

# Procedural Guide for the Financial Liability Officer Conducting a Financial Liability Investigation of Property Loss (FLIPL)



OFFICE OF THE STAFF JUDGE ADVOCATE  
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## I. INTRODUCTION

**A. Purpose.** The purpose of this guide is to assist you in conducting a timely, thorough, and legally sufficient FLIPL. Army Regulation 735-5, Property Accountability Policies, governs the Financial Liability Investigation of Property Loss (FLIPL) and is the source of the information provided in this guide. If you have any questions regarding the FLIPL system after reviewing this guide, contact an administrative law attorney at (210) 221-2373.

**B. Your Mission.** Upon appointment as a FLIPL officer, your primary military duty becomes the completion of the FLIPL within the regulated time constraints. You must first investigate the facts surrounding the loss, damage, or destruction of government property. After you have completed your investigation, you must provide a written recommendation as to whether the subject to the investigation is financially responsible for the loss, damage, or destruction of government property. You may recommend liability against a person only if the evidence indicates that it is more likely than not that the negligence or willful misconduct of that person proximately caused the loss. Throughout this guide, the term “loss” includes a loss of, damage to, or destruction of government property, or a loss of accountability of such property. After you have completed the FLIPL, you should submit it for legal review and then forward it and the legal review to the appointing authority. The appointing authority will review your findings and recommendation and forward them to the approving authority. The approving authority ultimately decides whether to assess liability.

## II. THE INVESTIGATION

**A. Your Timeline.** You should begin your investigation as soon as you are notified of your appointment as a FLIPL officer. Unless otherwise directed, you have 30 days to complete the FLIPL. If your investigation exceeds 30 days, you must attach as an exhibit a statement explaining the reason for the delay. Likewise, if you determine that the FLIPL was not initiated within 15 days of the discovery of the loss, damage, or destruction of government property, you must attach as an exhibit a statement from the person who caused the report to exceed these targets. A timetable for processing FLIPLs is available at figures 13-2, AR 735-5. See paras. 13-20 & 13-28.

**B. Establish Goals for Your Investigation.** Ultimately, your report should document what happened to the lost, damaged, or destroyed property, and who, if anyone, was responsible for its loss. Your investigation should answer the following questions:

1. What property was lost, damaged, or destroyed, and what was its value?
2. When and where was it lost, damaged, or destroyed?
3. How was it lost, damaged, or destroyed?
4. Who was responsible for it when it was lost, damaged, or destroyed?

**1. What property was lost, damaged, or destroyed, and what was its value?** You should first determine what government property, if any, has been lost, damaged, or destroyed. You can normally accomplish this task by identifying and documenting the chain of custody of the property listed in blocks 4, 5, and 9 of the DD Form 200. If the property is listed as "lost" (block 9 of DD Form 200), be sure to verify that the property was in fact issued. For example, if you are dealing with lost components from major end items and the property was identified using a new edition of a manual, determine whether the property was issued using a prior edition of the manual. The earlier edition may have a less inclusive list of required components and the missing property may not have been issued. Obviously, if the property was not issued, no loss occurred and the FLIPL should be canceled. Similar questions about whether property is missing may arise if a shortage annex exists but has not been reviewed.

**2. When and where was the property lost, damaged, or destroyed?** If possible, you should determine when and where the loss occurred. If you cannot verify the alleged circumstances of the loss described in block 9 of DD Form 200, or if the time or location of the loss is uncertain, determine when the property was last accounted for and who was responsible for it. Narrow the potential times and places as much as possible. In some cases, the person last responsible for the property may be held financially responsible for the loss even though the exact time and place of the loss cannot be determined.

**3. How did the loss, damage, or destruction occur?** You should pursue and document all possible reasons for the loss. What happened to the property? Was the property stolen? Was it lost? Was it burned? Was it dropped? In some cases, this determination will be easy. For example, the report may indicate that "the vehicle was damaged when PVT Bad News struck it with a sledge hammer." If you collect evidence that proves this claim, your task is complete. If however, the report does not correctly indicate how the loss occurred, you should consider what the evidence shows --the what, when, where, and who --to determine how the loss most likely occurred.

**4. Who was responsible for the property?** You should identify each person who has some form of responsibility for the property. There are four types of responsibility.

**a. Personal responsibility** is the obligation of a person to properly use, care for, and safeguard all government property in his or her physical possession, whether or not receipted. It applies to all government property issued for, acquired for, or converted to a person's exclusive use, with or without receipt.

**b. Direct responsibility** is that responsibility acquired by a person who signs a receipt for property to ensure that it is properly used and cared for and that proper custody and safekeeping are provided. It results from assignment as an accountable officer, receipt of formal written delegation, or acceptance of the property on hand receipt from an accountable officer. Commanders and supervisors should determine and assign in writing the individuals who will have direct responsibility for property.

**c. Supervisory responsibility** is the obligation of a supervisor to ensure that all government property issued to or used by his or her subordinates is properly used and cared for and that proper custody and safekeeping are provided. It is inherent in all supervisory positions, is not contingent upon signed receipts or responsibility statements and cannot be delegated. It arises because of assignment to a specific position and includes: 1) providing proper guidance and direction; 2) enforcing all security, safety, and accounting requirements; and 3) maintaining a supervisory climate that will facilitate and ensure the proper care and use of government property.

**d. Command responsibility** refers to the duty of a commander to ensure that all government property within his or her command is properly used and cared for and that proper custody and safekeeping are provided. It is inherent in command and cannot be delegated. It is evidenced by assignment to a command position at any level and includes: 1) ensuring the security of all property of the command whether in use or in storage; 2) observing subordinates to ensure that their activities contribute to the proper custody, care, use, and safekeeping of all property within the command; 3) enforcing all security, safety, and accounting requirements; and 4) taking administrative or disciplinary measures when necessary. See paras. 2-8 & 13-29.

**C. When Financial Liability Attaches.** You may impose financial liability for a loss only if the subject's conduct constitutes willful misconduct, simple negligence, or gross negligence, and such conduct proximately caused the loss, damage, or destruction to government property.

#### **1. Misconduct.**

**a. What is simple negligence?** Simple negligence is the failure to act as a reasonably prudent person would act under similar circumstances. In other words, would another individual, of similar experience and relationship to the property, as a matter of common sense, act differently to safeguard the property? If the answer is yes, then you have established negligence. At a minimum, you should consider the following factors when you determine whether conduct is reasonable: 1) the person's age, experience, physical condition, and qualifications; 2) the type of responsibility the person had towards the property; 3) the type and nature of the property; 4) the adequacy of supervisory measures or guidance for property control; 5) the feasibility of maintaining close supervision over the property given the nature and complexity of the organization or activity supervised; and 6) the extent supervision could influence the situation considering pressing duties or lack of qualified assistants. If the loss involves sensitive items, inventory losses, vehicle accidents, convoy incidents, or

communication wire, you should consult Chapter 8, DA Pam 735-5, as you analyze your evidence. See para. 13-29b.

**b. What is gross negligence?** Gross negligence is an extreme departure from the conduct of a reasonably prudent person under similar circumstances. It is a reckless or deliberate disregard for a foreseeable loss or damage of the property. Plainly, if negligence is failing to use common sense, gross negligence is failing to use any sense at all. For example, gross negligence would be using a government issued i-phone as a hammer; or driving a government vehicle the wrong way down a one way street.

**c. What is willful misconduct?** Willful misconduct involves an intentional act specifically aimed at causing a loss, damage, or destruction of government property. For example, if PVT Schmedlap destroys the commander's office with a claymore mine, he has committed an act of willful misconduct. He intended to do a wrongful act that caused the destruction of government property, and should be personally responsible for that loss. Even if PVT Schmedlap intended to only destroy the front door of the commander's office, and the end result was the total destruction of the entire building, he would be financially responsible for all of the resulting damage. PVT Schmedlap must only intend to cause damage; he need not intend to cause the severity of the damage that occurs.

## **2. Proximate Cause.**

**a. What is proximate cause?** Proximate cause is the cause which produced the loss in a natural and continuous sequence, unbroken by a new cause. It is the most direct cause for the loss, damage or destruction to the government property. Liability attaches when the loss is proximately caused by an act (or a failure to act), and this act (or non-act) plays a substantial part in causing the loss, and the loss was either a direct result, or a reasonable probable consequence of that act (or non-act).

**b. Examples of proximate cause.** Consider the following examples as you analyze the facts-of your case.

**(1) Example 1.** SPC Careless leaves his T A-50 gear overnight on the front seat of his unlocked car. The gear is stolen. By failing to act as a reasonable person of similar background and experience, SPC Careless was negligent in his care of the property. His negligence proximately caused the loss because he substantially contributed to the loss by leaving the equipment in his unlocked car overnight. Therefore, you should recommend that he be held liable for this loss.

**(2) Example 2.** 1SG Noluck recovers SPC Careless' stolen TA-50, but subsequently manages to lose it. Although SPC Careless' original conduct was negligent, his negligence is no longer the proximate cause of the loss. The gear was returned to the control of the government when 1SG Noluck recovered it. In this case, you should consider the conduct of 1SG Noluck to determine whether he was negligent in his care of the recovered property, and if so, whether his negligence caused the present loss.

**(3) Example 3.** PVT Speed is driving his 2 1/2 ton truck down a steep hill at an excessive rate of speed. He is unable to manage the curve at the bottom of the hill and hits a tree. If a reasonably prudent person with the same background and experience would not have attempted the curve at such an excessive rate of speed, then PVT Speed was negligent in his care of the truck. His negligent conduct **\*\*speeding\*\*** is the proximate cause of the accident

because it is rationally related to the type of accident which occurred. You may recommend that he be held liable for the damage to the truck.

**(4) Example 4.** CPL Crash is driving 20 miles per hour in a 15 mile-per-hour zone. A limb on an old pine tree breaks, falls, and shatters his windshield. Here, even though CPL Crash was negligently driving too fast, his negligence is not the proximate cause of the loss. The falling limb proximately caused the damage to the vehicle. Speeding is not rationally related to the type of accident that occurred. If, for example, he had left the motor pool a few minutes earlier, but had not been speeding, the damage would have still resulted. Even though he was negligently driving too fast, CPL Crash's negligence did not proximately cause the damage.

**(5) Example 5.** SSG Supply issued property without obtaining hand receipts. You cannot determine who received the property or where it is located. Since SSG Supply negligently failed to issue a hand receipt, you cannot determine to whom he issued the property to. Therefore, his negligence proximately caused the loss. The basis for a recommendation of liability would be a loss of accountability. On the other hand, if the investigation clearly reveals that SSG Supply issued the missing property to PVT Smith (with or without a subhand receipt), then the investigation should focus on the conduct of PVT Smith.

**D. Formulate Your Plan.** Your investigation involves gathering evidence. Evidence can be in many forms and often includes testimony, documents, photographs, and diagrams. You should obtain statements from each person who has personal knowledge of the circumstances surrounding the loss. At a minimum, you should collect documents that show the value of the property, such as Army Master Data File records or appraisals, and documents that show what happened to the property, such as hand receipts, police reports, and statements from responsible persons. If possible, you should personally inspect the areas involved with the loss, such as a supply room or range site, and attach as an exhibit a photograph or diagram of the area. See para. 13-31.

**1. Whom should you interview?** You should interview and obtain sworn statements from each person whose testimony may help determine the cause of, or responsibility for, the loss. Begin by interviewing the individuals who are most directly connected to the lost, damaged, or destroyed property, such as those identified in block 9 of DD Form 200. They will often reveal other individuals whom you should interview, such as the hand receipt holder, sub-hand receipt holders, and other individuals who were responsible for the property or who have knowledge of the circumstances surrounding its-loss. See para. 13-31.

**2. How do you document the statements made during an interview?**

**a. Sworn statement.** You should record the substance of each interview on DA Form 2823, "Sworn Statement." However, when obtaining a sworn statement from the Subject (or subjects) of your FLIPL investigation, you must attach DA Form 3881, "Rights Warning Procedure/Waiver Certificate," to your DA 2823. See Enclosures 3 & 4, for more guidance on this issue. If, however, you do not have access to a DA Form 2823, use plain bond or ruled paper and type or legibly print the word "CERTIFICATE" across the top of the paper. As a FLIPL officer, you may administer this oath, printed on the DA Form 2823:

"I (insert name), have read or have had read to me this statement which begins on page I and ends on page (Insert last page number). I fully understand the contents of the entire statement made by me. The statement is true. I have

initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement.”

Both DA Form 2823 and its substitute must be dated and signed under oath by the individual making the statement. See para. 13-31.

**b. Privacy Act Statement.** Privacy Act Statement must be signed and attached to each statement. The Privacy Act Statement is contained in the DA Form 2823. See Enclosure 4, for a sample of the Privacy Act Statement.

**c. Telephone interviews.** It is always preferred to conduct an interview face to face. However, if a person is unavailable, it is essential that phone conversations be memorialized in writing. If you do not create a memorandum for record, your conversation can not be considered as evidence for your FLIPL report. See Enclosure 5, for a sample MFR for telephone interviews.

**3. How to label the documents, interviews, and other exhibits.** You should mark your exhibits with the word “Exhibit,” an alphabetical designation, the date of the FLIPL, the amount assessed by the FLIPL, and the organization or account found on the DD Form 200. Example: “Exhibit A, Date, Amount, Unit. See para. 13-31.

**4. Should I look for lost property?** You should always attempt to find lost property. The scope of the search depends on the type of property and how and where it was lost. You should attach as an exhibit a statement documenting your efforts and the efforts made by others to locate the lost property. If practical, you should visit the site of the loss and talk to others who were in the area at the time of the loss. See para. 13-31.

**5. What if I recover the property during your investigation?** If all of the property listed on the report is recovered during your investigation, notify the appointing authority of the discovery and request in writing that the accountable officer re-establish accountability. Your job is done once the accountable officer verifies the complete recovery and you attach his verification memorandum as an exhibit to the FLIPL report. If some but not all the property is recovered, inform the appointing authority and request verification from the accountable officer for the recovered items. Continue to investigate the loss, damage, or destruction of the unrecovered property. Mark through the items in blocks 4 & 5 which have been recovered and attach the accountable officer’s verification letter as an exhibit to the report. In both cases, the appointing authority will conclude the FLIPL as to the recovered items. See para. 14-14.

**6. What should I do with damaged property?** You should immediately examine damaged property, document its condition and cost of repair, and release the property for repair or turn-in. Do not delay the FLIPL process while waiting for the actual cost of repair. You may process the report with an estimated cost of repair if the estimate is prepared by a technical expert. If the actual cost of repair turns out to be less than the estimated cost of repair and the estimated cost of repair has been collected from the respondent, you must ensure that the difference is reimbursed to the respondent. If the property cannot be repaired, document its salvage value with a statement from a technical expert and release the property for turn-in. A technical expert is a person having broad experience in dealing with or having thorough knowledge regarding the property’s use and functions. In many cases the maintenance support staff will qualify as technical experts. When you release property for repair or turn-in, be sure to

prepare a memorandum stating the reasons for the transfer and forward it with the damaged or destroyed equipment. See para. 13-31.

**7. What should I do if the investigation focuses on someone senior to me?** If your investigation requires you to examine the conduct of a person senior to you, report that fact to the approving authority. The approving authority must, in most cases, excuse you and appoint someone senior to the person being investigated. Attach as exhibits a copy of your notification memorandum and a copy of his response memorandum. See para. 13-27.

**E. Analyzing the Evidence.** After you complete your investigation, you must carefully analyze all of the evidence before you make your findings and recommendation. Your analysis should focus on whether there has been a loss of government property, and, if so, whether one of the individuals responsible for the property should be held liable for its loss. For a person to be held liable for a loss, the willful misconduct or negligence of that person must have proximately caused the loss. During your analysis, you must determine if there is sufficient evidence to support a finding of willful misconduct or negligence; and, if it does, whether that willful misconduct or negligence caused the loss. See para. 13-32.

#### **F. Credible Evidence.**

**1. Credible Evidence Defined.** Your findings must be supported by credible evidence. Evidence is credible if there is reasonable support for its truth. Direct evidence is based on actual knowledge or observation of witnesses. Indirect evidence includes facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind. There is no distinction between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than the statement of an eyewitness. The reliability of the evidence is not determined by the number of witnesses or exhibits but by carefully considering all of the evidence, evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall and relate events, and other signs of truth.

**2. What if a statement is self-serving?** The reliability of evidence is reduced if the statement is self-serving or if it is contradicted by other evidence. You may not rely on a statement from an individual who is responsible for the property and whose statement tends to clear him or her from wrong unless you identify corroborating evidence that confirms the self-serving statement or supplementary evidence that supports his or her credibility. If you do use a self-serving or contradicted statement, you must explain in your findings why you consider the witness or the particular self-serving or contradicted statement to be reliable.

**3. Example of self-serving statement.** For instance, suppose that SPC Honest states that the crack in the windshield of the government sedan that he was driving was caused when PVT Rock threw a stone at him. PVT Rock denies that he threw the rock. SPC Honest's statement is self-serving because he is responsible for the sedan and his statement tends to clear him from wrong. The FLIPL officer may not use SPC Honest's statement to support a recommendation of liability against PVT Rock unless he can explain how other evidence supports its credibility. In this example, the FLIPL officer may use this statement in support of his recommendation to hold PVT Rock liable if there is additional evidence that PVT Rock did in fact hit the car with a rock (a statement from a bystander), or if there is other evidence supporting SPC Honest's credibility (you have a reasonable basis to believe SPC Honest rather than PVT Rock). See para. 13-31.

**4. What if statements contradict each other?** Documents or testimony may support more than one conclusion and may contradict other evidence in your report. You should use your best judgment and common sense to resolve which account best represents what happened. In your findings, explain how you resolved the contradiction and why you resolved it the way you did.

**5. Example of contradicting statement.** For example, suppose that the FLIPL officer collects a statement from PVT Eyes who claims that he saw CPL Clean take the missing cleaning equipment from the supply closet. The FLIPL officer also has a statement from CPL Ears who states he saw CPL Dirt take it. The FLIPL officer is unable to collect statements from CPL Clean or CPL Dirt, but concludes that CPL Dirt took the equipment. The FLIPL officer must explain why he relied on the statement from CPL Ears and not the one from PVT Eyes. That is, why does CPL Ears' statement make the most sense under the circumstances? In this case the FLIPL officer might have evidence that PVT Eyes was standing 20 meters farther from the room than CPL Ears or that PVT Eyes had his days mixed up and was actually in the field on the day of the loss. The FLIPL officer can make this conclusion but must note his analysis in his findings statement. See para. 13-31.

## **G. Special Problems.**

**1. What if you cannot determine what happened to the property?** If you have completed a thorough investigation and are unable to determine what happened to the property, you may recommend that all persons responsible for the property be relieved from accountability and liability. Liability may not be imposed unless the evidence indicates that it is more likely than not that the negligence or willful misconduct of a person responsible for property caused its loss. Absent these elements, you should recommend that all parties be relieved from liability. In some cases, however, you may be able to recommend that liability be assessed even if you are unable to determine what actually happened to the property. You may presume negligence if you can determine that an individual had exclusive access and control over the missing or damaged property and if the only logical explanation for the loss is that the last person responsible for the property was negligent. In essence, the evidence must rule out all other possible causes for the loss. As in all cases, you must document the circumstances of the loss before presuming that someone was negligent. The circumstances must demonstrate that no other reasonably possible cause of the loss exists except the negligent conduct of the person last responsible for the property.

**2. Examples.** Consider the following examples as you analyze your facts.

**a. Example 1.** PVT Gone is AWOL. His TA-50 was secured and inventoried immediately after he went AWOL, but most of it is missing. Because PVT Gone had exclusive control over his TA-50 and it was immediately secured and inventoried after he went AWOL, he may be presumed to have caused the loss. If, however, the property was not secured or inventoried immediately after he left, the presumption will not apply unless the evidence shows that other causes of the loss, such as theft or pilferage, are unlikely to exist.

**b. Example 2.** SGT Sheet has the only key to a linen closet and has exclusive access to the property therein. He signed for the key and 30 sets of linen. Three months later an inventory determines that 10 sets of linen are missing. There is no evidence of theft. No one else had access to the linen closet. The records indicate that the linens have not been issued. Because SGT Sheet had exclusive access to and control of the linen closet and because other

causes of loss have been ruled out, he may be presumed to have caused the loss. See para. 13-15, figure 13-8

**3. What if the loss is caused by the willful misconduct or negligence of two or more people?** You may encounter circumstances where two or more people share responsibility for causing the loss of government property. You may hold more than one person liable if the evidence indicates that the negligence or willful misconduct of each person proximately caused the loss. If you hold more than one person liable, you must afford each of them his or her notice, rebuttal, and appeal rights, and must prepare the report with each person's name, social security number, basic monthly pay, and estimated termination of service date. They will be held jointly and severally liable for the loss in accordance with the formula at Table 12-4, AR 735-5. You must follow this formula to determine the liability of two or more different people and may not recommend any other percentage of liability between the parties. For example, you may not hold one respondent 20% liable and another 80% liable. See para. 13-32, Table 12-4.

**III. PREPARING THE REPORT.** Complete blocks 15b through 15k, and block 15a of the DD Form 200.

**A. What are Findings?** A finding is a conclusion reached by the financial liability officer during his or her investigation of the facts and circumstances surrounding the LDD of Government property. Findings are supported by evidence contained on DD Form 200, block 15 or in exhibit(s) attached to the DD Form 200. When writing your findings, exclude personal speculation, suspicion, or opinion not supported by evidence. Findings are the conclusions, which form the basis for making recommendations, and must be factual. The financial liability officer must state the facts in his or her own words.

**1. Suggested template.** Findings will be as complete as possible to enable the reviewers to ascertain relief from, or assessment of, financial liability. Insert the appropriate words in the following example:

"I have examined all available evidence as shown in exhibits thru and as indicated below have personally investigated the same and it is my belief that the article(s) listed hereon and/or attached to sheets, have a total cost of \$\_\_\_\_\_, and (choose a, b, or c)

(a) was/were (lost, damaged, or destroyed) through the (simple, gross negligence) of \_\_\_\_\_; or

(b) was/were (lost, damaged, or destroyed) by the willful misconduct of \_\_\_\_\_; or

(c) was/were (lost, damaged, or destroyed) as the result of (an unavoidable accident, an unpreventable theft, indeterminable circumstances, etc.)."

**2. Completing your narrative.** After writing the above sentence, describe what happened to the property. Use clear, simple language. Tell what was lost, when, where, how, and by whom. Your findings statement should also note if you determined that the loss was caused by willful misconduct or negligence. Describe how a person's conduct was willful or negligent. You should also describe why you resolved any conflicting evidence the way you did. What evidence was most persuasive? This narrative should support and explain the conclusion with which you began your findings statement. You may attach additional sheets if you are unable to insert the full statement in the block provided on the DD Form 200. See para. 13-32.

**3. How to reference the exhibits that support your findings.** You should reference the exhibits that support your conclusions in order to tie your report together and to insure that your conclusions are supported by the evidence. For example, if Exhibit A is a hand receipt showing that PFC Schmedlap was issued night vision goggles on 3/1/96, you should reference that exhibit in your findings as follows: "PFC Schmedlap was issued the night vision goggles on 3/1/96. (Exhibit A)." Every statement of fact in your findings should be followed by a reference to the document that supports it. See para. 13-10.

**4. How to explain how you resolved contradictory evidence, self-serving statements, or unanswered questions in your findings.** You must explain your analysis of the evidence. If there are contradictory or self-serving statements or questions left unanswered in the investigation, you should explain how you resolved the evidence in light of these inconsistencies. That is, why did you believe one account or document more than another?

Similarly, if a person responsible for the property makes a statement that tends to clear him from wrong, you must note some other evidence that confirms the self-serving statement or supports his credibility. Finally, if you were unable to discover what happened to the property, you should describe your efforts to do so and why you think the evidence is sufficient to determine whether or not to assess liability. See para. 13-31.

**B. What is your recommendation?** Your recommendation is your determination, based upon the findings, of whether or not someone should be held liable for the loss. You may recommend that those responsible for the property 1) be relieved from responsibility and accountability or 2) be held financially liable. You should recommend that all parties be relieved of accountability and responsibility if you determine that neither negligence nor willful misconduct caused the loss or if you are unable to determine the cause of the loss. You must recommend that a responsible party be held financially liable if you conclude that the negligence or willful misconduct of that person caused its loss, damage, or destruction. Include with your recommendation the following information: the full name, social security number, monthly base pay (or 1/12 annual pay for a civilian employee) at the time of the loss, and the estimated termination of service date of the individual. You must also demonstrate how you calculated the amount of liability assessed. Explain your calculations and refer to the specific provision of the regulation which authorizes that method of valuation. If the FLIPL officer and the respondent have the same rank, you must include the date of rank for both individuals. See para. 13-32. Your findings and recommendations are entered on DD Form 200, block 15a.

**IV. HOW TO CALCULATE CHARGES.** You must complete blocks 15b, 15c, and 15d of DD Form 200 showing the amount of loss, the respondent's monthly basic pay, and the recommended amount of financial liability. The actual dollar amount of loss to the Government should be provided in block 15b. The actual dollar amount of loss in block 15b of DD Form 200, is the difference between the value of the property immediately before and immediately after the loss, damage, or destruction (LDD) of government property. Your recommended amount of financial liability should be provided in block 15d. The amount provided in block 15d, is the recommended amount of charges assessed against the person being held financially liable for the LDD of government property. When you are recommending a charge of financial liability, enter the monthly basic pay of the military respondent in block 15c.

**A. How do you determine the actual loss?** The actual loss may be determined using one of four methods: 1) cost of repair; 2) market value; 3) depreciation; or 4) standard rebuild cost. If the property is repairable, the actual loss is the cost of repair. If the property is not repairable and a technical inspection is feasible, the actual loss is the difference between the value of the item before the damage and the appraised value after the damage. If the item is not repairable and a technical inspection is not feasible, the actual loss is the depreciated value of the property. If the property is not repairable, a technical inspection is not feasible, and depreciation is not possible or equitable, the value of the loss is the difference between the actual cost and the standard rebuild cost plus any salvage credit. See App. B.

**B. How do you determine actual cost of repair?** For damaged property that can be repaired, the loss to the government is the lesser of the cost of repair or the value of the item at the time of the damage. The cost of repair consists of the sum of material, labor, transportation, and overhead costs minus the salvage or scrap value of the replaced parts. If repair makes the item more valuable than it was before the loss, reduce the cost of repair by the amount of the increased value. If the actual cost of damage cannot be determined within a reasonable time, you may use an itemized estimated cost of damages if you state the reason for using the estimated rather than actual cost and the basis on which your estimate was made. If the actual cost of damage is later discovered to be less than the estimated cost of damage, the FLIPL will have to be reopened, the charge amended, and the difference reimbursed to the respondent. If the actual cost of damage is later discovered to be more than the estimated cost of damage, you may process another FLIPL against the respondent for the additional amount. You must, however, give the respondent notice and an opportunity to rebut the additional charge. See App. B-6.

**C. How do you determine the appraised value and salvage credit?** If the property cannot be repaired, the actual loss is the value of the property immediately before the loss minus its salvage or scrap value. The value of the property immediately before the loss can be established by an appraisal by a technical inspector. A person qualifies as a technical inspector if he or she has broad experience in dealing with the particular type of item and a thorough knowledge of its uses, mechanisms, and functions. The inspector should appraise the items based upon the prices of the same or similar items sold in the commercial markets at or about the time of the loss. If the appraised value appears to be unfair to the government or to the respondent, and the depreciating of the same item creates a fair amount, you should then depreciate the item. See Apps. B-3, B- 7.

**D. Determining Fair Market Value (FMV).** For purposes of determining FMV, the FLO should review at least three separate sources. A good guideline for whether a source should be considered is whether that source would be acceptable to make a purchase using a GPC. Examples of acceptable sources include: AAFES catalogues, online retailers, brick and mortar

retailer, and appraisal guides accepted on the commercial market. Exhibits must clearly list only one price for the item.

**E. Using eBay and other personal auction sites.** FLOs should be discouraged from using these as their sole source of pricing information. This is due to the variances introduced by the bidding process that may result in prices that do not accurately reflect the FMV of the LDD of the Government property. If an online auction site is used it should be used as a last resort and in conjunction with other, non-auction, sources. When an online auction is used to determine FMV, the following precautions should be taken: 1) ensure the item is similar in kind and quality to LDD property; 2) include the COMPLETE item description as an exhibit; 3) use only COMPLETED (ie SOLD) listings; 4) exhibit must list only ONE price for the item; 5) seller should be high volume – ie., eBay power seller or better - with high seller ratings (92% and higher) - to minimize variances; 6) do not use auctions with inflated shipping costs; and, 7) do not include shipping costs in the cost of the item.

#### **F. How do you determine depreciation?**

**1. Calculating depreciation.** Depreciation reduces the value of an item at a standard rate based upon its type of property and its time in service. To calculate the depreciated value of an item, you reduce the original cost of the item by a percentage listed for that particular type of property. The original cost of the item can be determined by obtaining the current FEDLOG or other standard price of a new item. Depreciation is not deducted on loss or damage to new property or small arms. Compute depreciated value for all property not listed below at 5 percent per year of service, up to 75 percent.

a. For OCIE items and nonpower hand tools, depreciate by 10 percent for each such item.

b. For items constructed with relatively perishable material (except CTA 50 items) such as leathers, canvas, plastic, and rubber, deduct 25 percent.

d. For electronic equipment and office furniture, deduct 5 percent per year of service, up to a maximum of 50 percent.

e. For tactical and general purpose vehicles, deduct 5 percent per year of service, up to a maximum of 90 percent.

f. For family quarters, furnishings will be depreciated 5 percent per year of service, up to 50 percent.

g. If the time of service cannot be determined, use a standard 25 percent.

**2. Adjusting depreciation rates must be substantiated.** If you conclude that the lost, damaged, or destroyed property was subjected to more or less use than that reflected in the above rates, you may increase or decrease the depreciation rates so long as your conclusion is substantiated by evidence in the report. AR 27-20 provides guidance on depreciating types of property not listed above. See App. B-2, B-8.

**G. How do you determine the standard rebuild cost?** If the depreciated value is not possible or equitable, and the item is not new or recently rebuilt, you may use the standard rebuild cost to determine actual loss if a standard rebuild cost has been published and the property has been used long enough to warrant overhaul. When using this method, subtract the standard rebuild cost, offset by any salvage value, from the current FEDLOG price. See App. B-2.

#### **H. How do you determine the amount charged?**

1. When negligence or willful misconduct are shown to be the proximate cause for a loss, the following individuals or entities will be assessed the full amount of the Government's loss, minus amounts charged to others:

- a. Accountable officers.
- b. States and territories of the United States.
- c. Contractors and contractor employees (see the FAR).
- d. Nonappropriated fund activities.
- e. Persons losing public funds.
- f. Soldiers losing personal arms or equipment.
- g. Persons, who lose, damage, or destroy Government quarters, and/or furnishings and equipment provided by the Government for use in quarters, through gross negligence or willful misconduct. If simple negligence is shown, paragraph 13–41*b* applies.
- h. Individuals or entities not federally employed.

2. In all other cases, the amount equal to one month's basic pay at the time of the loss, or the actual amount of the loss to the Government, whichever is less, may be assessed. The approval authority may reduce in whole or in part the amount of the individual's financial liability when the approval authority determines that the evidence documented in the investigating officer's findings indicates that the amount should be reduced because of the nature and circumstances surrounding the damage or loss.

a. An exception is for military members who lose both PA&E and OEP. In this case, the amount of liability will be 1 month's base pay at the time of loss or the actual OEP amount of loss to the Government, whichever is less, plus the actual amount of the PA&E (see table 12–3).

b. For ARNG and USAR personnel, 1 month's basic pay refers to the amount that would be received by the Soldier if on active duty.

c. For DOD civilian employees, financial liability for losses of Government property (including personal arms and equipment) is limited to 1/12 of their annual pay.

d. When two or more financial liability investigations of property loss are processed that involve the same incident financial liability is limited to 1 month's basic pay. (Compute the charge per table 12–3.)

3. When two or more entities are held collectively and individually liable for a single loss, their individual financial charge is computed per table 12–4.

4. When a Soldier or DOD civilian employee is held collectively and individually liable with an individual and/or entity identified in paragraph 13–41*a*(8), table 12–4 is not used to compute the amounts of financial liability. The total dollar amount of the loss is divided by the number of respondents. The amount derived from this equation is the maximum amount each respondent will be assessed. For Soldiers and DOD civilian employees, the amount of financial liability assessed will be the amount derived from the above equation or 1 month's base pay or 1/12th the annual salary, whichever is less.

**I. What property is considered personal equipment?** Personal arms and equipment are those items which are designed for personal use or performance of duty by a person and normally stored with the personal effects of, or worn, or carried on the person. Examples are iPod, iPad, iTouch, MacBook, PC Tablet and other personal technical equipment issued for language study usage issued by the student's respective school on DA Form 2062, Hand

Receipt; flashlights, some toolboxes, protective masks, binoculars, and items listed on DA Form 3645, Organizational Clothing and Equipment (OCIE) Record or DA Form 3645-1. Such items become personal equipment only when issued to the using person for personal use. Items like motor vehicles, government quarters and furnishings, and typewriters are not classified as personal property. See DA PAM 710-2-2.

**J. When is a housing occupant liable for damage caused by his guests?** An occupant is liable for the gross negligence or willful misconduct on the part of his dependents, guests, or pets if the occupant knew of the risk involved and failed to exercise due care in preventing the loss. Without evidence to the contrary, occupants are presumed to be on notice of risks attending the activities of those whom the occupant invites onto his premises. See para. 13-32.

**K. How do I determine the amount of liability for individuals jointly responsible?** If you conclude that the loss is caused by the negligence or willful misconduct of two or more individuals, you should recommend that they be held jointly and severally liable. If the actual loss exceeds the combined monthly basic pay for each individual, charge the full amount of each soldier's basic pay (or the full amount of 1/12 of the annual pay for civilian employees). If the actual loss is less than the combined basic pay of all individuals, compute the charges in proportion to the soldier's basic pay (or for civilian employees in proportion to 1/12 of the annual pay). See para. 13-32, Table 12-4.

## V. NOTIFYING THE RESPONDENT.

**A. Recommending No Finding of Fault or Liability.** If you recommend that all parties be relieved from accountability and responsibility, forward the original and 3 copies of the FLIPL to the appointing or approving authority for appropriate action. You should also retain a copy for your records. See para. 13-33.

**B. Recommending Liability.** If you recommend liability against someone, you must inform that person of your recommendation and give him/her a chance to examine the FLIPL packet. You must advise the person of the potential consequences of your recommendation and the significance of any statement made by him or her regarding possible liability. See Enclosure 6 to this guide, and AR 735-5, fig. 13-13, for a memorandum template for the written notification to the respondent.

**C. You must provide written notice to Respondent of liability.** You must provide written notice of the amount of liability recommended and of his or her right to inspect and copy Army records relating to the debt, to legal advice, and to submit a statement and other evidence in rebuttal of the FLIPL officer's recommendation. You must ensure that the respondent completes DD Form 200, blocks 16a through 16g, and provide a copy of your memorandum for written notice to the respondent (see Enclosure 6 for memorandum template for notice to respondent) to the DD Form 200 as an exhibit. If you recommend that more than one person be held financially liable, prepare additional documents for notice for each respondent in the same manner as described above. Attach all documents and supporting exhibits to your DD Form 200. See para. 13-34 & fig. 13-2.

**1. Local Respondent.** If the respondent is stationed locally, he should be contacted in person, counseled regarding his rights, provided a copy of the report and exhibits, and asked to complete blocks 16a through 16h of DD Form 200. Explain to the respondent that signing is not an admission of liability and does not waive any of his legal rights. If the respondent refuses to sign, attach a statement to the FLIPL explaining the circumstances of the refusal and forward the report and statement to the legal office for review. After the FLIPL has been reviewed for legal sufficiency, forward the FLIPL packet to the approving authority. If the respondent was notified of his/her rights in person, he/she has 7 days to respond.

**2. Nonlocal Respondent.** If the respondent is not stationed locally, you must send him/her a copy of the FLIPL and the notification memorandum by either certified or registered mail. A copy of the memorandum and the certified or registered mail receipt and return receipt must be attached to the FLIPL packet. Individuals located in the continental United States have 15 days from the date of mailing to respond. Individuals stationed outside the continental United States have 30 days to respond. See para. 13-35.

## **VI. WHAT TO DO WITH A REBUTTAL STATEMENT.**

**A. How to consider the respondents timely rebuttal statement.** If you receive a rebuttal statement within the allotted time, you must consider it, and note your consideration of it as an exhibit to your report. If the evidence provided changes to your findings and recommendation, the new findings and recommendation will be placed in block 15a of DD Form 200, or on an added page. After you have completed your review of the respondent's rebuttal, attach the respondent's statement to the DD Form 200 as an exhibit.

**B. What to do with an untimely received rebuttal statement.** If the individual does not respond within the appropriate time, include a statement to that effect and attach this memorandum for record to your DD Form 200 as an exhibit. If the respondent indicated that he/she intended to submit a statement but has not after the allotted time, explain the individual's intent and omission in block 15a of DD Form 200, and forward the report without the rebuttal. If you receive a rebuttal after the time has passed, you must consider it, respond to it, and forward it and your response to the legal office for review. After the FLIPL has been reviewed for legal sufficiency, forward the FLIPL and legal review to the appointing or approving authority as appropriate. See par. 13-35.

**VII. WHAT DO YOU DO AFTER YOU HAVE NOTIFIED THE RESPONDENT AND RESPONDED TO THE REBUTTAL STATEMENT.** When you have completed the report, properly notified the respondent, and responded to his or her rebuttal, forward a copy of the FLIPL to the legal office for review. Once the FLIPL has been reviewed for legal sufficiency, forward the original and 3 copies of the FLIPL to the appointing or approving authority for appropriate action. You should also retain a copy for your records. See para. 13-35.

# Enclosure 1

## FLIPL Review Checklist

The governing regulation is AR 735-5. These are specifics that may be in addition to the general 15-6 requirements. Use 15-6 checklist as applicable.

### DA Form 7531 (Checklist & Tracking Document for Financial Liability Investigations of Property Loss)

\_\_\_ Completely filled out (Sections A through F) (par. 13-9b).

### DD Form 200 (Financial Liability Investigation of Property Loss)

\_\_\_ Blocks 1-13, 15-16 completed.

\_\_\_ Compare Blocks 3 & 13c & FLO's Chronology to determine whether FLIPL was initiated within 15 days of discovering of discrepancy (par. 13-8a). If not, is there an MFR explaining the delay by the person responsible.

\_\_\_ Compare Blocks 13c & 15k, the Appointment Memorandum & the FLO's Chronology & MFR on Findings & Recommendations to determine whether the FLIPL was completed within 30 days of being appointed (par. 13-28). The rebuttal statement time is not counted against this time constraint (par. 13-35).

\_\_\_ Does Block 13 have the appropriate appointing authority.

\_\_\_ Does Block 13c reflect that a FLO was appointed prior to appointing authority making a recommendation to the approval authority as indicated in Blocks 13a & 13h.

\_\_\_ Block 14 prepared for appropriate approval authority.

\_\_\_ Block 15d should not be more than Block 15c except under limited circumstances.

\_\_\_ If Block 16a indicates that the respondent intends to submit a rebuttal statement, has adequate time been afforded to provide such rebuttal &, if provided, is included with the packet & noted in the findings & recommendations.

### Organization of Packet:

\_\_\_ DA Form 200

\_\_\_ DA Form 7531

\_\_\_ Table of Contents

\_\_\_ Legal Review

\_\_\_ MFR with findings & recommendations

\_\_\_ State specific facts (who, what, where, when, why, why not) & cite the exhibit

\_\_\_ State & address each element of paragraph 13-29 (Responsibility, Culpability, Proximate Cause, & Loss)

\_\_\_ State whether each element is "established" or "not established"

\_\_\_ State the basis on the finding (i.e. based upon the evidence the NAME had direct responsibility because he accepted the property on a hand receipt dated 1NOV10; based upon the evidence, there is insufficient evidence to substantiate that NAME's action or inaction was the proximate cause for the loss of the property) & avoid speculation & opinion (par. 13-32a)

\_\_\_ State which exhibits corroborate or conflict with finding

\_\_\_ If relying on conflicting evidence, state how conflict was resolved (pars. 13-31f & 13-32a(2))

\_\_\_ Comment on the reliability & credibility of the statements of the witnesses

\_\_\_ If relying on any self-serving statements, state independent corroborating evidence (pars. 13-31e & 13-32a(1))

\_\_\_ If unable to interview a potential witness, state reasons why

\_\_\_\_\_ State specific & practical recommendation (if assessing liability, provide specified amount IAW par. 13-32c & Appendix B & ensure it matches blocks 15b, 15c, & 15d on DA Form 200)

B-2a) \_\_\_\_\_ Was the fair market value at the time of loss used if possible (Appendix B, par. B-2a)

\_\_\_\_\_ If the fair market value at the time of the loss is not possible or equitable, was the loss depreciated (Appendix B, par. B-2c)

\_\_\_\_\_ Is the amount charged greater than 1 month's base pay (par. 13-41b)

\_\_\_\_\_ If so, is it appropriate under circumstances & supported by an explanation & evidence (par. 13-41a)

\_\_\_\_\_ Soldier's base pay & ETS listed in findings & match Block 15c (par. 13-41a)

\_\_\_\_\_ Is more than one person being held liable & was the computation done correctly & explained in the findings or an exhibit (par. 13-41c & Table 12-4)

\_\_\_ Appointment Orders

\_\_\_ Supporting evidence & documentation

\_\_\_ Chronology of the investigation

\_\_\_ Statements of witnesses & person being investigated; preferably on DA Form 2823 (Sworn Statement) with a DA Form 3881 (Rights Warning & Waiver) if necessary

\_\_\_ Hand receipts, SOPs (regarding unit property management, control, & security measures)

\_\_\_ Photographs, maps, charts, diagrams, storyboards, & so forth, if relevant

\_\_\_ Other relevant documentation (police reports, medical reports not listed above, email traffic, MFRs of phone conversations, Privacy Act statements, counseling statements, OERs/NCOERs, copies of orders to active duty periodic advance training scheduled for guardsmen & reservists on AD or Reserve duty training, etc.)

\_\_\_ Pertinent portions of applicable laws, regulations, orders, & SOPs used to establish the prescribed or appropriate COA in order to determine whether any intentional or negligent violations occurred

\_\_\_ Memorandum notifying the Respondent(s) (if any) of recommended liability from the FLO

\_\_\_\_\_ If mail, return receipt included

\_\_\_\_\_ If hand delivered, hand receipt or transmittal record included

\_\_\_ Rebuttal Statement from the Respondent (if any)

\_\_\_\_\_ If submitted, did the FLO consider the rebuttal statement & any additional evidence provided or allegations of error, & make a recommendation based on the reconsideration (par. 13-35a)

\_\_\_\_\_ If suspense date not met (30 days from the date of receipt of the FLIPL), MFR showing timeline of investigation & explanation of the delay (par. 13-28)

\_\_\_ Respondent(s)' ERB / ORB

\_\_\_ Chain of command recommendations on disciplinary action, if applicable & such recommendations are not contained on the DA Form 1574 signature page

### **Format Instructions:**

\_\_\_ Mark each exhibit in the lower right hand corner IAW par. 13-31g(2)

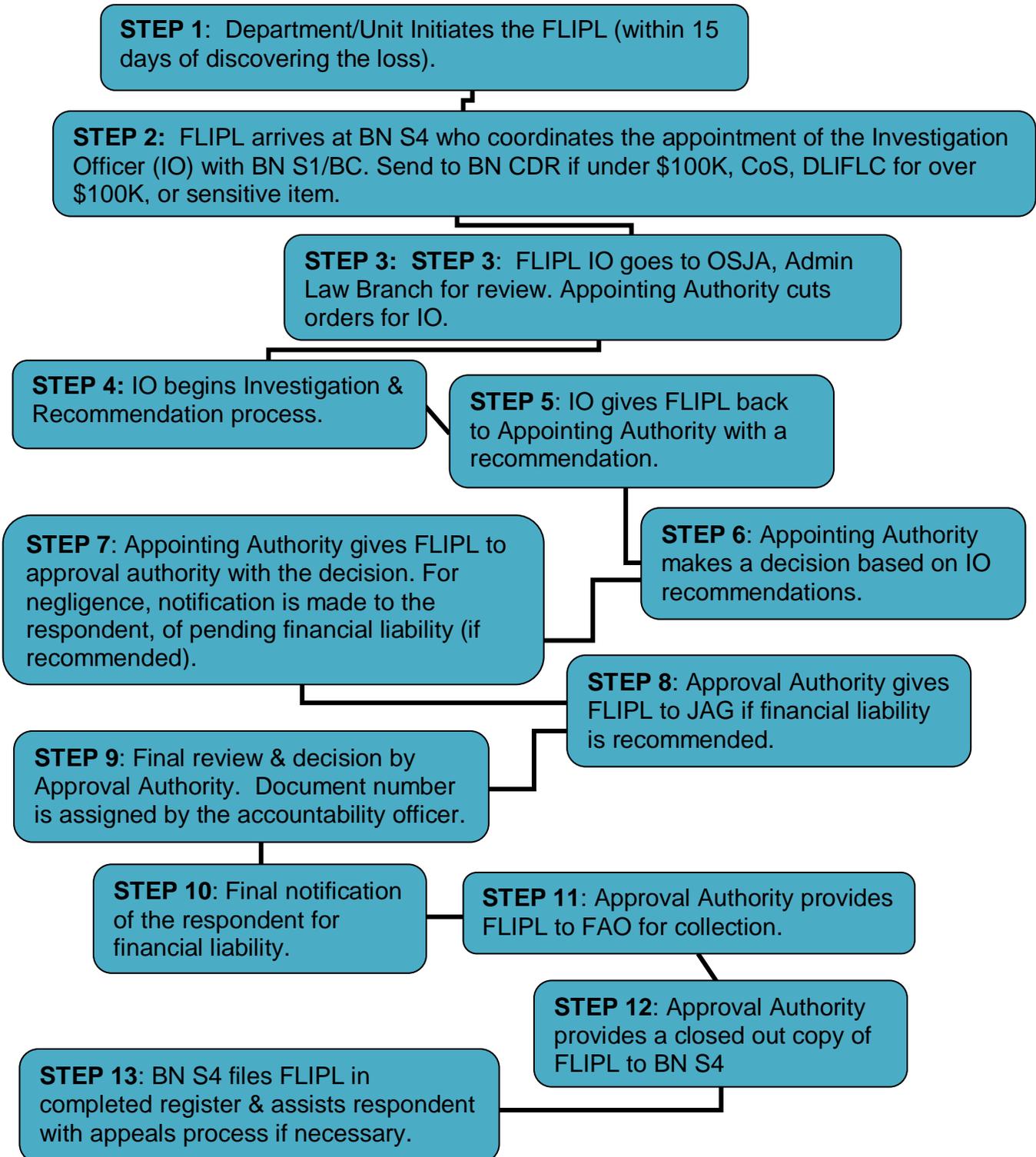
\_\_\_ No two-sided sworn statements

\_\_\_ Transcribe any tape-recorded statements

\_\_\_ Most important statements appear first with less important statements toward the end

\_\_\_ Keep documentary evidence organized by type; i.e. sworn statements together, reports together, photographs together, diagrams together, etc.

## Enclosure 2 FLIPL Flowchart



## Enclosure 3 Rights Advisement Guide

Please follow this guide to ensure the RIGHTS' ADVISEMENT is DONE CORRECTLY. The DA Form 3881 should correctly annotate the individual's selection of rights.

1. **Article 31, UCMJ**, is the statutory right of each service member to not be forced to incriminate him or herself. If a commander (or **any** other service member) **suspects** a Soldier of committing an offense under the UCMJ, **prior to questioning the Soldier**, he/she **must** advise the Soldier of the Soldier's rights under Article 31.

Q: When is someone suspected of committing an offense?

A: When, based on the available information, you reasonably believe the one being questioned has violated the UCMJ.

2. **How to administer a rights advisement.** The warning may be done verbally or in writing. It is best to use DA Form 3881, Rights Warning Procedure/Waiver Certificate when advising a Soldier. The form leaves a paper trail, whereas the Rights Warning Card DOES NOT. If the suspect initially waives his/her rights, he/she may still invoke them later while being questioned. If a Soldier, **AT ANY TIME**, invokes the right to remain silent or requests a lawyer, **IMMEDIATELY STOP THE QUESTIONING.**

a. **Verbal advisement.** It is lawful to advise a suspect of his/her rights verbally and receive a verbal waiver. **Use the GTA19-6-6, Rights Warning Card ONLY when the DA Form 3881 cannot be used.** It is recommended to have a witness to the waiver and document it in detail as soon as possible with a Memorandum for Record. If possible, have the suspect complete a DA Form 3881 later.

HOW TO INFORM SUSPECT/ACCUSED  
PERSONS OF THEIR RIGHTS

*Use this card only when DA Form 3881, Rights Warning Procedure/Waiver Certificate, cannot be used. Complete DA Form 3881 as soon as possible.*

**VERBAL RIGHTS WARNING**

*Inform the person of your official position, the nature of the offense(s), and the fact that he/she is a suspect/accused. Then read him/her the following--do not paraphrase; read verbatim:*

**"BEFORE I ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS."**

1. "YOU DO NOT HAVE TO ANSWER MY QUESTIONS OR SAY ANYTHING."
2. "ANYTHING YOU SAY OR DO CAN BE USED AS EVIDENCE AGAINST YOU IN A CRIMINAL TRIAL."
3. (For personnel subject to the UCMJ) "YOU HAVE THE RIGHT TO TALK PRIVATELY TO A LAWYER BEFORE, DURING, AND AFTER QUESTIONING AND TO HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE A CIVILIAN YOU ARRANGE FOR AT NO EXPENSE TO THE GOVERNMENT OR A MILITARY LAWYER DETAILED FOR YOU AT NO EXPENSE TO YOU, OR BOTH."  
  
(For civilians not subject to the UCMJ) "YOU HAVE THE RIGHT TO TALK PRIVATELY TO A LAWYER BEFORE, DURING, AND AFTER QUESTIONING AND TO HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE ONE YOU ARRANGE FOR AT YOUR OWN EXPENSE, OR IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, A LAWYER WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING BEGINS."
4. "IF YOU ARE NOW WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION, WITH OR WITHOUT A LAWYER PRESENT, YOU HAVE A RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME, OR SPEAK PRIVATELY WITH A LAWYER BEFORE ANSWERING FURTHER, EVEN IF YOU SIGN A WAIVER CERTIFICATE."

*Make certain the suspect/accused fully understands his/her rights, then say:*

**"DO YOU WANT A LAWYER AT THIS TIME?"**

**"AT THIS TIME, ARE YOU WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION AND MAKE A STATEMENT WITHOUT TALKING TO A LAWYER AND WITHOUT HAVING A LAWYER PRESENT WITH YOU?"**

(See DA Form 3881 for more detailed instructions.)  
Department of the Army Graphic Training Aid  
Supersedes GTA 19-6-5, July 1985

GTA 19-6-6, June 1991

## REMEMBER!

**The preferred  
method  
is to use the  
DA Form 3881.**

**The Rights Warning  
Card should ONLY  
be used when the  
DA Form 3881  
is not available.**

**b. Written advisement.** It is best to use a written instrument to document the rights advisement. The Army uses DA Form 3881. It separates the rights advisement into three basic portions; 1) the warning; 2) the rights advisement; and 3) the waiver/non-waiver election.

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE			
For use of this form, see AR 190-30; the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY: Title 10, United States Code, Section 3012(g)			
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.			
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.			
DISCLOSURE: Disclosure of your Social Security Number is voluntary.			
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)		8. ORGANIZATION OR ADDRESS	
6. SSN	7. GRADE/STATUS		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
<b>Section A. Rights</b>			
The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____			
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:			
1. <del>do not have to answer any question or say anything.</del>			
2. <del>anything I say or do can be used as evidence against me in a criminal trial.</del>			
3. <del>For personnel subject to the UCMJ, I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.</del>			
- or -			
<del>(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.</del>			
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.			
5. COMMENTS (Continue on reverse side)			
<b>Section B. Waiver</b>			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print)		4. SIGNATURE OF INVESTIGATOR	
b. ORGANIZATION OR ADDRESS AND PHONE			
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR	
b. ORGANIZATION OR ADDRESS AND PHONE		8. ORGANIZATION OF INVESTIGATOR	
<b>Section C. Non-waiver</b>			
1. I do not want to give up my rights. <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

Blocks 1-7 are self-explanatory; ignore Block 4

Print your unit here

Print offense of which individual is suspected; servicing Judge Advocate can provide you with this information

Have suspect initial next to each bullet as you read it to them

Individual being interviewed signs here if they waive their rights and want to make a statement

Individual NOT WANTING to make a statement must check one or both boxes

Individual being interviewed signs here if they DO NOT want to make a statement

### **3. Taking a statement after a valid waiver.**

a) After having advised a suspect of his/her rights and receiving a waiver, you may question him/her about any offense, which was the subject of his/her rights advisement. If the suspect is willing, obtain a written statement from him/her. DA Form 2823 is the sworn statement form. Although this is preferred, it is not required. You can find the DA Form 2823 at the following link: <http://armypubs.army.mil/eforms/pureEdge/A2823.XFDL>

b) After taking a written statement, swear the suspect to its truth and authenticity. Article 136, UCMJ, combined with AR 27-10, par 11-2, authorizes commanders (or his/her appointed agent (talk with your Legal Counsel)) to take sworn statements for military justice purposes. Other individuals authorized to administer oaths include an adjutant, assistant adjutant, judge advocate, MP, or anyone appointed as an investigating officer under AR 15-6. Once a suspect makes a tape recorded, handwritten or typed statement, it must be preserved as evidence, regardless of its form or content, and even if it is redone. If a statement is typed, also retain the original handwritten statement.

c) If the suspect refuses to make a written statement, you may still have his/her verbal statements. As soon as possible, reduce your recollection of what the suspect said in a Memorandum for Record.

**4. What if a suspect invoked his rights?** If the suspect invokes his/her right to remain silent or the right to an attorney or both, before, during, or after the rights advisement, ***all questions concerning the suspected offense(s) must cease.***

**5. The remedy for violations.** The remedy for a violation of the right to remain silent or to have an attorney present during questioning is usually the suppression of the statement from use at a court-martial. Additionally, any evidence directly derived from the violation of these rights is usually inadmissible at a court-martial.

**Note:** *To ensure that procedures are followed properly in specific cases, contact the Legal Advisor for guidance prior to conducting the interview/questioning.*

## Enclosure 4 SAMPLE PRIVACY ACT STATEMENT

**NOTE: The Privacy Act Statement is contained on the DA Form 2823 (Sworn Statement).**

### PRIVACY ACT STATEMENT (5 U.S.C. § 522a)

**AUTHORITY. 5 U.S.C. § 301 and 10 U.S.C. § 3012**

**PURPOSE.** The purpose of this solicitation is to gather facts and make recommendations to assist the appropriate authorities in determining what action to take with regard to the matters under investigation. This information will be used in determining the appropriate action to be taken with regards to the matter under investigation, if any, including adverse administrative action.

**ROUTINE USES.** Any information you provide is disclosable to members of the Department of Defense who have a need for the information in performance of their official duties, and where use of such information is compatible with the purpose for which the information is collected. In addition, the information may be disclosed to Government agencies and persons outside the Department of Defense for law enforcement purposes, or if determined to be disclosable pursuant to a request submitted under the Freedom of Information Act, or if needed for Congressional or other Government Investigations.

**DISCLOSURE MANDATORY FOR INDIVIDUAL WHO MAY BE ORDERED TO TESTIFY.**

Providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under the UCMJ or applicable Army or other federal regulations.

**DISCLOSURE VOLUNTARY FOR INDIVIDUALS WARNED OF HIS/HER RIGHTS UNDER ARTICLE 31, UCMJ, OR THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION.**

Providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than essential information which might not otherwise be available to the commander for his decision in this matter.

#### ACKNOWLEDGMENT

I have read and been provided a copy of the Privacy Act Statement above and understand its contents.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Rank

\_\_\_\_\_  
Social Security Number (Last 4 only)

# Enclosure 5

## MFR Template for Telephone Interviews

Phone conversations should be memorialized in writing to be considered evidence for investigatory purposes.

DEPARTMENT OF THE ARMY  
ORGANIZATION STREET  
ADDRESS CITY STATE ZIP



OFFICE SYMBOL

(Date)

MEMORANDUM FOR RECORD

FOR (Respondent's name, rank, and address)

SUBJECT: AR 15-6 Investigation Regarding (Incident), (Name), (Unit)

1. On 18 January 2010, I spoke with SGT \_\_\_ on the telephone. I advised him that I was an investigating officer conducting an inquiry into \_\_\_. (I read him his rights **{if required}**. I used the list of rights verbatim from the DA 3881. He elected to speak with me after being read his rights.) During our conversation, SGT \_\_\_ told me the following things:

- a. The unit leadership is...
- b. SSG B did the following...
- c. He stated...

2. POC for this memorandum is the undersigned at ###-####.

YOUR NAME  
RANK,  
Investigating Officer

# Enclosure 6

## MFR Template for Notice to Respondent of Financial Liability

**DEPARTMENT OF THE ARMY**  
ORGANIZATION STREET  
ADDRESS CITY STATE ZIP



OFFICE SYMBOL

(Date)

MEMORANDUM FOR: (Respondent's commander or supervisor)

FOR (Respondent's name, rank, and address)

SUBJECT: Financial Liability, Financial Liability Investigation of Property Loss (number) (\$ amount)

1. You are hereby notified that you are being recommended for changes of financial liability to the Government, in the amount of(\$ amount) for the (loss, damage, or destruction) of Government property investigated under subject investigation of property loss (Encl). If the approval authority approves my recommendation, you may be held financially liable.
2. Your attention is invited to AR 735-5, paragraph 13-34b, which lists you rights relative to this matter. You have the right to-
  - a. Inspect and copy Army records relating to the debt.
  - b. Legal advice.
  - c. Submit a statement and other evidence to the approving authority in rebuttal of my recommendation. The approval authority will consider any rebuttal statement you submit in making their determination of financial liability.
3. Time constraints for submission of a rebuttal are contained AR 735-5, paragraph 13-35b.
4. You are requested to complete blocks 16a through 16h of the enclosed DD Form 200, and to sign the endorsement below. Request these be returned to me not later than (enter the date) in the event I am not in receipt of these documents (enter date). I will forward the financial liability investigation of property loss to the approving authority as is.

Encl

Investigating Officer's Signature Block and Signature

OFFICE SYMBOL (Office Symbol/date basic correspondence) 1st End

SUBJECT: Financial Liability, Investigation of Property Loss (number) (\$amount)

I hereby acknowledge receipt of notice recommending me for charge of financial liability contained on the basic correspondence above. The DD Form 220 with blocks 16a-16h completed is returned, as requested.

Encl

Respondent's Signature Block And Signature