

### 4.3.1 Meaning Of "Marriage" Under RRA

- A. General - A marriage relationship is determined, either by applicable State law, or by the deemed marriage provision of the RR Act. Under State law, a marriage relationship may be created by participation in a ceremony (civil or religious), or being eligible to inherit intestate property as the deceased's spouse, or by living together in a common-law relationship. Under our deemed marriage provision, however, we can establish a marriage relationship when a ceremonial marriage would not be recognized under State law due to certain impediments or defects.

NOTE: The deemed marriage provision can only be applied when there are no adverse claimants. Therefore, when there are no adverse claimants, a marriage relationship may be developed under the deemed marriage provision or applicable State law, whichever way is quicker or easier.

- B. Validity of Marriage - The validity of a marriage is ordinarily determined by the law of the State in which the marriage took place. If valid in that jurisdiction, the marriage is ordinarily held valid in other jurisdictions.

A miscegenous marriage is valid even though State law may bar such a marriage. Such laws were declared unconstitutional by the Supreme Court in 1967. If a claim is found which was previously denied because of a miscegenous marriage, reopen it and allow full retroactivity.

### 4.3.2 When POM Required

Documentary POM is required from an applicant for a monthly annuity, LSDP, or RLS (except a designated beneficiary) who claims status as the wife, husband, widow(er), or stepparent of an employee.

Documentary POM may also be required as to the marriage of any other person when such person's marriage is relevant in the determination of payments under the RR Act.

Before 6-1-58, a spouse applicant's statement on the application that (s)he was ceremonially married to the employee was accepted as POM under certain circumstances if the employee verified the statement on Form G-346 (or G-345). Effective 6-1-58, documentary POM is required in all cases, except those in which the spouse's application was filed before that date. Therefore, in a survivor case the widow(er) need not submit POM if a spouse annuity began to accrue to such person before the employee's death and marriage was proved in accordance with procedures in effect prior to 6-1-58.

### 4.3.3 Establishing Marital Relationship Without Documentary Evidence

Accept the applicant's statement on the application that a ceremonial marriage was performed without securing documentary evidence when there are no annuities payable on a monthly basis and it is apparent that the total amount payable does not exceed \$25.

#### 4.3.10 Preferred Proof

The following are preferred POM:

- The original certificate of marriage
- A copy of, or statement regarding, a public record of the marriage certified by the custodian of such record or by an RRB employee.
- A copy of, or statement regarding, a church record of the marriage certified by the custodian of such record or by an RRB employee.

NOTE: Religious ceremonial marriages performed in Mexico by a clergyman have no legal status. Ordinarily, however, when a religious ceremony of marriage is shown to have been performed, it can reasonably be inferred in the absence of evidence to the contrary that a civil ceremony preceded the religious ceremony. Accept as proof of a civil marriage any certification from Mexico that a religious marriage ceremony took place, absent volunteered statements or evidence to the contrary.

#### 4.3.11 Secondary Proof

- A. Types of Evidence - If none of the preferred proofs of marriage can be furnished, obtain a signed statement from the applicant giving the reasons and one of the following forms of evidence:
1. The sworn statement of the clergyman or official who performed the marriage ceremony; or
  2. Other evidence of probative value such as:
    - The sworn statements of two persons who have knowledge as to the facts of the marriage (preferably eyewitnesses to the marriage ceremony) showing the time and place of the marriage and the basis of the affiant's knowledge; or
    - Excerpts from naturalization certificates, deeds, immigration records, insurance policies, passports, or from original business, employment,

labor, fraternal, school, church, or other records that show the relationship of husband and wife.

NOTE: The evidence in 2 above is used only if the preferred proof in sec. 4.3.10 or the secondary proof in 1 above cannot be submitted.

If none of the proofs in sec.4.3.10 or in items 1 or 2 above can be furnished, evidence of cohabitation, such as a sworn statement from a knowledgeable person showing when and where cohabitation took place and the basis of that person's knowledge, will establish a marriage in certain states.

Evidence of cohabitation should be developed only if the applicant lived in a state where such evidence can be used to establish a marriage and if the applicant claims to have participated in a marriage ceremony but cannot submit proof. Therefore, if cohabitation is indicated or claimed in a case in which a ceremonial marriage is claimed but cannot be proved, submit the case to the attorney-advisor. Do not initiate special development for evidence of cohabitation before the attorney-advisor requests it.

- B. Evaluating Secondary Proof - In determining the acceptability of secondary evidence, consider the statements and conduct of the parties. Also consider the length of time during which the parties have lived together as man and wife; the longer the period, the stronger the inference. When children were born of the relationship, the inference is even stronger.

### 4.3.15 De Facto (Deemed) Marriage

A deemed marriage is created when the claimant's marriage to the employee would have been valid under applicable state law except for a legal impediment (see sec. 4.3.17), provided:

- There was a marriage ceremony; and
- The claimant went through the marriage ceremony in good faith not knowing of the impediment at the time of the marriage; and
  - The Claimant was living in the same household with the employee at the time of the death of the employee, or, in a life case, at the time (s)he files the application (in a survivor case, this requirement must be met even if the claimant was entitled to a spouse annuity at the time of the employee's death); and
  - At the time of the filing an application there is no other person (based on a valid marriage or inheritance rights under state law) who had filed and been found entitled to any type of survivor benefit, or, in a life case, there is no other person who is or was entitled to a spouse's benefit at SSA; and

- The impediment is one resulting from a prior undissolved marriage or otherwise arising out of a prior marriage or its dissolution, or one arising from a defect in the procedure followed in connection with the purported marriage.

### 4.3.16 Marriage Ceremony

This requirement may be met by a ceremony conducted under civil, religious or tribal practices, and situations in which certain formalities were observed (such as securing a marriage license), but no ceremony was actually performed although the parties believed a ceremony had been performed. The term includes all ceremonial marriages we would otherwise recognize as valid were it not for the defect, but does not include common-law marriages.

### 4.3.17 Legal Impediment

The deemed marriage provision applies only:

- To marriages that are invalid because the prior marriage was not dissolved, or the attempted dissolution was not valid (e.g., Mexican mail order divorce), or, if dissolved, there was a restriction against marriage still in effect at the time of remarriage; or
- When the marriage is invalid because of a procedural defect in connection with the marriage. Examples of such defects are: Religious marriage in a country which requires a civil ceremony for a valid marriage, or failure to comply with state licensing requirements. When a valid marriage is alleged, do not look for a procedural defect which makes the marriage invalid; however, if it comes to your attention, it must be considered since it would require deemed marriage development. (However, for Mexico, see sec. 4.3.10.)

When the marriage is invalid for other reasons under state law (e.g., because it was incestuous), the deemed marriage provision does not apply. If in doubt as to whether the defect which makes the marriage invalid is procedural, submit the case to the DGC, in the absence of precedent opinion.

NOTE: In any case in which both a legal widow and a de facto widow survive the employee, determine the de facto widow's entitlement to any RRB survivor benefits, including the RLS in an SSA jurisdiction case, by the rules set forth in RCM sec. 2.1.28.

### 4.3.18 Good Faith

The claimant must establish that (s)he acted in good faith and in ignorance of any legal impediment which invalidated the marriage as of the time (s)he went through the marriage ceremony. Good faith or lack of it, on the part of the employee makes no difference; nor does it matter if the claimant learned of the invalidity of the marriage after the marriage took place.

The test for determining whether the claimant acted in good faith is the individual claimant's belief at the time of the ceremony. If the claimant believed that the marriage was valid, the requirement is met. The fact that another person might not have had the same belief under the same circumstances, or that a more prudent course could have been adopted, will not prevent a finding that the claimant acted in good faith.

State law definitions of "good faith" or interpretations of the term by state courts do not determine "good faith" under the deemed marriage provision. Thus, a claimant who fails to meet a "good faith" requirement under a state law which imposes a "reasonable person" standard may meet the good faith test described above.

Generally, if the action taken was based on the advice of an attorney or other person who the claimant believes would know the law (e.g., minister, marriage license clerk, etc.), consider the claimant to have acted in good faith in the absence of evidence to the contrary. Other factors which may be helpful in resolving the question in doubtful cases (i.e., whether the claimant's allegation of believing the marriage valid is creditable) are the claimant's education, experience in worldly affairs and age.

#### 4.3.19 Living In The Same Household

To determine whether or not the claimant was living in the same household as the employee at the time of the employee's death or at the time the application was filed in a life case, use the applicable rules in chapter 4.6

#### 4.3.20 Development Of A Deemed Marriage

- A. General - Usually, if entitlement is possible under the deemed marriage provision, it is not necessary to determine the legality of the relationship under state law before developing deemed marriage. Development may be under state law, or under the deemed marriage provision, whichever is quicker and easier. However, if two people are claiming the status of a widow(er), you must develop under state law; in such cases, the deemed marriage provision cannot be applied.
- B. Good Faith - Generally, the statement of the claimant is sufficient to determine whether there was good faith. If the marriage was invalid because of an undissolved prior marriage and the prior spouse is living and her address is known, secure a signed statement from the prior spouse. A reasonable effort should be made to locate the prior spouse (e.g., by contacting relatives and friends); a report should be submitted if the prior spouse is not located.

The statement of the prior spouse should include information as to whether the claimant knew of the previous marriage (before the claimant married the employee) and how the prior spouse became aware of the claimant's knowledge.

The statement of the claimant should say why, at the time of the ceremony, (s)he believed the marriage valid. If a prior marriage is involved, the statement should

also show whether (s)he knew of it and its invalid dissolution or lack of dissolution; or if there was a restriction on remarriage and, if so, the reason for believing the restriction did not apply.

- C. Prior Spouse's Entitlement - If, in the course of developing good faith under section 3 above, the prior spouse inquires about benefits, explain the requirement for entitlement and the necessity of filing an application.

#### 4.3.25 Common-Law and Similar Marriages

In an ordinary case, a common-law marriage is entered into upon the mutual agreement of the parties to become husband and wife from that time on, and is not solemnized by a ceremony. If a ceremonial marriage is claimed, do not attempt to establish a common-law marriage until all reasonable efforts have been made to secure proof of the ceremonial marriage or the applicant admits a ceremony did not take place.

To bring a common-law marriage into being, the parties must have the intent to marry, must consider themselves as husband and wife, and in some States must cohabit and hold themselves out to the public as husband and wife. Both persons must also be legally capable of entering into a valid marriage, and the marriage must be contracted in a State in which common-law marriages are recognized (see FOM1 Chapter 9 Appendix D).

#### 4.3.26 General Rules For Determining Validity

Subject to the exceptions in the different States the following rules apply in States where a common-law marriage can be, or could have been, contracted.

- A. How Created - Ordinarily, a common-law marriage is created when parties free to contract marriage enter into a present agreement to be husband and wife, and actually live together after the agreement as husband and wife.
- B. Bigamous Marriage Contracted in Good Faith by at Least One Party - A valid common-law marriage may arise in some States if at least one of the parties to a bigamous marriage contracted it in good faith and they lived together as husband and wife in a State which recognizes common-law marriages after the impediment is removed.

An agreement of marriage after removal of the impediment may, in some States, be inferred from the parties continued cohabitation.

- C. Both Parties Enter Into Bigamous Marriages Knowing That Such Marriage Is Void - Ordinarily, a common-law marriage will not arise when both parties enter into a bigamous marriage knowing that such marriage is void, even after removal of the impediment unless the parties enter into a new agreement of marriage and live together as husband and wife after the new agreement.

- D. Parties Domiciled in State Which Does Not Recognize Common-Law Marriages - If the parties were domiciled in a State which does not recognize common-law marriages but they contracted a marriage in a State where such marriages are recognized, their marriage will be considered valid by the State of their domicile except in Utah.
- E. Cohabitation in State Not Recognizing Common-Law Marriage - No inference of marriage can arise from cohabitation and repute in a State not recognizing common-law marriage after removal of an impediment to a bigamous marriage. (Wisconsin is an exception to this general rule.)
- F. Cohabitation Requirement - After a present agreement to be husband and wife, some States require cohabitation but the cohabitation need not always be in the State where the agreement was made.
- G. Marriage Not Valid in Beginning - When the marriage was not valid in the beginning, generally the relationship is presumed to be the same after removal of the impediment. However, the contrary can be shown by convincing evidence that the parties intended to establish a valid marital relationship after the removal of the impediment.

#### **4.3.27 When Proof Of Common-Law Marriage Required**

- A. The Parties Agreed To Be Husband and Wife and/or Lived Together as Such in a State That Recognizes Common-Law Marriages - If the parties lived together as husband and wife while living temporarily or visiting in a State which recognizes common-law marriages, a valid common-law marriage may arise from their temporary stay in that State. Therefore, if a valid marriage cannot be established under the laws of the State where the parties have been domiciled, it may be possible to establish a common-law marriage in a State in which the couple visited (ask about the places they visited together).
- B. Ceremonial Marriage Alleged, Supporting Evidence Not Submitted - When a ceremonial marriage is alleged but evidence that such marriage was solemnized by a clergyman, justice of the peace, or other civil official authorized to perform the marriage ceremony has not been submitted, do not try to establish a common-law marriage until all reasonable efforts have been made to establish the relationship on the basis of the alleged ceremonial marriage.
- C. Ceremonial Marriage Void - If a ceremonial marriage was void when entered into because of a legal impediment and the parties continued to live together as husband and wife after removal of the impediment, develop for a common-law relationship.

### 4.3.28 Proof When Husband And Wife Are Both Living

- A. Primary Proof - Obtain a completed G-124, "Statement of Marital Relationship", from both husband and wife, and a completed G-124a, "Statement Regarding Marriage," from a blood relative of each party.

When a G-124a cannot be obtained from a blood relative of one party, secure a G-124a from another blood relative of the other party. If no statements can be secured from blood relatives, or a statement is secured from only one, obtain a written explanation from the applicant. For each statement not obtained from a blood relative, obtain a completed G-124a from another person who knows the facts.

- B. Evidence in Lieu of G-124a - Although G-124a does not indicate the absence of a ceremonial marriage, an applicant may object to its completion. The fact that completion of a G-124a might prove embarrassing is not sufficient reason why the form should not be secured. If the claimant explains satisfactorily in writing why use of a G-124a would be actually detrimental to the parties or to children born of the relationship, accept other evidence of equal value. Acceptable substitute evidence includes documents identifying the parties as husband and wife, such as:

- Copies of purchase agreements;
- Contracts and leases executed by both parties;
- Bank accounts;
- Correspondence;
- Insurance policies, employment, church, or fraternal records;
- Other documents of equal value.

### 4.3.29 Proof When One Spouse Deceased

Obtain a completed G-124 from the surviving spouse and a completed G-124a from each of two blood relatives of the deceased husband or wife.

If you cannot secure statements from blood relatives, or if you can only secure a statement from one, obtain a written explanation from the applicant. For each statement not obtained from a blood relative of the decedent, secure a completed G-124a from a person who knows the facts. (See the preceding section on substituting other evidence for G-124a.)



### 4.3.30 Proof When Husband And Wife Are Both Deceased

Secure a completed G-124a from a blood relative of each deceased party. Obtain a G-124a completed by an individual other than a relative as a substitute upon written explanation if such relative's statement is not reasonably obtainable. (See sec. 4.3.28 on substituting other evidence for G-124a.)

### 4.3.31 Proof When Ceremonial Marriage Void Due To Legal Impediment

If both or one of the parties who entered into a ceremonial marriage that was void because of a legal impediment are alive there may be a valid common-law marriage if:

- The impediment is later removed; and
- The parties continued to live together as husband and wife; and
- Such marriages are recognized under applicable State law.

Signed statements by blood relatives and others are not required in these cases. Obtain proof of the ceremonial marriage and Forms G-124 completed by both the husband and wife or by the surviving party. This rule applies even though the State law requires proof of a new agreement to be husband and wife after the impediment is removed.

If the parties were separated temporarily for reasons such as ill health, financial trouble, employment away from home, or service in the Armed Forces, the living-together requirement may be met in some States.

If both parties are alive but did not live together as husband and wife after the impediment was removed, see sec. 4.3.28. When one party is deceased, see sec. 4.3.29. Similar proofs are required when the parties were not living in the same household when the application was filed (if the employee was alive) or when the employee died and the separation was other than temporary.

#### EXAMPLES OF IMPEDIMENT:

1. A prior marriage of one or both of the parties had not been ended. The impediment was later removed by annulment of the prior marriage, divorce, or death of the former spouse.
2. One of the parties was precluded from remarrying or from remarrying for a specific period pursuant to a divorce decree. The impediment is later removed by expiration of the waiting period, removal of the parties to another State where the restriction would not be effective, or by death of the former spouse.

3. A State law barred a valid marriage because the parties were too closely related, and the parties later go into a State where a marriage between them would be recognized.

### 4.3.32 Foreign Common-Law Marriages

If the employee was not domiciled in any State, but rather in a foreign country, the law of the District of Columbia would govern. In the District of Columbia, a marriage not valid in the place where it is contracted is not valid anywhere. Therefore, a common-law marriage is only recognized if it is valid under the applicable law in the place where it was contracted.

For example, Legal Opinion L-97-26 determined that common-law marriages were not recognized in Ontario, Canada. Since the relationship between the claimant and the deceased employee could not be recognized as a valid marriage under the laws of Ontario, Canada, the relationship does not create a valid marriage under the laws of the District of Columbia, and the claimant could not be recognized as the widow for purposes of awarding her a widow's insurance annuity under the Railroad Retirement Act.

Cases involving foreign common-law marriages should be submitted to the attorney advisor assigned to the unit through the claims specialist or senior claims examiner for a determination on the validity of the marriage.

### 4.3.40 Termination Of Prior Marriage

A ceremonial or common-law marriage is terminated by death of a spouse, divorce, or annulment. In determining whether the last marriage is valid, the first question to resolve is whether a prior marriage has been terminated.

- A. Separation or Abandonment - If an applicant states that a prior marriage was terminated by divorce, but does not appear to understand the difference between a divorce and a mere separation, find out what (s)he really means. The fact that the parties to the marriage separated or that one party abandoned the other does not necessarily mean that a divorce followed such action, and terminated the marriage.
- B. Prior Marriage Terminated After Later Marriage - If the prior marriage terminated after the later marriage, a valid marriage may come into being under applicable State law. The following sections explain when the validity of the last marriage may be presumed and when a common-law marriage may be established after an impediment is removed.

#### **4.3.41 When To Accept Allegation That Marriage Was Terminated**

Accept a statement that a marriage was terminated by death of a spouse, divorce, or annulment when at least the year and State of termination are provided and when there is no evidence to the contrary creating a reasonable doubt. Accept such a statement even though complete information is not furnished as to the exact date, place of termination, or the identity of the other party and even though a common-law marriage is claimed in the present or in a former marriage.

When the year or State of termination is not provided or when there is a reasonable doubt that the prior marriage was not terminated, secure proof of death, divorce, or annulment. If preferred proofs cannot be secured, obtain any available secondary evidence such as a statement from the other spouse of the prior marriage, correspondence referring to the terminating event, statements from friends or relatives of both parties to the prior marriage, newspaper accounts, or other evidence of probative value. Also, secure a statement giving the reason a preferred proof cannot be furnished.

#### **4.3.42 When Date Of Termination Of Prior Marriage Is Material**

In determining the validity of a later marriage, the date the prior marriage terminated is material when the length of time between the marriages is short. In such cases, if the prior marriage ended by divorce, there might be a restriction on remarriage within a certain period of time; such a marriage may be invalid in some States.

Accept a statement of the approximate time the prior marriage was terminated only if there is no evidence that creates reasonable doubt as to the correctness of the statement.

#### **4.3.43 Applicant Does Not Know Prior Marital Status Or Whether Prior Marriage Was Terminated**

- A. Prior Marital Status Unknown - If the applicant does not know whether the employee was previously married and there is no evidence to the contrary, assume that there was no prior marriage.
- B. Termination of Prior Marriage Uncertain - If the applicant alleges a prior marriage but does not know whether it was terminated, tell the applicant to get information from other sources such as relatives or friends. The applicant has the burden of securing the evidence necessary to establish the claim. If the evidence shows that the prior marriage was terminated but not all the details are known, handle in accordance with the preceding sections.

#### 4.3.44 Presumption Of Validity Of Last Marriage

Most States follow a presumption in favor of the validity of the last of several conflicting marriages. If the State of the employee's domicile at death or (in a life case) at the time of filing has such a presumption, it must be applied where all the evidence and information the applicant can supply still leaves the termination of a former marriage in doubt.

In many cases, you might find development of a deemed marriage more convenient (RCM 4.3.15). However, in a case involving a person with an undissolved prior marriage who applies for a widow's, widower's or parent's annuity based on a deemed marriage, you must determine that the prior marriage ultimately ended.

A State's presumption of the validity of the last marriage does not mean that the applicant need only submit proof of such last marriage and thereby qualify as the legal spouse of the insured individual. Even though there is no adverse claimant, the applicant must submit information which will enable a determination to be made on the facts.

All leads must be exhausted. If after complete development, enough evidence cannot be obtained to determine whether or not the prior marriage was terminated, use the presumption applicable in the particular State as to the validity of the last marriage. In the absence of a precedent opinion, submit the case to the Bureau of Law for a ruling.

Under the presumption of the validity of the last marriage, a divorce is presumed to have occurred on the first day on which the prior spouse's whereabouts are unknown. When the duration of marriage is material to the claim, the applicant must establish that the marriage lasted at least ten years.

Consult precedent opinions in cases involving the following States:

Georgia applies a presumption of validity of a subsequent ceremonial marriage until evidence is adduced that the spouse of the first marriage is living.

Louisiana does not apply a presumption of validity of the last marriage with respect to a party who was in bad faith; in such cases, the burden is upon such party to show the dissolution of a prior marriage. With respect to a party who was in good faith, Louisiana does apply a presumption of validity of the last marriage.

Nebraska and South Carolina apply an equal presumption in favor of each of two successive marriages.

Ohio applies a presumption that the first marriage continues in the absence of conclusive proof that it has terminated.

Wisconsin determines validity of a marriage by reasonable inferences drawn from all facts and circumstances in the case with the burden on the spouse of the last marriage to prove the dissolution of the earlier marriage.

#### **4.3.45 Development Required Before Applying Presumption**

- A. General - The development required before applying a presumption of validity of the last marriage is the same whether the employee or the applicant entered into a prior marriage. If both parties to the prior marriage still survive and are available, secure statements from each as to whether the prior marriage was terminated by divorce or annulment. If it is stated that the prior marriage had been terminated by divorce or annulment, accept the statement in the absence of evidence creating a reasonable doubt to the contrary. If there is evidence creating a reasonable doubt, secure a certified copy of the divorce or annulment decree. If both parties answer that no divorce or annulment was obtained, this is sufficient to determine that the prior marriage has not been terminated. Whether the validity of a prior marriage is to be developed will depend upon applicable State law.

Development is more complicated, however, when one of the parties to the prior marriage is deceased or cannot be located.

- B. How to Develop - In addition to obtaining statements from the parties involved, use the following forms when applicable:

- G-237 (Statement/Regarding Marital Status);
- G-238 (Statement of Residence);
- G-238a (Statement Regarding Divorce or Annulment).

It is not always necessary to secure each of these forms; their usefulness depends on how much information is in file and how much additional information is needed. Use the information in 4.3.46 and 4.3.47 as a general guide for securing these forms in conjunction with statements from the parties involved.

#### **4.3.46 Development When Living Employee Or Applicant Was Previously Married, Other Party's Whereabouts Unknown**

- A. Initial Development - Have the employee or applicant submit the dates of the prior marriage and separation, a G-238 showing the places of residence of the other party including the dates of such residence (from the date of separation until the present), and the names and addresses of the other party's relatives and friends if a G-237 is not in file.

If the other party is located from this information, secure a G-237 from that person. If the other party is not located but it is alleged that the prior marriage was terminated, secure corroboration, i.e., POD or proof of divorce or annulment.

If the other party is not located and the relatives and friends are unable to furnish information about termination of the prior marriage, have them complete G-238's corroborating the list of the other party's place of residence. Limit the initial development to securing and evaluating information outlined in this subsection before taking any development under subsection B below.

- B. Additional Development - If development under subsection A above has not resolved the issue, have the employee or applicant submit G-238a's from the court clerks having jurisdiction in the places where the other party resided as to whether a divorce or annulment is shown. Do not request these statements if the other party's whereabouts cannot be traced for the entire period from the date of separation to the date the application was filed. If a record of a divorce or annulment is shown to exist, secure a certified copy of the public record.

If the other party's whereabouts cannot be traced for the entire period, apply the presumption of validity of last marriage. When the information secured covers the other party's whereabouts from the date of separation and the statements of the clerks or custodians show no divorce, annulment, or death, do not apply the presumption.

#### **4.3.47 Development When Deceased Employee Previously Married**

- A. Other Party's Whereabouts Unknown - Follow the instructions in the preceding section with respect to the other party, except that the period to be covered extends from the date of separation to the date of the employee's death. In addition, the claimant must submit similar information about the deceased employee. Develop the information pertaining to the employee in the same manner as for the other party. Do not request the statements from the court clerks if the whereabouts of both parties cannot be traced for the entire period.

If the whereabouts of either or both are unknown for certain periods of time, apply the presumption of validity of the last marriage. When the information relating to both parties covers their places of residence for the entire period and the statements of the clerks or custodians show that neither party secured a divorce or annulment, do not apply the presumption.

- B. Other Party's Whereabouts Known - If the other party denies that the marriage was terminated, have the applicant submit information with respect to the employee similar to that called for in the preceding section.

If the employee's whereabouts cannot be traced for the entire period, apply the presumption of validity of last marriage. When the information secured covers the

employee's whereabouts for the entire period and the statements of the clerks or custodians show no divorce or annulment, do not apply the presumption.

#### **4.3.48 Validity Of Last Marriage When Prior Marriage Subsequently Terminated By Divorce**

The fact that the prior marriage was terminated after the date the current marriage was entered into does not necessarily make the current marriage invalid. In some States, the current marriage will become valid after the removal of the impediment. In those States where the current marriage does not become valid merely upon removal of the impediment, such marriage may still be valid based upon the presumption of validity of the second marriage.

When the employee or the claimant was the defendant in the divorce action, it is reasonable to assume that the other party did not secure a divorce previously. If the employee (still living) was a party to the prior marriage, his statement that no divorce had previously been secured is also sufficient to rebut the presumption. However, if the employee is deceased, follow the development instructions in sec. 4.3.46.

If the employee or the applicant was the plaintiff in the divorce action to terminate the prior marriage, attempt to locate the other party to the marriage. If the other party can be located, a statement that (s)he did not secure a divorce or annulment will be sufficient to rebut the presumption. If the other party cannot be located, examine the divorce or annulment records. If an answer was made to the Bill of Complaint without indicating that such prior marriage was previously terminated, that is sufficient to determine that the other party did not secure a termination of such prior marriage, and the presumption of validity of the last marriage cannot be applied. However, if no answer was filed and the other party cannot be located, develop in accordance with sec. 4.3.46.

#### **4.3.49 Statement From Court Clerk Or D/O As To Search Of Records**

The statement G-238a from the court clerk as to the search of the records should be signed by such clerk and show:

- The name of the court and county where the court is located; and
- The records searched (i.e., both divorce and annulment records) and whether a record of a divorce or annulment is shown; and
- The dates for which these records were searched.

Occasionally, a custodian of the public records will not search his records or will not furnish such a report. In these cases, if a D/O employee makes the search he should submit a statement covering the above items. He should also indicate his title, D/O name, and show that he made the search.

**NOTE:** A request for a search of public records by a D/O employee should only be made upon the authorization of the section supervisor.

### 4.3.50 Restrictions On Remarriage After Divorce

Many States provide that one or both parties to a divorce may not remarry for a specified period and sometimes impose other restrictions on remarriage. Some States have special restrictions; they provide for the imposition of restrictions on remarriage at the discretion of the court or jury, or impose restrictions only on the guilty party, or impose restrictions only if the divorce is obtained on certain grounds. (See FOM1 Article 9, Appendix M.) When a restriction on remarriage could have existed as of the date of remarriage, the field has instructions to secure a statement either on the application form or on a separate sheet as to whether or not such a restriction existed.

A marriage in violation of these restrictions is not necessarily void; in some States it is valid and in some it is merely voidable (i.e., valid unless annulled by a court). In some jurisdictions, a remarriage outside the State where the divorce was granted may be valid even though a remarriage within the State would be void. Even if a remarriage is void, a valid marriage may come into being under the laws of some States when the restriction expires. Submit doubtful cases to the Bureau of Law.

### 4.3.51 Final And Interlocutory Decrees Of Divorce And Waiting Period

- A. Final Decree - Interlocutory Decree - Do not confuse a final decree with one that requires further action.
- An interlocutory decree and decree nisi are not final decrees of divorce. They become final only after a specified period, and in some States, additional action is required to make them final.
  - If the divorce decree contains the Latin phrase “nunc pro tunc” (now for then) and two dates, submit to the attorney advisor to determine the correct date of divorce. This is an entry made now for something previously done and has a retroactive effect. For example, a judge may issue a “nunc pro tunc” order to correct a trial record made earlier. The correction would be considered effective from the date of the original record rather than the date of the correction.
  - If the effective date of the divorce is material to the claim and the correct date cannot be determined from the decree, submit to the attorney advisor.
- B. Waiting Period After Final Decree of Divorce - The date of divorce is material in determining the validity of a later marriage when a waiting period is imposed after the divorce. If the date of the divorce is not known, a statement of the approximate time the divorce was granted is sufficient. However, there must not be any evidence to the contrary in such a case. Include in the file a statement showing the basis for the applicant's claim.



### 4.3.52 When To Assume No Restriction Imposed

Do not try to find out whether a restriction on remarriage was imposed unless there is a reason to believe that one may have been imposed.

In some States, special restrictions may be imposed by the court or jury; if the divorce was obtained in such a State, assume no restriction was imposed on a person who has remarried, unless the evidence indicates that the restriction may have been imposed or that the conditions which require its imposition may have existed. Some States impose a restriction only on the defendant, and then only if the divorce was granted on a particular ground (e.g., adultery). If the divorce was granted in such a State, find out whether the person in question was the defendant and whether divorce was granted on that ground.

### 4.3.53 Development When Restriction Involved

The usual restriction bars marriage to anyone and is for a fixed period. Therefore, when the person in question was subject to a restriction, merely find out the dates of divorce and remarriage; these dates will show whether the marriage violated the restriction.

In some States, however, the restriction bars remarriage of a defendant only to the other party to the defendant's adultery; in some States the restriction lasts as long as the other party to the divorce is alive, and in some both these restrictions are combined. (See FOM1, Article 9, Appendix M) In these cases, if the person in question was subject to the restriction find out if it was violated; that is, find out if the other party to the divorce was alive at the time of remarriage or whether the remarriage was to the other party to the adultery.

### 4.3.54 Place Of Divorce Unknown

If the place of divorce is not known, assume that the remarriage did not violate any restrictions. However, if the State of employee's domicile imposes a waiting period and the available facts indicate that the remarriage would violate that restriction, try to find out whether the divorce was obtained in that State. If the place of divorce cannot be ascertained and there is no other evidence which casts doubt on the validity of the remarriage, assume the remarriage did not violate any restriction.

### 4.3.55 Advance POM

- A. Acceptable Proof Filed Through D/O - The CR uses the Advanced Evidence Collection (AEC) screens of the Initial Claims (IC) system to record acceptable POM filed before or after an application. The CR will submit a photocopy of the evidence or form G-91 as folder documentation. The CR returns original evidence to the submitter with an acknowledgment that the document has served its purpose. PCS will not prepare an RL-103a in this situation. If the CR indicates

the evidence was entered into AEC, PCS will treat the advance POM as "file only" correspondence.

- B. Proof Not Filed Through D/O Or Requests For Review - The CR will not use AEC if headquarters evaluation of evidence is required. PCS will route requests for review and direct submissions of advance POM to the adjudication unit. If the examiner finds the evidence acceptable, a G-91 should be prepared per RCM 11 and forwarded to BFS - Program Services Section. Note "AEC" in the Remarks section of the G-26. BFS will return the G-91 with a notation of the date the proof was entered into AEC.

If the examiner finds the evidence unacceptable, the D/O should be contacted to develop better evidence. Return original documents and acknowledge evidence not submitted through the D/O per RCM 4.1.5 - 4.1.6.

### 4.3.60 Validity of Divorce

- A. Validity - A divorce is valid if it was granted by the court in whose jurisdiction at least one of the parties was domiciled at the time of the divorce. Assume a divorce is valid unless:
- Its validity is challenged by another applicant or potential applicant who offers a reasonable basis for his contention of invalidity; or
  - Reliable evidence (e.g., official records, statements from one of the parties to the divorce or from close relatives) raises a reasonable doubt as to its validity; or
  - Evidence indicates that at the time of the divorce neither party was a resident of the country or State in which the divorce was granted; or
  - The divorce allegedly took place in a country whose laws do not permit an absolute divorce.
- B. Invalidity - The general rule is that a divorce which is valid in the State where it is granted will be recognized in other States, but this is not true if the court of the State that had granted the divorce did not have jurisdiction. A divorce will be held invalid if it is found not valid according to the law of the employee's domicile at the time of the employee's death or at the time of filing an application for a wife's or husband's annuity. Laws in certain countries do not permit absolute divorce. These countries include: Argentina, Brazil, Chile, Columbia, Dominican Republic (in the case of Catholic ceremonies performed after 8/5/54), Ireland, Italy (prior to 1/1/71), Liechtenstein (when either party is a Catholic), Philippines (prior to 1917 and after 8/29/50), Portugal (in case of Catholic ceremonies performed after August 1940), and Spain (except from 3/2/32 through 3/4/38).

- C. Questionable Validity - A divorce granted in a jurisdiction in which neither party is domiciled, such as a mail-order divorce, is not valid. Where the plaintiff in a divorce action goes to another jurisdiction solely for the purpose of obtaining a divorce and did not intend to make his home there, the validity of the divorce is questionable. If a divorce is granted by a court in a foreign country where at least one of the parties was domiciled as required, the validity is not questioned on this basis alone. If the claims folder indicates that either party to a foreign divorce had some other connection with that country, it can be assumed that he or she may have been a resident of that country, and no additional development is required. However, the validity of a foreign divorce should be questioned when a person alleges that he or she was divorced in a foreign country and the claims folder does not indicate that either party to the divorce had some other connection with that country, for example, prior residence in that country lasting until the time of the divorce. In such cases, additional development for residence under sec. 4.3.61 should be undertaken.

#### 4.3.61 Developing Validity Of Divorce

- A. When Development is Required - Any question about the validity of the divorce must be resolved if:
1. The applicant is filing for benefits as a divorced wife, a surviving divorced wife, or a surviving divorced mother, and (A) another woman has filed as the wife of the employee by a later marriage, or (B) the rights of children by a later marriage are involved, or (C) the applicant cannot meet the requirements for entitlement as a divorced spouse but might be able to establish a entitlement as the legal wife or widow; or
  2. The divorce is questioned because of the jurisdiction of the court; or
  3. There is a technical defect in the proceedings (e.g., decree was not recorded properly, court costs not paid, etc.).
- B. Development Required
1. If a divorce is questioned under A1 or A2 above, obtain a certified copy of the divorce decree and the following information:
    - Identity of the plaintiff in the divorce proceeding;
    - Domicile of the parties before the divorce;
    - How long each party lived in the State or foreign country where the divorce was obtained;
    - Reason for establishing residence in that place;

- Whether the defendant was given notice of the divorce proceeding and how;
  - Whether the defendant filed an answer in the proceeding or appeared in court;
  - Whether there was any property settlement; and
  - Whether either party remarried.
2. If the divorce is questioned under A3 above, obtain a certified copy of the divorce decree and the following:
- A statement from the clerk of court as to whether the records substantiate the allegation as to the defect; and
  - Certifications of the pertinent court record entries.

#### **4.3.62 Determining Validity Of Divorce**

Assume the validity of a divorce unless it is questioned under sections. 4.3.60 or 4.3.61. After complete development, refer questions regarding jurisdiction or defects in the proceedings to the Attorney Advisor. For information about divorce decrees, see 4.3.51.

#### **4.3.65 Effect Of "Estoppel" To Deny Validity Of Divorce In A Survivor Case**

A person may, under the law of a particular state, forfeit his or her rights in the estate of the deceased employee, if that person has used or relied on or been a party to a divorce (between that person and the deceased employee), even if the divorce was invalid. If the divorce was invalid, the loss of rights in the estate will not effect that person's entitlement under the RRA since, under state law, she or he would still have the legal status of widow(er).

However, if there is a competing widow(er) in a case in which the other widow(er) has forfeited his or her rights in the estate because of his or her reliance on or participation in an invalid divorce, then both widow(er)'s may be entitled to a widow(er)'s annuity:

- (1) the applicant who has forfeited his or her rights in the estate of the deceased employee because of reliance on or participation in an invalid divorce from the employee, but who is, nevertheless, considered to have been validly married to him, and
- (2) the applicant who married the employee subsequent to the invalid divorce and who may obtain rights of a widow(er) in the estate of the deceased employee even though not validly married to him at death.

Any conflicting widow(er) case where there is a possibility of entitlement by both applicants should be referred to the General Counsel.

#### **4.3.66 Effect Of Estoppel To Deny Validity Of Divorce In A Retirement Case**

It is rare that the principle of estoppel would ever operate in a retirement case. However, where a spouse has relied on or been a party to an invalid divorce from the employee, and the employee has remarried, either or both spouses may be entitled on the same basis as described in section 4.3.62. Any case in which competing spouse applicants are involved and in which there is a question concerning the validity of the divorce from the first spouse should be referred to the General Counsel.

#### **4.3.75 Two Or More Persons Claim Benefits Based On Relationship**

Occasionally, conflicting claims are received in a case. Two women may claim to be the widow of an employee, or a woman may claim to be the widow but a child or parent files for the RLS asserting that the employee was not survived by a widow.

When two applicants claim to be the lawful spouse, the basic fact to ascertain is whether a divorce terminated the first marriage. The law of the State of the employee's last domicile determines who is responsible for showing this fact. When the State applies a presumption in favor of the last marriage, as a general rule, the burden of proof is on the spouse alleging the continuation of the prior marriage. Such spouse must show that no divorce was secured in those counties in which both (s)he and the employee lived and in which the residence requirements and provisions for court jurisdiction (venue) would have permitted a divorce action.

When there is no such presumption, the spouse of the last marriage must produce all available evidence as to the termination of the first marriage.

#### **4.3.76 Evidence Required Of Spouse Of Previous Marriage**

The alleged spouse of the employee's previous marriage must submit proof of the previous marriage in addition to the information outlined in the following sections.

- A. Spouse's Statement of Marital History - The spouse's statement must include the following:
- A brief history of the marital relationship between the spouse and the employee (i.e., how long they lived together, the number of children, if any, born of the marriage, whether there were any periods of prolonged absence or separation, and the cause of any such separation); and
  - Why (s)he knows or believes that this marriage was not terminated by divorce; and

- Whether (s)he was served with notice of a divorce proceeding or otherwise got notice that the employee was trying to get a divorce; and
  - The places the employee lived from the date of their separation up to the employee's death, and if there are periods for which (s)he cannot furnish this information, (s)he must explain why.
- B. Corroboration of Spouse's Statement - In addition to the statement explained in A above, the spouse must submit written statements from persons most likely to know the facts (friends, relatives, employers of the employee, etc.) showing:
- The places the employee lived from the date of marriage to the applicant to the date the employee died; and
  - Any information they have about the termination of the marriage; and
  - The basis for their knowledge of the facts.
- C. Statements From Court Clerks That Employee Did Not Get a Divorce - The spouse must show that the employee did not get a divorce by securing statements G-238a, to this effect from the court clerks handling divorce cases in each county in which the employee lived and where the residence and venue requirements would have permitted a divorce. The statements must cover the period from the date the employee separated from the applicant to the date the employee died.

If a custodian of the public records will not search the records and will not furnish a report that the employee did not get a divorce, a D/O employee may search the records and submit the statement. However, a request for a search of public records by a D/O should only be made upon the authorization of the section supervisor.

#### **4.3.77 Evidence Required Of Spouse Of Latest Marriage**

- A. General - The alleged spouse of the employee's latest marriage must submit a certified copy of the divorce decree dissolving the employee's prior marriage. If (s)he is unable to submit the divorce decree, the spouse must submit statements in accordance with sections B and C below.
- B. Spouse's Statement - The statement must show:
- All information the spouse has about the employee's previous marriage, particularly as to when, where, and how the marriage terminated;
  - That the spouse has no information tending to contradict or discredit any statements furnished on the spouse's behalf and knows of no person having such information;

- Places the employee lived during the time the spouse knew the employee, including, if known to the spouse, all places the employee lived after separating from the previous spouse.

C. Corroboration of Spouse's Statement - In addition to the statement explained in B above, the spouse must submit written statement from persons most likely to know the facts (friends, relatives, employers of the employee, etc.) showing:

- The places the employee lived from the date of marriage to the latest spouse to the date the employee died;
- Any information they have as to the employee's previous marriage and its termination;
- The basis for their knowledge of the facts.

NOTE: If the claimant cannot furnish a copy of the divorce decree or the statements required in B and C above, (s)he must state the reason why.

#### **4.3.78 Disqualification From Inheriting Personal Property**

If the claim is made that an applicant was disqualified from inheriting the employee's intestate personal property under the intestacy laws of the State in which the employee was last domiciled, informally refer the question to the appropriate attorney advisor.

#### **4.3.79 Decisions In Conflicting Claim Cases**

The person properly entitled to benefits may be determined on the basis of a precedent opinion or an opinion from the DGC in the particular case.

A. Precedent Legal Opinion - If the person properly entitled to benefits is determined on the basis of a precedent legal opinion, incorporate the applicable portion of that opinion in the denial letter to the unsuccessful claimant. Also, include the name but not the address of the person found to be entitled to the benefit.

If an unquestionable determination (beyond a reasonable doubt) regarding the proper payee can be made, deny the unsuccessful claimant at the same time you submit the case to authorization for payment to the proper payee. However, if there is a possibility that the decision in BRC could be changed, deny the adverse claimant and advise that payment will not be made for 30 days so that (s)he may, if (s)he wishes, submit new or additional evidence to support the claim.

If the adversely affected claimant offers new evidence or information in support of the claim, submit the case to DGC. If no new evidence or information is received

within the 30-day period, submit the case to the DGC asking if payment can be made before the end of the appellate period.

- B. Submission to DGC - When there is no precedent legal opinion by which to determine which claimant is the proper beneficiary, refer the case to the DGC. On receipt of the DGC's opinion, deny the unsuccessful claimant (enclosing a copy of the legal opinion) and certify payment to the person found entitled.

The DGC may indicate in his opinion on a particular case that decision should be withheld for a period to give further opportunity to the unsuccessful claimant to submit something more. If the DGC so indicates, notify the claimant adversely affected of the name but not the address of the person found entitled. Inform the unsuccessful claimant also that payment will not be made for 30 days so that (s)he may, if (s)he wished, submit new or additional evidence to support the claim. With that letter, enclose a copy of the legal opinion in the case.

If the adversely affected claimant offers new evidence or cites a State law or other authority in support of the claim, resubmit the case to the DGC. But if at the end of the call-up period the unsuccessful claimant has not offered new or additional evidence, deny the claim and certify payment to the person found entitled.

## Appendices

### Appendix B - Common-Law And Similar Marriages

#### **B1. The following is a digest of State laws regarding the recognition of common-law marriages.**

This information is contained in FOM1 appendix D.

#### **B2. Putative Marriages**

Under the laws of some States, the innocent party to a void marriage may acquire inheritance rights as a spouse. This relationship is called a putative marriage. The essential basis of a putative marriage is a good faith belief in the existence of a valid marriage at its inception, and continuing until the spouse's application is filed in a life case or until the employee dies in a death case. The marriage may be invalid because of some defect of which the putative spouse was unaware, such as a prior undissolved marriage of one of the parties, or failure to meet the requirement of solemnization. Putative marriages should be distinguished from deemed marriages, discussed in RCM section 4.3.15.

A person who maintained a putative marriage with the employee under applicable State law and who was then divorced from the employee may qualify as a divorced spouse or surviving divorced spouse. The good faith belief must have lasted until a final divorce was obtained.



### **B3. Arizona**

A person who maintained a good faith belief in the validity of a legally invalid marriage is accorded certain inheritance rights to property acquired during the course of the relationship, and therefore, acquires the status of putative spouse in Arizona. ORSP will submit to the General Counsel any case in which either party alleges a putative marriage in Arizona. Where the putative spouse learned of the defect in the marriage before the time as of which status as a spouse must be established, but the parties undertook within a reasonable time to legalize their marriage, then the status as a spouse continues.

### **B4. California**

Prior to February 4, 1983, where at least one of the parties to an invalid marriage, either ceremonial or common-law, entered into the marriage in good faith, believing that it was valid, a spouse has status as a putative spouse and inheritance rights as a spouse so long as such good faith belief continued. Where the putative spouse learned of the defect in the marriage before the time as of which status as a spouse must be established, but the parties undertook within a reasonable time to legalize their marriage, then the status as a spouse continued.

With one limited exception noted below, a putative marriage based on a common-law relationship is no longer recognized in California. This is a change of position effective for claim determinations on or after February 4, 1983. A putative marriage can now be established only on the basis of an invalid ceremonial marriage.

EXCEPTION: If the parties secured a marriage license but did not go through a marriage ceremony, and if they were inexperienced foreigners unfamiliar with U.S. customs and California laws, they might have had reason to believe that the license alone made them legally married.

ORSP will submit any such case to the General Counsel, after development of the statement regarding the parties' good faith belief, their language ability, length of stay in the U.S., and general information on the marriage laws in their native country.

### **B5. Colorado**

Any person who has cohabited with another to whom he/she is not legally married, in the good faith belief that he/she was married to that person, is a putative spouse, until knowledge of the fact that he/she is not legally married terminates his/her status and prevents acquisition of further rights. Children born of putative spouses are legitimate. A putative spouse acquires the rights conferred upon a legal spouse, whether or not the marriage is prohibited under State law, declared invalid, or otherwise terminated by court action. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses.

A putative marriage may be established in Colorado to give the status of wife or husband to a person who applies for benefits as the spouse of a railroad employee on or after January 1, 1974, or to give the status of widow or widower to a person who applies for benefits as the surviving spouse of a railroad employee who died on or after January 1, 1974.

Any case in which either party alleges a putative marriage in Colorado will be submitted by ORSP to the General Counsel.

## **B6. Illinois**

Effective October 1, 1977, the Illinois Marriage and Dissolution of Marriage Act provides the following with regard to the concept of putative spouse in Illinois:

Any person, having gone through a marriage ceremony, who has cohabited with another to whom he/she is not legally married in the good faith belief that he/she was married to that person is a putative spouse; until knowledge of the fact that he/she is not legally married terminates his/her status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, whether or not the marriage is prohibited or declared invalid under state law. If there is a legal spouse or other putative spouse, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses. The provision of Illinois law concerning putative marriages does not apply to common-law marriages contracted in the State after June 30, 1905.

## **B7. Louisiana**

If at least one of the parties of a ceremonial marriage, or to what one of the parties actually believes was a ceremonial marriage, reasonably and in good faith believes that the marriage is valid, a putative marriage may be created under Louisiana law. A putative marriage, if in force at the death of one party, gives inheritance rights to the innocent spouse and any children born of the relationship even though the marriage is bigamous or otherwise void.

## **B8. Minnesota**

Any person who has cohabited with another to whom he/she is not legally married, in the good faith belief that he/she was married to that person, is a putative spouse until knowledge of the fact that he/she is not legally married terminates his/her status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse whether or not the marriage is prohibited or declared a nullity.

A putative marriage may be established in Minnesota to give the status of wife, husband, widow, or widower to a person who applies for benefits as a spouse or surviving spouse on or after March 1, 1979, or who filed an application before March 1, 1979, that has not yet been finally adjudicated.

Any case in which a putative marriage is alleged in Minnesota will be submitted by ORSP to the General Counsel.

### **B9. Texas**

The one year time limit is satisfied if an applicant seeking to prove a common-law marriage:

1. Files an application with the RRB no later than one year after the relationship ended (usually the date of separation or death). The determination does not have to be made before the end of the time limit; or
2. Submits a favorable determination from a Texas judicial or administrative proceeding.

### **B10. Utah**

The one year time limit is satisfied if the determination or establishment of a common law marriage occurs during the relationship or within one year following the termination of that relationship. To ensure that the determination is timely, develop promptly any claim where a Utah common law marriage is alleged.

If a Utah common law marriage has not been proved timely in a Utah proceeding, the marriage never existed.

