rights. DA Civilians retain their Weingarten rights (5 U.S.C. 7114(a)(2)(B)) of labor union representation.

2. IG investigators may not consider privileged communications, as recognized in MRE 502, 503, and 504 (lawyer-client, clergy, and husband-wife).

K. CONCLUDING THE INVESTIGATION/INQUIRY.

1. IG Review. The command/state IG will review and approve the ROI/ROII.

2. Legal review. Legal reviews are required for all ROIs, ROII, or hotline completion reports in memorandum/letter format with substantiated findings or resolution of complaints involving statutory whistleblower reprisal or improper mental health referral.

3. The command/state IG will approve or disapprove ROII in part or in the entirety and provide the commander with appropriate recommendations. Additionally, all substantiated allegations must be reviewed/approved by the commander. The command/state IG will forward all ROIs to the directing authority for approval.

4. The directing authority can approve or disapprove the ROI/ROII in part or in its entirety. The directing authority must also take appropriate action. ROI/ROIIs that require a higher commander to implement corrective action will be forwarded.

L. RELEASE OF IG RECORDS. (Chapter 3)

1. An IG record includes, but is not limited to, correspondence or documents received from a witness or a person requesting assistance, IG reports, IGMET data, or other computer automatic data processing files or data, to include IG notes and working papers. Non-IG records are documents contained within an IG file created by other Army or Federal agencies or documents from outside the Federal Government.

2. IG records are privileged documents and contain sensitive information and advice. Unauthorized use or release of IG records can seriously compromise IG effectiveness as a trusted adviser to the commander and may breach IG confidentiality.

3. Individuals, commands, or agencies within DA having a need for IG records in the official performance of their duties may obtain a copy as an FOUO release.

4. TIG is the initial denial authority under the Freedom of Information Act, and the access and amendment refusal authority under the Privacy Act.

M. WHISTLEBLOWER REPRISAL ALLEGATIONS. DODD 7050.06, MILITARY WHISTLEBLOWER PROTECTION; 10 U.S.C. 1034

1. Allegations of reprisal against Soldiers for making a protected communications require reporting to the DOD IG and DA IG within two working days (DODD 7050.06 requires reporting within 10 days, but AR 20-1 reduces that timeframe to two days). The DOD IG will evaluate the allegation to determine if it meets statutory requirements (10 U.S.C. 1034).

2. Whistleblower Reprisal. Defined as taking (or threatening to take) an unfavorable personnel action or withholding (or threatening to withhold) a favorable personnel action with respect to a member of the armed forces for making or preparing to make a (lawful) protected communication. Lawful communications are those communications made to an IG; Member of Congress (MC); member of a DOD audit, inspection, or investigation organization; law enforcement organization; or any other person or organization (including any person or organization in the chain of command starting at the immediate supervisor level) designated under regulations or other established administrative procedures (such as the equal opportunity advisor or safety officer) to receive such communications.

3. No investigation is required when a member of the Armed Forces submits a complaint of reprisal to an authorized IG more than 60 days after the date that the member became aware of the personnel action that is the subject of the allegation. An authorized IG receiving a complaint of reprisal submitted more than 60 days after the member became aware of the personnel action at issue may, nevertheless, consider the complaint based on compelling reasons for the delay in submission or the strength of the evidence submitted.

X. CONSCIENTIOUS OBJECTION

A. DODI 1300.06, CONSCIENTIOUS OBJECTORS; AR 600-43, CONSCIENTIOUS OBJECTION

1. Applicability. DODI 1300.06 – the Military Services; AR 600-43 – the Active Army, the Army National Guard/Army National Guard of the United, and the U.S. Army Reserve.

2. Purpose. Sets forth policy, criteria, responsibilities, and procedures to classify and dispose of military personnel who claim conscientious objection to participation in war in any form or to the bearing of arms.

3. Function of Investigation. Ensure the application contains all required information to allow decision authority to make an appropriate decision regarding the validity of applicant's claim of conscientious objection.

B. BACKGROUND. Conscientious objector program was first required by the selective service system, but has been retained by DoD for all-volunteer military. 50 USC App. 456(j) "Nothing contained in this title [Military Selective Service Act] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

C. DEFINITIONS.

1. Conscientious objection: A firm, fixed and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and/or belief. Includes both 1-O and 1-A-O conscientious objectors.

a) Class 1-O conscientious objector: A member who, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.

b) Class 1–A–O conscientious objector: A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a noncombatant status.

2. War in any form: A person who desires to choose the war in which he or she will participate is not a conscientious objector under the regulation. His or her objection must be to all wars rather than a specific war.

3. Religious training and belief: Belief in an external power or "being" or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well-being. The external power or "being" need not be one that has found expression in either religious or societal traditions. However, it should sincerely occupy a place of equal or greater value in the life of its possessor. Deeply held moral or ethical beliefs should be valued with the strength and devotion of traditional religious conviction. The term "religious training and/or belief" may include solely moral or ethical beliefs even though the applicant may not characterize these beliefs as "religious" in the traditional sense, or may expressly characterize them as not religious. The term "religious training and/or belief" does not include a belief that rests solely upon considerations of policy, pragmatism, expediency, or political views.

D. PROCESS.

1. Application. Applicant initiates process by requesting CO status. Burden is on the applicant to prove by **clear and convincing** evidence that nature of claim comes within definition of CO and that their beliefs are sincere and whether those beliefs govern the claimant's actions in word and deed (Army applicants submit application on DA Form 4187 (Personnel Action) to company commander). Applications from active duty personnel will be processed and forwarded to HQDA within 90 days from the date submitted. If processing time exceeds 90 days, the GCMCA will state the reasons for the delay and add these reasons as an enclosure to the record. Application requires detailed information such as (not exhaustive - see specific Service regulation for exhaustive list of requirements):

a) General information. Name; SSN; name and address of schools attended; list of employers with addresses; former home addresses; parent's names and addresses; parents religious denomination; information regarding previous applications.

b) Training and belief. Express statement whether applicant applying for 1-0 or 1-A-0 status; description of belief that requires the applicant to seek separation or assignment to noncombatant duties; explanation as to how nature of belief changed or developed; explanation as to when these beliefs became incompatible with military service and why; explanation as to how applicants daily lifestyle has changed as a result and what future actions applicant plans to continue to support his or her beliefs.

c) Participation in organizations. Prior military service; membership in religious sect or organization (name, location of governing body, dates of membership, extent of participation, name/address of pastor or leader, sects creed or official statements relating to applicants participation in war); description of applicant's activities in all organizations, other than military, political, or labor.

2. Counseling. Upon receipt of the application, the company commander must expeditiously process the application and ensure the applicant is properly counseled in writing regarding the following:

a) Privacy Act provisions (5 USC § 552a).

b) Department of Veterans' Affairs (DVA) benefits (38 USC § 3103). Service members who refuse to perform military service or wear uniform who are granted CO status (1-0) will lose DVA benefits for the period of Service from which they are discharged/dismissed.

c) Applicants' reclassified as a noncombatant (1-A-0) will be barred from reenlistment.

3. Interviews. The company commander must arrange for the applicant to be interviewed by a military chaplain and psychiatrist.

a) Military chaplain.

(1) Interview is not privileged and must not be conducted by a chaplain who has an existing confidential relationship with the applicant.

(2) Chaplain provides detailed report of interview to commander which includes: Nature and basis for applicant's claim; opinions on source of beliefs; **sincerity and depth of conviction**; appropriate comments as to applicant's demeanor and lifestyle; specific reasons for chaplain's conclusions; explanation of circumstances if applicant refuses to be interviewed.

- (3) Chaplain does not make recommendation for approval or disapproval of application.
- b) Psychiatrist (or other medical officer if not available).
 - (1) Psychiatrist provides mental status examination report indicating presence or absence of disorder that warrants treatment or disposition through medical channels.
 - (2) Psychiatrist does not make recommendation for approval or disapproval of application.

4. Investigation. The initial application, counseling statements, and interview reports become the application packet and are forwarded through the chain of command. The commander exercising special court-martial convening authority over the applicant must then convene an investigation.

a) Investigating Officer (IO). Must be a Chief Warrant Officer in the grade of WO-3 or higher or an officer in the grade of O-3 or higher (AR 600-43 limits IOs to officers O-3 or higher), senior to applicant. Cannot be in applicant's chain of command. Should not be from the same company but can be from the same battalion.

b) Review and Legal advice. IO will review the application packet and obtain legal advice "as necessary prior to submitting a written report."

c) The Hearing. The IO is required to hold a hearing on the application though the applicant may waive appearance.

(1) Purpose of the hearing is to give applicant opportunity to present evidence, enable IO to assemble all relevant facts, and create comprehensive record upon which an informed decision can be made.

(2) Applicant must acknowledge in writing applicant's understanding of the nature of the hearing. Hearing is informal and is not adversarial. Military Rules of Evidence do not apply. Any relevant material may be considered. All statements will be sworn. Applicant may present evidence and cross examine witnesses. Applicant may be represented by counsel at no expense to the Government. Verbatim record is not required. Witness testimony will be summarized by the IO. IO must authenticate the record.

5. The Report. At the end of the investigation, the IO must prepare a report. Report includes all documents considered; summaries of witness testimony; executed statement of understanding; executed statement of waiver (if applicable); statement of IO conclusions, and recommendations for disposition of the case.

a) Conclusions include the underlying basis of applicant's professed CO; time period the belief became fixed; whether belief constitutes CO (1-O or 1-A-O); applicant's sincerity.

b) Recommendations include whether to deny CO status, or to grant classification. In 1-O application cases, the IO will not recommend classification as 1-A-O unless applicant has expressed willingness to remain on active duty in a noncombatant role (AR 600-43).

6. Rebuttal rights. A copy of the case record is provided to the applicant as the record is forwarded to the appointing authority (SPCMCA). Applicant has 10 days to submit rebuttal (AR 600-43).

7. Case review. The entire file, with rebuttal, is forwarded through the chain of command, to the general court-martial convening authority (AR 600-43). Each commander provides a recommendation as to disposition.

8. Legal review. (AR 600-43) Prior to the GCMCA making a determination, the entire record will be reviewed by the GCMCA's SJA. The SJA will ensure that the procedural safeguards of the regulation have been afforded to the applicant. The SJA must make a recommendation for disposition **supported by reasons**. A "legally sufficient" opinion does not satisfy the requirement. The SJA must be specific.

9. Decision authority. (AR 600-43) Army GCMCAs may approve applications for 1-A-0 status (noncombatant CO). The DA Conscientious Objector Review Board (DACORB) will make final determinations on all applications requesting 1-0 status (discharge) and those 1-A-0 applications not approved by the GCMCA.

10. Time Limitations. (AR 600-43) Under normal circumstances active duty and reserve component applications will be processed and forwarded to HQDA within 90 days and 180 days, respectively. GCMCAs will annotate reasons for any delays.

E. USE, ASSIGNMENT, AND TRAINING.

1. To the extent practicable, applicants will be retained in their unit and assigned duties providing minimum practicable conflict with their asserted beliefs pending final disposition of an application; reassignment orders received after application submitted will be delayed until final determination; trainees will not be required to train with weapons.
2. Soldiers scheduled for deployment may be ordered to deploy. If an application has been forwarded to the DACORB, the GCMCA may excuse the Soldier from the deployment, pending decision.

XI. BOARD OF INQUIRY TO DETERMINE STATUS OF PERSONNEL MISSING AS A RESULT OF HOSTILE ACTION.

A. DODI 2310.05, ACCOUNTING FOR MISSING PERSONS—BOARDS OF INQUIRY; AR 600-8-1, ARMY CASUALTY PROGRAM.

1. Applicability. DODI 2310 – the Military Services; AR 600-8-1 – the Active Army, the Army National Guard, and the U.S. Army Reserve.
2. Purpose. Prescribes the policies and mandated operating tasks, responsibilities, and procedures for casualty operations functions of the military personnel system.
3. Function of an AR 600-8-1 (Chapter 13) Board of Inquiry. To inquire into and determine the whereabouts and status of personnel presumed to be missing as a result of hostile action. Inquiry required pursuant to the Missing Persons Act. Implements requirements of DODI 2310.5.

B. BACKGROUND.

1. The Missing Persons Act. Congress first enacted the Missing Persons Act in 1942 (current version codified at 37 U.S.C. §§ 551-59 and 5 U.S.C. 5561-69). The Act provided for payment of pay and allowances to missing service members, and it was not intended to be a law to account for missing persons.
2. DOD Personnel Missing as a Result of Hostile Action. In 1996, Congress passed legislation to account for persons missing as a result of hostile action (current version codified at 10 U.S.C. §§ 1501-1513). Among other provisions, the law and subsequent DOD instruction provide certain family members with due process rights.

C. APPLICABILITY OF THE MISSING PERSONS ACT. The statutory provisions on accounting for personnel missing as a result of hostile action apply to the following.

1. Members of the armed forces on active duty, or in the Reserve component performing official duties:
 - a) Who become involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and
 - b) Whose status is undetermined or who is unaccounted for.
2. Any other person who is a citizen of the U.S. and a civilian officer or employee of the DOD or an employee of a contractor of the DoD, as determined by the Undersecretary of Defense for Policy:
 - a) Who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and
 - b) Whose status is undetermined or who is unaccounted for.

D. DEFINITIONS.

1. Missing Status. The status of a missing person who is determined to be absent in any of the following categories.
 - a) Missing. Status of a person who is not present at his or her duty location due to apparent involuntary reasons and whose location may or may not be known.
 - b) Missing in Action. Status of a person who is not present at his or her duty location due to apparent involuntary reasons under hostile circumstances and whose location is unknown.
 - c) Interned. A person definitely known to have been taken into custody of a nonbelligerent foreign power as the result of and for reasons arising out of any armed conflict in which the Armed Forces of the U.S. are engaged.
 - d) Captured. A person is captured if he or she has been seized as the result of action of an unfriendly military or paramilitary force in a foreign country.
 - e) Casualty. A person who is lost to the organization by reason of having been declared beleaguered, besieged, captured, dead, diseased, detained, DUSTWUN, injured, ill, interned, missing, missing in action, or wounded.

f) Beleaguered. A person is beleaguered if a member of an organized element that has been surrounded by a hostile force to prevent escape of its members.

g) Besieged. A person is besieged if a member of an organized element that has been surrounded by a hostile force for the purpose of compelling it to surrender.

h) Detained. A person who is prevented from proceeding or is restrained in custody for alleged violation of international law or other reason claimed by the government or group under which the person is being held.

2. Accounted For. With respect to a person in a missing status:

a) The person is returned to U.S. control alive;

b) The person's remains are recovered and, if not identifiable through visual means, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

c) Credible evidence exists to support another determination of the person's status (such as when a person's remains have been destroyed and are, thus, unrecoverable).

E. PROCEDURES REGARDING MISSING PERSONS.

1. Preliminary Assessment (Para. 13-3; 10 U.S.C. § 1502; DODI 2310.05, Encl. 3)

a) When an individual is unaccounted for, the immediate commander must conduct a basic inquiry to determine the individual's whereabouts. If after 24 hours, the individual's whereabouts are still unknown, and it appears that the absence is involuntary, the commander must make a preliminary assessment of the circumstances via an informal AR 15-6 investigation.

b) The commander must also contact the Casualty Assistance Center (CAC) which will coordinate with the Casualty and Mortuary Affairs Operation Center (CMAOC) to place the person in an interim status called "Duty Status-Whereabouts Unknown" or "DUSTWUN." If an involuntary absence cannot be determined by the facts, the individual should be listed as AWOL rather than DUSTWUN.

c) The preliminary assessment must be concluded within 10 days of the incident. If the commander concludes that the person is missing, the commander must recommend that the person be placed in a missing status and forward the investigation through the CAC to the CMAOC.

d) Upon receiving the commander's initial assessment and recommendation, the Secretary of the Army or his designee may appoint an initial board of inquiry.

2. Initial Board of Inquiry. (Para. 13-6; 10 U.S.C. § 1503; DODI 2310.05, Encl. 4)

a) Secretary must review the preliminary assessment and, not later than 10 calendar days after receipt, appoint a board to conduct an inquiry into the whereabouts and status of the person.

b) An initial board of inquiry is not always required. For example, if the evidence regarding a covered person may be received through news coverage or discovered through diplomatic channels, it may be sufficient to enable the Secretary to make a status determination. Receipt of additional evidence could require the Secretary to appoint an initial board, such as cessation of hostilities without the return of the person.

c) The Secretary may appoint a single board to inquire into the whereabouts and status of two or more persons where it appears that their absence is factually related.

d) Composition of the Board.

(1) The board must consist of at least one person who has experience with, and understanding of, military operations or activities similar to the operation or activity in which the person disappeared. The person must be:

(a) A military officer, in the case of an inquiry regarding a service member;

(b) A civilian, in the case of an inquiry regarding a civilian employee of the DOD or a DOD contractor; or

(c) At least one military officer and a civilian, in the case of an inquiry regarding one or more service members and one or more civilian DOD employees or DOD contractors. The ratio of service members to civilians should be roughly proportional to the ratio of number of service members and civilians subject to the board of inquiry.

(2) Legal Advisor.

(a) The Secretary must assign a judge advocate to the Board, or appoint an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(b) Duties of the legal advisor include advising the Board on questions of law or procedure pertaining to the Board, instructing the Board on governing statutes and directives, and monitoring (observing) the deliberations of the Board.

e) Duties of the Board. The Board's duties include:

(1) Collecting, developing, and investigating all facts and evidence relating to disappearance or whereabouts and status of the person;

(2) Analyzing facts and evidence, making findings that are supported by a preponderance of the evidence based on that analysis, and drawing conclusions as to the current whereabouts and status of the person; and

(3) Recommending to the Service Secretary that:

(a) The person be placed in a missing status;

(b) The person be declared deserted, absent without leave, or dead; or

(c) The person is accounted for, such as when credible evidence exists to support a determination that a person's remains have been destroyed and are unrecoverable.

f) Board Proceedings. The board must:

(1) Collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information relating to the whereabouts and status of the person(s);

(2) Gather information relating to actions taken to find the person(s);

(3) Arrive at its findings and recommendations by majority vote and ensure that its findings are supported by a preponderance of the evidence;

- (4) Maintain a record of its proceedings; and
 - (5) Close the proceedings to the public, including the PNOK, other immediate family members, and any previously designated person of the missing person (i.e., a person designated by the missing person to receive information on the whereabouts and status of the missing person).
- g) Counsel for Missing Person. Each person named in the inquiry is entitled to a counsel. If the absence or missing status of two or more persons may be factually related, one counsel may represent all such persons, unless a conflict results.
- (1) The missing person's counsel represents the interests of the missing person and not those of any member of the person's family or other interested parties.
 - (2) The missing person's counsel must have access to all facts and evidence the Board considers;
 - (3) Observe all official activities of the Board during the proceedings; and
 - (4) Monitor (observe) the Board deliberations.
 - (5) Independent Review. The missing person's counsel must conduct an independent review of the Board's report. This review is made an official part of the Board's record and accompanies the report to the Secretary for final decision.
- h) Board Report.
- (1) The Board must submit a report to the SA within 30 calendar days of its appointment. The report must include:
 - (a) A discussion of the facts and evidence the Board considered and the recommendation with respect to each person the report covers;
 - (b) Recommendation with respect to each person the report covers;
 - (c) Disclosure of whether the Board reviewed classified documents and information or used them otherwise in forming its recommendation;
 - (d) The missing person's counsel's independent review of the Board's report; and
 - (e) Legal review of the Board's report

(2) An initial Board of inquiry may not recommend that a person be declared dead unless:

(a) Credible evidence exists to suggest that the person is dead;

(b) The U.S. possesses no credible evidence that suggests that the person is alive; and

(c) Representatives of the U.S.:

(i) Have completely searched the area where the person was last seen (unless, after making a good faith effort to obtain access to the area, the representatives are not granted access); and

(ii) Have examined the records of the Government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to the records, the representatives are not granted access).

(3) If the Board recommends that a missing person be declared dead, the Board must include in their report: a detailed description of the location where the death occurred; a statement of the date on which the death occurred ; a description of the location of the body, if recovered; and if the body was recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body is that of the missing person.

(4) Disclosure of Report. The report may not be made public, except to PNOK, other members of the immediate family, and any other previously designated person, until one year after the date on which the report is submitted. Classified portions may not be made available to the public or the NOK.

3. Secretary Determination.

a) The Secretary must review the report within 30 calendar days of receipt and determine whether the report is complete and free of error. If incomplete, the Secretary may return the report to the Board for further action.

b) If the Secretary determines the report is complete and free of administrative error, he or she will determine the status of the missing person(s), including whether the person(s) shall be declared:

- (1) Missing;
- (2) Deserted;
- (3) Absent without leave; or
- (4) Dead.

4. Report to Family Members and Other Interested Persons. No later than 30 calendar days after the date the Secretary determines status; the Secretary must provide the PNOK, immediate family, and other previously designated person:

a) An unclassified summary of the unit commander's preliminary assessment and recommendation and the Board report (including the names of the members);

b) Notice that the U.S. will conduct a subsequent inquiry into the whereabouts and status of the missing person(s) upon the earlier of:

- (1) On or about one year after the date of the first official notice of the disappearance; or
- (2) Information becomes available that may result in a change in status.

5. Subsequent Boards of Inquiry. (Para. 13-7; 10 U.S.C. § 1504; DODI 2310.05, Encl. 5.)

a) Requirement to Conduct Subsequent Boards of Inquiry.

(1) If, during the year following the date of the transmission of a commander's initial report credible information becomes available that may result in a change of the person's status the Secretary must appoint a subsequent board of inquiry to inquire into the information.

(2) In the absence of such information, the Secretary must appoint a subsequent Board of inquiry to inquire into the whereabouts and status of a missing person on or about one year after the date of the transmission of a commander's initial report on the person. One board may be appointed for two or more persons if their absence or missing status appears to be factually related.

b) Duties of the Board.

(1) The Board must review the commander's preliminary assessment and recommendation and the report of the initial Board of inquiry.

(2) The Board must also collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person during the initial Board process. Considering the evidence, the Board must determine, by a preponderance of the evidence:

(a) Whether the status of the person should be continued or changed; or

(b) If appropriate, whether the person is accounted for (such as when credible evidence exists to support a determination that the person's remains have been destroyed and are unrecoverable).

c) Report. The Board must submit a report to the Secretary describing their findings and conclusions, together with a recommendation for determination by the Secretary.

d) Counsel for Missing Person.

(1) Counsel must be appointed to represent each person the subsequent Board of inquiry covers. When circumstances permit, counsel should be the same individual who represented the missing person during the initial Board. The qualifications, rights, and duties of the counsel are the same as those for the initial Board.

(2) The missing person's PNOK and other previously designated person shall have the right to submit information to the missing person's counsel relative to the disappearance and status of the missing person.

(3) The missing person's counsel must submit a written review of the Board's report, which becomes part of the official record.

e) Attendance of Family Members and Certain Other Interested Persons at Proceedings.

(1) The missing person's PNOK, other immediate family members, and any other previously designated person must be given notice not less than 60 calendar days before the first meeting of the Board that they may attend the proceedings. The person must then notify the Secretary of their intent, if any, to attend the proceedings not later than 21 calendar days after the date on which they received notice.

(2) Persons attending the proceedings of the Board may:

(a) If PNOK or designated person, attend with private counsel;

(b) Have access to the case resolution file and unclassified reports relating to the case;

(c) Be afforded the opportunity to present information at the proceedings that such individual considered relevant; and

(d) Have the opportunity to submit in writing an objection to any recommendation of the Board regarding the status of the missing person, provided:

f) Board Recommendation. The Board must make a recommendation as to the current whereabouts and status of each missing person, based on the findings that are supported by a preponderance of the evidence. The prerequisites for recommending that a person be declared dead are the same as those for the initial Board of inquiry.

g) Board Report. The Board must submit a report to the Secretary concerned. Board report requirements are the same as those for an initial Board of inquiry.

h) Action by the Secretary. No later than 30 days after receipt of the Board report, the Secretary must review the report, along with the report of the missing person's counsel and objections, if any, to the report submitted to the president by the PNOK, other family members, and any previously designated person. If the Secretary determines the report is complete and free of administrative error, the Secretary must determine the status of each person the report covers.

i) Report to Family Members and Other Interested Persons.

(1) No later than 60 days after the date the Secretary determines the missing person's status, the Secretary must provide the report (without classified portions) to the PNOK, other immediate family members, and any designated person.

(2) These individuals are also informed that the U.S. will conduct a further review board into the whereabouts and status of the person if the U.S. Government receives information in the future that may change the status of the person.

6. Further review boards. (Para. 13-14; 10 U.S.C. § 1505, DODI 2310.05, Encl. 6)

a) When the Director, Defense Prisoner of War/Missing in Action Office (DPMO) receives information from a U.S. intelligence agency or other Federal Government element relating to a missing person, the Director must:

(1) Ensure that the information is added to the missing person's case resolution file; and

(2) Notify the following of the information:

(a) The missing person's counsel;

(b) The PNOK and any previously designated person;

(c) The appropriate Service Casualty/Mortuary Affairs Office;

(d) The Secretary concerned or his designee.

(3) The Director, with the advice of the missing person's counsel, must decide whether the information is significant enough to require a review by a further review board.

(4) If the Director decides to appoint a review board, he or she notifies the Secretary concerned, who must appoint the Board.

b) The procedures for further review boards are identical to those of the subsequent board of inquiry.

F. Judicial review. (10 U.S.C. § 1508)

1. The law provides that the PNOK or other previously designated person of a missing person who is declared dead by an initial, subsequent, or further Board may obtain judicial review in a U.S. district court of that finding.

2. Judicial review may be obtained only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process.

G. Release of information. (DODI 2310.05.)

1. The Secretary must, upon request, release the contents of a missing person's case resolution file to the PNOK, other immediate family members, and any other previously designated person.

2. Classified information, debriefing reports, or information protected by the Privacy Act or by other applicable laws and regulations may be made available, for official use only, to personnel within the DOD possessing the appropriate security clearance and having a valid need to know.

XII. MISCELLANEOUS INVESTIGATORY REQUIREMENTS.

A. INTELLIGENCE INTERROGATION INCIDENT.

1. References. DoDD 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, 11 October 2012.

2. Requirement. It is DoD policy that: All captured or detained personnel shall be treated humanely, and all intelligence interrogations, debriefings, or tactical questioning to gain intelligence from captured or detained personnel shall be conducted humanely, in accordance with applicable law and policy. Acts of physical or mental torture are prohibited. All **reportable incidents**, allegedly committed by any DoD personnel or DoD contractors, shall be: promptly reported, thoroughly investigated by proper authorities, and remedied by disciplinary or administrative action, when appropriate.

3. Definitions. Reportable Incident. Any suspected or alleged violation of DoD policy, procedures, or applicable law relating to intelligence interrogations, detainee debriefings or tactical questioning, for which there is credible information.

B. QUESTIONABLE INTELLIGENCE ACTIVITY.

1. References. DoD 5240.1-R, Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons, December 1982; AR 381-10, U.S. Army Intelligence Activities, 3 May 2007.

2. Requirement. Applicable only to questionable activities that are completed as part of Military Intelligence duties or mission.

a) DoD military, civilian, and contractor personnel **will report** questionable intelligence activity upon discovery through their chain of command or supervision to the CJCS, the USD(I), the GC, DoD, the Director, DIA, the DOD IG and the Assistant SECDEF for Intelligence Oversight (ATSD(IO)). Employees are encouraged to report questionable intelligence activity through command or inspector general channels to TIG, or may report directly to TIG. Regardless of which reporting channel used, the report must reach TIG (SAIG–IO) no later than five days from discovery with update every 30 days until the investigation is complete.

b) Each report of a questionable activity **shall be investigated** to the extent necessary to determine the facts and assess whether the activity is legal and is consistent with applicable policy.

c) **Procedure 15 Inquiries.** (Described in Chapters 15 of both DoD 5240.1-R and AR 381-10).

(1) A command may conduct an inquiry under the provisions of AR 15–6 or through an appropriate IG. Inquiries into allegations not referred to a counterintelligence or criminal investigative agency will be completed within 60 days of the initial report, unless extraordinary circumstances dictate a longer period.

(2) The results will be reported to TIG (with updates to TIG every 30 days until complete).

3. Definitions. Questionable intelligence activity: (DoD 5240.1-R) any conduct that constitutes, or is related to, an intelligence activity that may violate the law, any Executive order or Presidential directive, including E.O. 12333 or applicable DoD policy. (AR 381-10) Conduct during or related to an intelligence activity that may violate law, Executive Order or Presidential Directive, or applicable DOD or Army policy. Includes: Improper collection, retention, or dissemination of U.S. person information; misrepresentation (using one's status as an MI member to gain access for non-MI purposes); questionable intelligence activity constituting a crime; misconduct in the performance of intelligence duties.

C. ACTUAL OR POTENTIAL COMPROMISE OF CLASSIFIED INFORMATION

1. References. DoDM 5200.01 Vol 3, DoD Information Security Program: Protection of Classified Information, 24 February 2012 (w/change 2, 19 March 2013); AR 380-5, Department of the Army Information Security Program, 29 September 2000.

2. Requirement.

a) Preliminary Inquiry. When an actual or potential compromise of classified information occurs, the head of the activity or activity security manager having security cognizance shall promptly initiate and complete an inquiry into the incident within 10 days.

If information obtained as a result of the preliminary inquiry is sufficient to answer the questions below, then such information shall be sufficient to resolve the incident to include institution of administrative sanctions.

(1) When, where, and how did the incident occur? What persons, situations, or conditions caused or contributed to the incident?

(2) Was classified information was compromised?

(3) If a compromise occurred, what specific classified information and/or material was involved? What is the classification level of the information disclosed?

(4) If classified information is alleged to have been lost, what steps were taken to locate the material?

(5) Was the information properly classified?

(6) Was the information officially released?

(7) In cases of compromise of classified information to the public media, the inquiry should determine: In what specific medial article or program did the classified information appear? To what extent was the compromised information disseminated or circulated? Would further inquiry increase the damage caused by the compromise? (AR 380-5 requires additional questions)

(8) Are there any leads to be investigated that might lead to identifying the person(s) responsible for the compromise?

(9) If no compromise and the incident was unintentional/inadvertent, was there a failure to comply with established practices/procedures and/or weakness that could lead to a compromise if uncorrected? What corrective action is required?

(10) AR 380-5 requires the preliminary inquiry to conclude with one of the 4 alternatives:

(a) Compromise of classified information did not occur;

(b) Compromise of classified information may have occurred;

(c) Compromise of classified information did occur, but there is no reasonable possibility of damage to national security; or

(d) Compromise of classified information did occur and damage to national security may result.

b) Investigation. If the circumstances of an incident are as such that a more detailed investigations is necessary, then an individual will be appointed to conduct that investigation. This individual must have an appropriate security clearance, have the ability to conduct an effective investigation, and must NOT be someone likely to have been involved, directly or indirectly, in the incident. Except in unusual circumstances, the activity security manager should not be appointed to conduct the investigation.

3. Definitions. Compromise: unauthorized disclosure of classified information.

D. LAW OF WAR VIOLATIONS (DETAINEE ABUSE).

1. References. DoDD 2311.01E, DoD Law of War Program, 9 May 2006 (w/change 1, 15 November 2010); Army Regulation 190-8, OPNAVINST 3461.6, AFJI 31-304, MCO 3461.1, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, 1 October 1997.

2. Requirement. All reportable incidents committed by or against U.S. or enemy persons must be promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action.

a) Any act or allegation of inhumane treatment will be investigated and, if substantiated, reported to HQDA as a Serious Incident Report (SIR) per AR 190-40.

b) Allegations of criminal acts or war crimes committed by or against EPW/RP must be reported to the supporting element of the U.S. Army Criminal Investigation Command (USACIDC). Death resulting from other than natural causes will be investigated by USACIDC.

c) Confinement facility commanders will appoint an officer to investigate and report: (a) Each death or serious injury caused by guards or suspected to have been caused by guards or sentries, another detainee, or any other person. (b) Each suicide or death resulting from unnatural or unknown causes.

3. Definitions.

a) Reportable Incident: A possible, suspected, or alleged violation of the law of war, for which there is a credible information, or conduct during military operations other than war that would constitute a violation of the law of war if it occurred during an armed conflict.

b) Law of war: That part of international law that regulates the conduct of armed hostilities. It is often called the law of armed conflict. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

E. COUNTERINTELLIGENCE INVESTIGATIONS.

1. References. AR 381–20, The Army Counterintelligence Program, 15 November 1993.

2. Requirement. Counterintelligence (CI) issues will be investigated by CI units alone or jointly with other agencies (FBI, CID, etc.) Units identifying a CI issue must report it immediately.

3. Definitions. Examples of CI Issues: (1) Treason. (2) Espionage and spying. (3) Subversion. (4) Sedition. (5) Foreign intelligence service-directed sabotage. (6) CI aspects of terrorist activities directed against the Army. (7) CI aspects of assassination or incapacitation of Army personnel by terrorists or by agents of a foreign power. (8) Investigation of the circumstances surrounding the defection of military personnel, and DA civilians overseas, and debriefing of the individual upon return to U.S. control. (9) Investigation of the circumstances surrounding the detention of DA personnel by a government or hostile force with interests inimical to those of the United States. (10) Investigation of the circumstances surrounding military members, and DA civilians overseas, declared absent without leave (AWOL), missing or deserters, who had access within the last year to TOP SECRET national defense information or sensitive compartmented information (special category absentees) (SCA); who were in a special mission unit (SMU); who had access to one or more special access programs; or were in the DA Cryptographic Access Program (DACAP); and debriefing of these personnel upon return to U.S. control. (11) CI aspects of security violations; known or suspected acts of unauthorized disclosure of classified information or material; unauthorized access to DA computer systems; and COMSEC insecurities. These CI investigations may occur simultaneously with the command's own responsibilities under AR 380-5. (12) CI aspects of incidents in which DA personnel with a SECRET or higher security clearance,

access to a SAP or sensitive compartmented information, or in the DACAP or an SMU, commit or attempt to commit suicide. (13) CI aspects of unofficial travel to designated countries, or contacts with foreign diplomatic facilities or official representatives, by military personnel or by DA civilians overseas. (14) CI investigations of CI scope polygraph examinations and refusals as specified in appendix E (of AR 381-20).

F. INFORMATION SYSTEM SECURITY INCIDENTS.

1. References. AR 25-1, Army Knowledge Management and Information Technology, 4 December 2008.

2. Requirement. All information system security incidents will be investigated to determine their causes and the cost-effective actions to be taken to prevent recurrence.