

### 4.4.1 Scope of Chapter

This chapter covers the various types of parent-child relationships and how they may be established. It also contains information on establishing other family relationships which may be necessary in order to award benefits under the RR Act.

The chapter is oriented to establishing the relationship of a child to the employee parent, but unless otherwise indicated, the same conditions apply in establishing the relationship of a parent to the employee child.

### 4.4.2 When Proof of Relationship Is Required

- A. Applicant for Recurring Payment or O/M Inclusion - An applicant for a recurring payment as the child or parent of the employee must prove such relationship. Likewise, a child must establish such relationship to qualify for inclusion in the O/M.
- B. Applicant for Nonrecurring Payment – Proof of relationship (POR) is always required when the applicant's share is more than \$25.00. POR is also required when the share is less than \$25.00 and the relationship is questionable.

When children or grandchildren of a deceased employee share in a nonrecurring payment, consider POR of each child verified if at least one child:

- Has established his relationship to the deceased employee by regular documentary evidence; and
- Has listed in his application (or in another writing) the names and relationships of the remaining children entitled to share the payment with him, or her and the relationships so stated are the same as those alleged by such remaining children who file applications.

However, if any claimed relationship is questioned or if the file contains evidence indicating a relationship is other than as claimed, each person whose relationship is questionable must furnish regular documentary POR.

If the employee died before 10/1/1958, the old order of precedence for nonrecurring payments applies. Under that order, children and grandchildren and other lineal descendants may share in a nonrecurring payment in those proportions provided by applicable State law. In such a case, consider POR verified for each such entitled survivor if one entitled child (or grandchild if no child survived) fulfills the above requirements and no relationship is questionable.

- C. Developing POR for Multiple Payees - Cases may occur in which one or more apparently eligible survivors do not file applications or answer inquiries. Their failure to do either will not in itself prevent verification of relationships under these

instructions. Allow 30 days for the person to furnish the required information or document, after which dispose of any claim on which final action can be taken.

Should an applicant fail to list the names and relationships of all the other apparently eligible survivors, ask him to explain the omission. If the information was omitted in error and he does not challenge the relationship of the survivors in question, such omission will not prevent verification of relationships under these instructions.

If the survivor whose relationship is questioned has not filed, see whether he wishes to file; if so, obtain documentary POR along with the application. If he does not wish to file, secure his statement giving the reason he does not.

#### 4.4.5 Natural Child

The term "natural legitimate child" includes:

- A child of a valid ceremonial or common-law marriage;
- A child of a voidable marriage not judicially declared void;
- A child held legitimate under a void marriage statute (see [Appendix D](#));
- A posthumous child (a child of the employee born alive after the employee's death);
- A child legitimated under applicable State law (see [RCM 4.4.61](#));
- Any child who is legitimate under State law even though there has been no marriage or act of legitimation (see [RCM 4.4.61](#)).
- Any child who is deemed to be a "child" under the RR Act.

#### 4.4.6 Legal Relationship Of Parent And Child

- A. General - To determine if a claimant is the natural child of the employee, the inheritance laws of the state of the employee's domicile apply. If, under state inheritance laws, the claimant could inherit a child's share of the employee's personal property if the employee were to die intestate, the claimant is considered the child of the employee. If deceased, the inheritance laws of the state in which the employee was domiciled at the time of death apply.

If the employee's domicile was not in one of the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands, the laws of the District of Columbia apply. When in doubt, refer the case to the Office of General Counsel (OGC).

- B. Life cases - Apply the state law in effect when the annuity may first be increased under the Social Security Overall Minimum. If, under a version of state law in effect at that time, a person does not qualify as a child of the employee, look to all versions of state law in effect from when the employee's annuity may first have been increased, until you make a final decision. Apply the version of the state law most favorable to the employee.
- C. Survivor Cases - Apply the version of state law in effect at the time of the final decision on the application for benefits. If, under that version of state law, the claimant does not qualify as the child of the employee, apply the state law in effect when the employee died, or any version of state law in effect from the month of potential entitlement to benefits until a final determination is made on the application. Apply the version most beneficial to the claimant. The following rules determine the law in effect as of the employee's death:

**NOTE:** Survivor examiners will need to complete Form G-313, *Legitimation of Child Summary*, to aid in determining the legitimacy of a deceased railroad employee's child. (See [RCM 11, Form Instructions](#) for the G-313)

1. Any law enacted after the employee's death, if that law would have retroactive application to the employee's date of death, will apply; or
2. Any law that supersedes a law declared unconstitutional, that was considered constitutional at the time of the employee's death, will apply.

#### 4.4.7 Natural Parent-Child Relationship

- A. General - The preferred evidence of a natural parent-child relationship is a certified copy of a civil or church record of birth. However, accept any of the forms of documentary evidence used to establish age or DOB (see chapter 4.2) if it shows the relationship claimed and there is no information in file which casts doubt on the existence of the relationship.

Records originating after the death of an employee are always of doubtful value, unless based upon evidence predating the death of the employee.

Newspaper or magazine clippings are never acceptable as evidence.

If no documentary evidence is obtainable, the applicant must:

- Furnish a written statement giving the reason why documentary evidence is not obtainable; and
- Submit affidavits from two disinterested persons showing the name of the child and the name of the parent, that to their knowledge such child is the child of such parent, and the basis of their knowledge.

- B. POA of Child as Proof of Natural Parent-Child Relationship - When the POA of the child shows that the employee is his parent, the relationship is established. Sometimes this proof will show only the mother's name; in such a case, if the father is the employee, the relationship is established if the child's surname is the same as the employee's and other evidence establishes a marital relationship between the employee and the child's mother before the child's birth.
- C. Short Form Birth Certificates - Accept a short form birth certificate (i.e., one that does not have space for showing the names of the parents) as proof of the child's relationship when the child's given name and surname are shown on the certificate. The child's surname shown must be the same as that of the employee at the time the child is born, and there must be no information in file which casts doubt on the existence of the relationship. This includes a short form certificate based on a hospital birth record or a church baptismal record.
- D. Child of a Void Marriage - Any of the proofs in subsections B and C above will also establish the relationship of a child of a void marriage considered legitimated under a void marriage statute.

#### 4.4.8 Presumption Of Legitimacy Under State Law

Presume that a child born in wedlock is the legitimate child of the mother's husband at the time of the child's birth. If the marriage of the child's mother terminates before the child's birth, deem the child to be the legitimate child of the mother's husband at the time of conception unless the mother remarries before the child's birth. In Louisiana, a child is conclusively presumed the legitimate child of the mother's husband at the time of the child's birth unless its legitimacy is successfully disputed by the husband or his heirs in a statutory action in disavowal.

The presumption of legitimacy is subject to modification in the event of quick successive marriages. Submit cases to the OGC for a determination as to legitimacy when a child is conceived during one marriage and born during a later marriage, except when the child may qualify as a stepchild, or the law of Louisiana or Puerto Rico is involved. In Louisiana and Puerto Rico, a child is presumed to be the legitimate child of the mother's husband at the time of the child's conception unless the child's legitimacy is successfully disputed in a statutory action in disavowal. However, in such a case, the child may still be able to qualify as a stepchild.

#### 4.4.9 When Presumption Of Legitimacy Is Rebutted

The presumption of legitimacy of a child born during wedlock is rebutted when clear and convincing evidence shows that:

- The husband is sterile at the time of the child's conception; or
- The husband is constantly absent from his wife during the whole period within which the child must have been conceived; or

- The husband is present with his wife only under circumstances which make sexual relations impossible; or
- The child's mother is living in adultery continuously during the time the child must have been conceived and there is no evidence of access by the husband; or
- A statutory action in disavowal is successfully prosecuted in Louisiana or Puerto Rico.

NOTE: Release no correspondence in connection with matters relating to this section unless the unit supervisor approves such release.

#### **4.4.10 When To Question Legitimacy Of Child**

Do not question the legitimacy of a child born during wedlock unless there is sufficient cause. The following sections illustrate the situations in which a child's legitimacy may be questionable.

- A. Information in File Raises Question - If an adverse claimant or a relative of the employee raises the question of the child's legitimacy, or evidence in file casts doubt on the child's legitimacy, obtain such evidence as the issue involved would require. When the question is raised by a contesting claimant, that claimant must submit evidence to support the allegation.
- B. Child's Parent Volunteers Information - If the child's mother and/or her legal husband volunteer information which raises doubt as to the child's legitimacy, the acceptability of their statements to show that the child is not legitimate depends on whether the State applies the Lord Mansfield Rule.
- C. Employee Not Mother's Legal Husband When Child Born - If the mother is married to the employee (or employee annuitant) at the time the child is conceived, deem the child to be his legitimate child even though the marriage is terminated before birth (see sec. 4.4.8 in case of Louisiana or Puerto Rico). However, if the mother is married to the employee at the time of conception but remarries after the child's conception and before the child's birth, submit the case to the OGC.
- D. Extended Period of Gestation - If the child is born more than 287 days after the death of the mother's husband or her divorce from him, submit to the OGC for a determination under applicable State law.
- E. Parents Divorced in Tennessee - If the law of Tennessee applies and the child is conceived after his parents begin divorce proceedings, go through the proceedings in apparent good faith, and are divorced, submit the case to the OGC.

- F. Louisiana Divorce From Bed and Board - If the child is conceived after a divorce from bed and board in Louisiana, submit the case to the OGC.

#### 4.4.11 When POM Of Child's Parents Is Required

Documentary proof of marriage is only required when the child's legitimacy is in question.

#### 4.4.12 Development And Burden Of Proof Of Legitimacy

If a child's legitimacy cannot be established under the preceding sections, or if a question of the child's legitimacy is raised by another claimant, a relative of the employee or by other evidence, obtain additional evidence depending on the issue raised.

If a contesting claimant raises a question about the child's legitimacy, ask the claimant to submit evidence in support of his allegations. The evidence which is required or admissible to rebut a presumption of legitimacy varies from State to State. However, mere suspicion is not enough to rebut the presumption.

When there is some evidence, rather than mere suspicion, that the child is illegitimate and there is a question whether the evidence is enough to rebut the presumption of legitimacy under applicable State law, or there is doubt as to the need for more development, submit the case to the OGC through the section chief for a determination.

#### 4.4.13 Acceptable Evidence Disproving Child's Legitimacy

- A. General - Acceptable types of evidence showing that the child is not legitimate include statements from neighbors, friends, and relatives of the parties, or from other persons in a position to know the facts. The statements of the mother and her legal husband as to illegitimacy are only acceptable if the State does not apply the Lord Mansfield Rule.
- B. Information To Be Obtained - Acceptable evidence should show:
1. The continuity of the relationship between the mother and the alleged father; whether they lived together continuously and whether they are considered husband and wife in the communities where they lived.
  2. The whereabouts of the mother, her legal husband, and the alleged father during the entire period when the child in question could have been conceived.
  3. When the child could have been conceived and the circumstances under which the alleged father and mother are together (in cases in which the legal husband is not constantly absent from the mother during the whole period).

4. When pertinent, whether the child is born prematurely or whether the gestation period is normal or abnormal. (Since this constitutes medical evidence, it must be based on the statement of the physician in attendance.)
5. Who is considered the child's natural father among the family group and others in a position to know the facts at the time of the child's birth.

This list is not exhaustive; it shows only the most common development. Other types of acceptable evidence should be presented whenever the situation warrants.

An allegation that the mother's husband is sterile must be supported by the statement of a reputable physician. His statement must show the basis of his knowledge.

#### **4.4.14 Lord Mansfield Rule**

In many States, the Lord Mansfield Rule bars the mother of the child and her legal husband at the time the child is conceived or born from giving testimony which might prove the child to be illegitimate. Do not accept evidence submitted by the parents that tends to prove a child illegitimate if the evidence is not acceptable under applicable state law. In such States, if the only available evidence is the testimony of the mother or her legal husband, the presumption of the child's legitimacy is not rebutted.

In some States, a married woman can testify concerning the non-access of her husband in proceedings seeking to establish the paternity of her child. This does not, however, affect the application of the Lord Mansfield Rule when making a determination. If the Lord Mansfield Rule applies in those States in proceedings relating to property rights, do not accept such statements.

When the testimony of the mother and/or her legal husband does not tend to establish illegitimacy, i.e., merely shows the child to be a legitimate child of a marriage after the child's conception, submit the case to the OGC unless the child can qualify for benefits as a stepchild.

#### **4.4.15 State Law On Applicability Of Lord Mansfield Rule**

If the State of the employee's domicile follows the Lord Mansfield Rule, do not accept the testimony of the child's mother or the person who is her legal husband when the child is conceived or born as evidence disproving the child's legitimacy.

#### **List of States and which State Law to Apply Lord Mansfield Rule**

##### **Alabama**

Follows the rule except that the mother can testify to circumstances from which non-access and impossibility of parenthood may be inferred.

**Alaska**

Does not follow the rule.

**American Soma**

Does not follow the rule. Rather, where paternity of child is in dispute, if the mother is married, both she and her husband are considered competent to testify concerning non-access of either married party to the other at the time of conception. Additionally, the mother and alleged father (not the husband) are considered competent to testify.

**Arizona**

Does not follow the rule.

**Arkansas**

Does not follow the rule effective 7/2/1989.

**California**

Does not follow the rule. Effective 1/1/1976, the presumed legitimacy of a child born in wedlock may be challenged by any interested person who has relevant evidence to present. Prior to 1/1/1976, the presumption could be disputed only by the mother, her husband, or the descendent of one or both of them; in which case, evidence of any person is admissible.

**Colorado**

Does not follow the rule.

**Connecticut**

Follows the rule in that the mother may not testify as to the non-access of her husband; however, the mother may testify as to any other independent facts affecting the legitimacy of the child even though some of the facts may result in establishing the child's illegitimacy.

**Delaware**

Does not follow the rule effective 1953.

**District of Columbia**

Does not follow the rule.

**Florida**

Does not follow the rule.

**Georgia**

Does not follow the rule; prior to 11/1/1982, neither husband nor wife could give evidence that a child born during their marriage was illegitimate, i.e., they could not give direct evidence of the mother's adulterous conduct but could give other evidence from which a child's adulterous conception may be inferred.

**Guam**

Does not follow the rule but the presumed legitimacy of a child born in wedlock may be disputed only by the mother, her husband, or the descendant of one or both of them; in which case, evidence of any person is admissible.

**Hawaii**

Does not follow the rule, effective 1/1/1976.

**Idaho**

Does not follow the rule.

**Illinois**

Does not follow the rule. This is a change of position effective 1/10/1983. However, although the husband of married mother may testify as to non-access, the husband's testimony alone is not sufficient to prove illegitimacy. The husband's testimony as to non-access must be corroborated by other evidence or testimony. Similarly, the testimony of the married mother is not sufficient evidence, standing alone, to overcome the presumption of legitimacy where she continued to live with her legal husband.

**Indiana**

Does not follow the rule.

**Iowa**

Does not follow the rule.

**Kansas**

Follows the rule.

**Kentucky**

Does not follow the rule; however, declaration by the mother or husband is admissible only if evidence from other sources show non-access.

### **Louisiana**

Does not follow the rule; however, a child is presumed the legitimate child of his/her mother's husband at the time of the child's birth unless legitimacy is disputed by the husband or his heirs in a statutory claim.

### **Maine**

Does not follow the rule.

### **Maryland**

Does not follow the rule.

### **Massachusetts**

Does not follow the rule, effective 2/21/1990.

### **Michigan**

Does not follow the rule, effective 10/24/1977.

### **Minnesota**

Does not follow the rule.

### **Mississippi**

Does not follow the rule to the extent that husband or wife may testify to the fact(s) disclosing that the parties were so separated that husband could not have had access during the time child was conceived.

### **Missouri**

Does not follow the rule.

### **Montana**

Does not follow the rule; however, the presumed legitimacy of a child born in wedlock may be disputed only by the mother, her husband, or the descendant of one or both of them; in which case evidence of any person is admissible.

### **Nebraska**

Follows the rule.

**Nevada**

Does not follow the rule: however, if presumed father died before 7/1/1971, submit to P&S – RAC.

**New Hampshire**

Follows the rule.

**New Jersey**

Does not follow the rule.

**New Mexico**

Does not follow the rule.

**New York**

Follows the rule.

**North Carolina**

Does not follow the rule.

**North Dakota**

Does not follow the rule.

**Ohio**

Does not follow the rule.

**Oklahoma**

Follows the rule until 5/1/1973. As of this date, the presumption of legitimacy can be disputed only by the husband or wife or the descendants of one or both of them. If a child is born during wedlock and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of 2 years, the presumption cannot be disputed by anyone.

**Oregon**

Follows the rule.

**Pennsylvania**

Does not follow the rule, effective 9/22/1975.

**Puerto Rico**

Does not follow the rule; however, a child is presumed the legitimate child of the mother's husband at the time of the child's birth unless the child's legitimacy is successfully disputed by the husband or his heirs or by the child in a statutory action.

**Rhode Island**

Follows the rule.

**South Carolina**

Does not follow the rule, effective 3/22/1984.

**South Dakota**

Does not follow the rule.

**Tennessee**

Does not follow the rule, effective 3/15/1955.

**Texas**

Does not follow the rule effective 4/9/1975.

**Utah**

Follows the rule.

**Vermont**

Follows the rule

**Virgin Islands**

Forward to P&S-RAC

**Virginia**

Does not follow the rule.

**Washington**

Does not follow the rule.

**West Virginia**

Follows the rule.

**Wisconsin**

Does not follow the rule.

**Wyoming**

Does not follow the rule.

**4.4.16 Child Of Void Or Voidable Marriage**

- A. Child of Void Marriage - A child of an illegal or void marriage is held legitimate under void marriage statutes in many States (see [Appendix D](#)).
- B. Child of Voidable Marriage - Voidable marriages are deemed valid and the children legitimate unless the marriage is judicially declared void. If the marriage is declared void (see POMS GN 00306.090), submit the case to the OGC unless the State has a true void marriage statute (see [Appendix D](#)). However, first consider whether the child can qualify under the SS Act invalid marriage provision (see [sec. 4.4.66](#)) or the illegitimate child provisions (see [sec. 4.4.55](#)).

**4.4.25 Legally Adopted Child**

A child who is legally adopted by the employee under applicable adoption laws of a state or foreign country is a "child" of the employee. Legal adoption is distinguished from equitable adoption by the fact that the contemplated adoption is completed under applicable adoption laws of the state or foreign country, and the proceedings are not defective.

In survivor cases, a child adopted after the employee's death by the widow(er), under certain conditions, is deemed to be the employee's child.

**4.4.26 Child Legally Adopted By Employee's Widow(er)**

- A. Child Adopted Within Two Years After Employee's Death - Effective 1/1/1991 (for applications filed after 12/31/1990), deem a child who is legally adopted by the employee's widow(er), within two years after the day the employee died to be a child of the employee if:
- Such child was living with the employee at the time of the employee's death; or
  - Such child received at least one half of his/her support from the employee in the year prior to the employee's death.

**NOTE:** Prior to 1/1/1991, the following requirements applied: the child must have been living with the employee at the time of his death and at the time of the employee's death, the child is not receiving regular and substantial contributions

for support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

Do not determine entitlement before the legal adoption is completed even though payment may be made for earlier months. (The determination is not required if the child can qualify as an equitably adopted child.)

B. Child Adopted Any Time After Employee's Death - Effective 1/1/1991 (for applications filed after 12/31/1990), deem a child who is legally adopted by the employee's widow(er) any time after the employee's death to be a child of the employee if:

- The employee instituted proceedings to adopt the child before death, and
- Such child was living with the employee at the time of the employee's death; or
- Such child received at least one-half of his/her support from the employee in the year prior to the employee's death.

NOTE: Prior to 1/1/1991, the following requirements applied: the employee instituted proceedings to adopt child before death; and the child was living in the employee's household at the time of death; and at the time of the employee's death, the child is not receiving support from any public or private welfare organization which furnishes assistance or services for children or from any person other than the employee or spouse.

Do not determine entitlement before the legal adoption is completed even though payment may be made for earlier months.

C. Development When Child Legally Adopted by Employee's Widow(er) More Than Two Years After Death - Develop in accordance with the following section. However, in addition, it is necessary to establish whether proceedings to adopt the child are instituted by the employee before death.

Consider adoption proceedings to be instituted by the employee before death if the employee takes some specific action toward the child's legal adoption. The specific action may include arrangements for the adoption with approved adoption agencies or other qualified persons, as well as initial court proceedings for the adoption. Of course, development should cover all possibilities that the employee instituted adoption proceedings before death and should not be confined to only the above examples. Evidence of action to adopt a child may be on adoption certificates, contracts, affidavits, etc., or it may be necessary to contact appropriate officials for verification.

### 4.4.27 Proof Of Legal Adoption

- A. Preferred Proof - The preferred POR of a legally adopted child to the adopting parent is:
- Copy of the decree or order of adoption, certified by the custodian of the record; or
  - A photocopy of the above.
- B. Other Acceptable Proof - In a number of States (see Appendix B), the record of adoption is sealed and cannot be obtained without a court order. In such an event, accept the following types of evidence as proof of adoption:
- An official notice received by the adopting parents at the time of adoption stating that the adoption has been completed; or
  - A birth certificate issued as a result of an adoption proceeding.
- C. Adoption Established by Birth Certificate - When a birth certificate or a certified copy of the record of birth is used as proof of adoption, it is not necessary that the date of adoption be shown if:
- The certificate is issued before the requested ABD; or
  - In the case of a child to be included in the O/M after 8/1958, the certificate is issued before the effective date of the O/M (before 9/1958, the certificate must have been issued more than 3 years before the effective date of the O/M); or
  - In a survivor case, the certificate is issued before the death of the employee.
- A certificate that does not meet these requirements must be accompanied by a statement from the official having custody of the records which indicates the date the record is changed to reflect the adopting parent's names.

### 4.4.35 Equitably Adopted Child

Sometimes a child cannot qualify as a legally adopted child because:

- The adoption proceedings are defective under State law; or
- A contemplated adoption is never completed.

Such a child may qualify as an equitably adopted child in states that recognize the doctrine of "equitable adoption." See Appendix C for a reference to SSA's listing of states recognizing equitable adoptions. If a child can be deemed an equitably adopted

child for inheriting intestate personal property from the "adopting" parent; the child may, for O/M purposes, become entitled to a Child's Insurance Annuity (CIA), and entitled to an RLS based on the creditable earnings of their "adopting" parent.

If the child's entitlement has been established, a spouse shall be entitled to benefits, provided that the child is in the spouse's care and the spouse does not otherwise qualify for benefits pursuant to other provisions of the Railroad Retirement Act. Under the theory of equitable adoption, most States grant relief to a child who is the subject of a contract to adopt and has performed as a child for such a length of time that failure to permit the child to take property as if (s)he were legally adopted would operate as a fraud upon the child.

Equitable adoption applies with respect to a child's entitlement to benefits. It does not flow the other direction—it does not entitle an equitably adopting parent of the employee to an annuity under the Act (see FOM1\_945.5.5, POMS [GN 00306.175 D](#) and [RS 00209.010](#)).

#### 4.4.36 Requirements For Equitable Adoption

The statutory requirements for equitable adoption appear in Appendix C which should be used as a guide for statutory requirements applying in a case. For equitable adoption to occur there must be:

- An express or implied (in some States) contract to adopt the child; and
- A legal consideration for the adopting parent's promise to adopt; and
- In some States, a promise to give the child inheritance rights in the adopting parent's personal property; and
- Surrender of the child to the adopting parent; and
- Performance by the child under the contract; and
- Sufficient lapse of time so that the child could have been legally adopted under applicable State law prior to the time the child is included under the O/M in a life case, or prior to the employee's death in a survivor case.

#### 4.4.37 Contract To Adopt

- A. General - The essential basis for equitable adoption is an express or implied contract to adopt the child legally. This contract is ordinarily between the adopting parents and the child's natural parents or the person or agency which has custody and control of the child.

In establishing a contract to "legally adopt," the specific word "adopt" need not be used and the legal process by which it may be accomplished need not be

named. There need be only a clear indication that the parties are obligated to take whatever steps necessary to meet the statutory requirements for legal adoption. If this obligation is established, equitable adoption may be found to have taken place even though the parties have no knowledge of the adoption laws or the required legal proceedings. They must believe in good faith that they meet all legal requirements.

Generally, all States recognizing equitable adoption will require the child's parents (if alive) either to be parties to the contract or at least to consent to it. However, this participation or consent may be waived under certain conditions, e.g., if the child is illegitimate and paternity has not been established, the father's participation in the contract or his consent is not required. If the consent of a parent living at the time of the agreement is not obtained, submit the case to the OGC.

If the mother of an illegitimate child acts through an authorized agent, the agent's agreement with the adopting parents and surrender of the child to them are to be given the same consideration as if the child's mother had dealt directly with the adopting parents.

- B. Oral or Written Agreement - See Appendix C to determine whether an oral agreement is acceptable or whether the agreement must be in writing.

#### 4.4.38 Express Contract

An express contract to adopt is one in which the parties expressly agree, in writing or orally, that the child is to be legally adopted. The word "adopt" need not be used in the agreement; it is enough if direct evidence shows that the parties actually assumed an obligation under the agreement to legally adopt the child.

#### 4.4.39 Implied Contract

- A. General - In most States, equitable adoption can be established even though there is no express contract to adopt. A contract to adopt in exchange for the child's surrender may be implied if the circumstances of the transfer of the child and the later conduct and statements of the parties clearly indicate that they intend to adopt the child, and no other inference can reasonably be drawn. There need be no allegation or direct evidence of a contract to adopt; the contract is implied from the circumstances and conduct of the parties. If, however, the terms of an agreement are known, no contract other than that indicated in the agreement may be implied.
- B. When a Contract to Adopt May Be Implied - There are no exact rules as to when a contract may be implied. Unless other facts refute the inference, a contract to adopt may be implied when:

1. The circumstances under which the transfer of the child took place indicate that the promise to relinquish absolute custody and control of the child is exchanged for the promise of the "adopting parents" to give him the same rights and considerations he would have by law had he been born their natural child; and
2. The subsequent conduct of all parties is indicative of this mutual exchange of promises, e.g., the natural parents completely give up custody and control of the child, the adopting parents take the child into their home (give him their name, support, educate, and treat him as their own over a period of time), the child is known in the community as their child, and the child conducts himself, according to his age, as if they are his parents.

Acts such as baptizing the child in the employee's family name when the child has a different surname, entering the adopting parents' names on the child's public birth record, etc., are indications of an intent to adopt.

- C. When a Contract to Adopt May Not Be Implied - An implied contract does not exist if there are reasonable grounds for believing that the parties involved have some other intent at the time of the child's transfer. For example, if the transfer is originally made to provide for the child until the natural parent can establish a home for him, do not assume an implied contract to adopt. In such a case, even if the intent later changes into an intent to adopt, an express contract has to be shown.

An implied contract does not exist when the terms of an agreement are known. If the terms are known, the agreement is express.

The evidence must be strong to justify a finding of an implied contract to adopt when the adopting parents are close relatives of the child. That relationship tends to weaken an inference that an adoption is intended; relatives are often motivated by affection and desire to help the child's parents when they take a child into their home, rather than by an intent to adopt.

Even if the intent of all the parties involved can be reasonably implied, do not consider a child equitably adopted unless the implied contract is enforceable in the courts of the State. The contract is not enforceable, for instance, if the consent to give over the custody of the child is made by a legally incompetent natural parent or grandparent or by another person who is incapacitated to enter into such an agreement. It is not enforceable if for any reason a legal adoption would not be granted had such proceedings been started. For example, in some States, a person over age 60 is not qualified to adopt a child.

#### **4.4.40 Adoption By Estoppel - No Evidence Of Valid Contract**

When a valid contract to adopt, either express or implied, cannot be found, it is possible in some States for a child to be granted the rights of an adopted child under the theory

of "estoppel." This means that the adopting parents are barred from denying that a child's performance is pursuant to a valid contract to adopt.

The courts of a number of States have not yet considered whether the doctrine of estoppel applies to adoption. The majority of States which do apply this doctrine to adoption restrict its application to those cases in which an attempt is made to legally adopt but the proceedings are imperfect because of some technicality or oversight. (Some States use the doctrine of estoppel interchangeably with an implied contract.)

States in which the possibility of adoption by estoppel needs to be considered are:

- Missouri - The only State in which it is known that the courts apply the doctrine of estoppel to enforce an invalid contract to adopt; and
- The States in which information to date is that the courts have not ruled as to whether the doctrine of estoppel does or does not apply to adoption. This includes all States EXCEPT Alabama, Iowa, Ohio, South Dakota, Tennessee, and Texas. These six States require a valid contract and/or restrict the application of the doctrine of estoppel to situations in which a statutory adoption proceeding is instituted but in some way is defective.

When all elements for equitable adoption are present except for evidence of a valid contract to adopt in Missouri and all States other than the exceptions mentioned above, submit the case to the OGC for a determination under applicable State law.

#### **4.4.41 Legal Consideration For Promise To Adopt**

The promise to adopt by the adopting parent(s) must be based on a legal consideration. The absolute surrender of the child by the natural parent(s) or by the person or agency having legal custody of the child upon a promise by the adopting parent(s) to adopt the child is such a legal consideration. If, however, the contract to adopt is made some time after the child is placed in the care of the adopting parent(s), it must be shown that the surrender is then made absolute and permanent in exchange for the promise of the adopting parent(s) to adopt the child.

If the contract to adopt does not include an agreement of absolute surrender of the child to the adopting parent(s), submit the case to the OGC as the contract may contain some other legal consideration.

#### **4.4.42 Promise To Give Child Inheritance Rights**

In many States the agreement to adopt need provide only for the adoption of the child. In some States (see Appendix C), however, the agreement to adopt must be coupled with a promise to give the child inheritance rights in the adopting parent's personal property when the child otherwise would have no inheritance rights.

The promise of inheritance rights need not be stated precisely as a separate promise. It is sufficient if the words in the promise to adopt clearly show the obligation to give the child inheritance rights. When the language is ambiguous, consider the later words and actions of the adopting parent(s) for an indication of an original agreement to give the child inheritance rights. Each case must be decided in the light of all the facts. Submit questionable cases to the OGC for a determination under applicable State law.

#### 4.4.43 Surrender Of Child

There must be a surrender of the custody and control of the child to the adopting parents pursuant to the contract of adoption. The surrender must be complete and absolute. To meet this requirement of surrender:

- The agreement must not reserve to the person or agency placing the child authority to regain custody, or to the adopting parent the right to return the child; and
- No rights must be retained by the person or agency placing the child to exercise control and supervision of the child.

Thus, when the child is placed with the adopting parents for a probationary period during which the child may be returned at the option of either party, do not deem the surrender complete and absolute until the trial or probationary period expires, unless both parties agree to make the contract final prior to the expiration of the probationary period.

After the expiration of the probationary period, if the agency takes no action to recover the child and the adopting parents keep the child, deem the surrender of the child complete and absolute, unless the agency continues to exercise control and supervision over the child.

#### 4.4.44 Performance By Child

A child can be equitably adopted only if there is such performance by the child under a contract to adopt (as distinguished from a foster parent relationship) as to create equities which would impel a court to grant him a child's share in the employee's property. Among the factors showing such performance are:

- A parent-child relationship is created between the adopting parent and the child (i.e., they conduct themselves just like an actual parent and child); and
- The child occupies the position of a child, rendering filial obedience until eligibility for inclusion under the O/M in a life case, or until the employee's death in a survivor case.

In some States, performance by the child for a relatively short period will suffice; in others a longer period is necessary; in still others performance alone is not enough to

justify a finding of equitable adoption. Submit all cases to the AGC for which there are no precedents covering the facts under the applicable State law.

Do not confuse the period of performance with the trial or waiting period requirements of the various States in Appendix C.

#### **4.4.45 Equitable Adoption Must Meet Time Requirement For Legal Adoption**

For a child to qualify as an equitably adopted child of an employee, it must be possible under applicable State law for the child to be legally adopted before the date the child is included in the O/M in a life case, or before the employee's death in a survivor case.

Some State laws provide that the child must live with the adopting parents for a specified period before the granting of an adoption decree. Some States provide that there must be a waiting period after the petition for adoption is filed or after the final decree of adoption is granted. In those States, the child must start living with the employee early enough so that the required waiting period has run before the child is taken into account for O/M purposes in a life case, or before the employee's death in a survivor case. However, if the State law permits the courts to waive the waiting period, treat the case as if no waiting period is required.

#### **4.4.46 Developing Equitable Adoption**

When adoption is alleged but there is no formal legal adoption, obtain proof of equitable adoption. Such proof should consist of:

- The original or transcribed copy of any written contract or agreement; and
- G-118 completed by the applicant (regardless of whether or not a written contract or agreement exists); and
- G-118 completed by a responsible person who has knowledge of the facts, preferably a natural parent (regardless of whether or not a written contract or agreement exists).

However, if affidavits executed by the applicant and another responsible person containing substantially the same information called for on the G-118 are in file, accept the affidavits in lieu of Form G-118.

#### **4.4.47 Adoption Contract Made Outside State Of Employee's Domicile**

A contract to adopt, like other contracts, is usually governed by the law of the State where the contract is made. However, if the contract is made or executed in a State other than the State of the employee's domicile, submit the case to the OGC for a ruling as to the validity of the contract under the applicable State law.

#### 4.4.48 Responsibility For Equitable Adoption Determinations

Form G-314, *Equitable Adoption Summary*, should be completed by an examiner in RSBD and submitted to their supervisor. The supervisor will review and submit the form to P&S-RAC. If P&S-RAC cannot make a determination based on the information in the form, P&S-RAC will submit to OGC for a determination. See [RCM 11 G-314](#).

Determination of the existence or non-existence of equitable adoption must be based on both analogous precedent legal opinions and existing instructions. However, exercise caution when making any determination pursuant to precedent opinion.

#### 4.4.55 Illegitimate Child

An employee's illegitimate child (one born out of wedlock) may have the status of a child and meet the definition of a child for benefit purposes if the child is:

- Legitimated under applicable state law (such a child is treated the same as one born in wedlock); or
- Recognized or acknowledged under applicable state law for the purpose of inheriting intestate personal property (see [RCM 4.4.61](#)).

NOTE: Effective 2/1968, an illegitimate child may usually be deemed to be a "child" of the employee regardless of the child's status under applicable state law. Refer to RCM secs. [4.4.66](#) and [4.4.68](#).

#### 4.4.56 Child Recognized By Father For Inheritance Rights But Not Legitimated

An illegitimate child, even if not legitimated, has the status of the employee's natural child if he/she has been recognized or acknowledged under applicable state law for inheriting personal property if the employee were to die without a will. Provisions concerning inheritance rights but not legitimating the child are preceded by an "I" in the state law entries in [RCM 4.4.61](#). Such a child is deemed dependent and does not have to prove dependency.

#### 4.4.57 Evidence Of Written Acknowledgement

If state law provides that a child may be legitimated, or acknowledged for inheritance purposes, by a statement in writing signed in the presence of a witness and if there is no requirement that the writing be in a certain form, be acknowledged before a justice of the peace, be filed in court, etc., there is a great variety of written statements which may suffice. For example: A soldier's application for an allotment is sufficient if the application lists the child as his child; an application for social security benefits on behalf of a child signed by the father before a witness would suffice if he listed the child either as legitimate or illegitimate. When there is a writing acknowledging paternity, but it is not apparent that it is signed by the father in the presence of a witness, submit the case to

the Office of General Counsel (OGC) for a determination as to whether such acknowledgement complies with the statute of that state.

#### **4.4.58 Informal Acknowledgement Or Recognition**

An informal (i.e., oral) acknowledgement or recognition is sufficient in some states. When [RCM 4.4.61](#) does not show clearly whether or not informal acknowledgement or recognition is acceptable, submit the case to the OGC for a determination as to compliance with the state law.

#### **4.4.59 Effect Of Change In Father's Domicile**

The usual rule is that a child who is legitimate under the law of the father's domicile at the time of the child's birth, OR who is legitimated in accordance with the law of the father's domicile at the time the legitimating act is performed, is recognized as legitimate and able to inherit as a child from the father in all states.

A different rule prevails when a child is illegitimate at birth under the law of the father's domicile at that time, and the father performs acts (such as acknowledgement) which fall short of giving the child a legitimate status under the law of the father's domicile at the time the acts are performed. Generally, acts of this sort will not enable the child to inherit as a child from the father under the law of another state, even though such acts may bestow inheritance rights on the child under the law of the father's domicile at the time of performance.

Nevertheless, in a few states, a child will be allowed to inherit as a child from the father if the latter has performed certain specified acts, regardless of the effect of the acts under the law of the father's domicile at the time of performance.

Submit the case to the OGC when the following conditions exist:

- The father performs acts which constitute legitimation or acknowledgement (which confers inheritance rights on the child) under the law of the state where the father is domiciled at death or at the time of the child's O/M inclusion, as the case may be; but
- When he performs the acts the father is domiciled in another state where such acts do not confer a legitimate status. (It is immaterial whether or not the acts constitute acknowledgement which confers inheritance rights on the child in the other State.)

#### **4.4.60 Effective Date of Legitimation**

Most states follow the rule that a child legitimated after birth is considered legitimate from birth. See SSA POMS ([GN 00306.085](#)).

The exception is Louisiana See SSA POMS (See [GN 00306.505](#)) and Puerto Rico (See [GN 00306.615](#)) the illegitimate child is legitimate from the date of the legitimating act.

## 4.4.61 Digest Of State Laws On Legitimation And Inheritance

The Digest of “State Laws” on Legitimation and Inheritance explains how a parent or child can acquire status under state law.

An employee’s illegitimate child, even if not legitimated, may have the status of a “child” under the acts if recognized and acknowledged under applicable state law for the purpose of inheriting intestate personal property. RRB uses the same laws and regulations as the Social Security Administration (SSA). A link has been added to SSA Programs Operations Manual System (POMS) to the list of Digest of State Laws on Legitimation and Inheritance.

NOTE: If there are instructions to submit information or evidence to Regional Chief Counsel (RCC) for determination, forward to Policy and System-RAC.

### **Alabama**

See SSA POMS ([GN 00306.405](#))

### **Alaska**

See SSA POMS ([GN 00306.410](#))

### **American Samoa**

See SSA POMS ([GN 00306.415](#))

### **Arizona**

See SSA POMS ([GN 00306.420](#))

### **Arkansas**

See SSA POMS ([GN 00306.425](#))

### **California**

See SSA POMS ([GN 00306.430](#))

### **Colorado**

See SSA POMS ([GN 00306.435](#))

### **Connecticut**

See SSA POMS ([GN 00306.440](#))

### **Delaware**

See SSA POMS ([GN 00306.445](#))

### **District of Columbia**

See SSA POMS ([GN 00306.450](#))

### **Florida**

See SSA POMS ([GN 00306.455](#))

### **Georgia**

See SSA POMS ([GN 00306.460](#))

### **Guam**

See SSA POMS ([GN 00306.465](#))

### **Hawaii**

See SSA POMS ([GN 00306.470](#))

### **Idaho**

See SSA POMS ([GN 00306.475](#))

### **Illinois**

See SSA POMS ([GN 00306.480](#))

### **Indiana**

See SSA POMS ([GN 00306.485](#))

### **Iowa**

See SSA POMS ([GN 00306.490](#))

### **Kansas**

See SSA POMS ([GN 00306.495](#))

### **Kentucky**

See SSA POMS ([GN 00306.500](#))

### **Louisiana**

See SSA POMS ([GN 00306.505](#))

**Maine**

See SSA POMS ([GN 00306.510](#))

**Maryland**

See SSA POMS ([GN 00306.515](#))

**Massachusetts**

See SSA POMS ([GN 00306.520](#))

**Michigan**

See SSA POMS ([GN 00306.525](#))

**Minnesota**

See SSA POMS ([GN 00306.530](#))

**Mississippi**

See SSA POMS ([GN 00306.535](#))

**Missouri**

See SSA POMS ([GN 00306.540](#))

**Montana**

See SSA POMS ([GN 00306.545](#))

**Nebraska**

See SSA POMS ([GN 00306.550](#))

**Nevada**

See SSA POMS ([GN 00306.555](#))

**New Hampshire**

See SSA POMS ([GN 00306.560](#))

**New Jersey**

See SSA POMS ([GN 00306.565](#))

**New Mexico**

See SSA POMS ([GN 00306.570](#))

### **New York**

See SSA POMS ([GN 00306.575](#))

### **North Carolina**

See SSA POMS ([GN 00306.580](#))

### **North Dakota**

See SSA POMS ([GN 00306.585](#))

### **Northern Mariana Islands**

See SSA POMS ([GN 00306.590](#))

### **Ohio**

See SSA POMS ([GN 00306.595](#))

### **Oklahoma**

See SSA POMS ([GN 00306.600](#))

### **Oregon**

See SSA POMS ([GN 00306.605](#))

### **Pennsylvania**

See SSA POMS ([GN 00306.610](#))

### **Puerto Rico**

See SSA POMS ([GN 00306.615](#))

### **Rhode Island**

See SSA POMS ([GN 00306.620](#))

### **South Carolina**

See SSA POMS ([GN 00306.625](#))

### **South Dakota**

See SSA POMS ([GN 00306.630](#))

**Tennessee**

See SSA POMS ([GN 00306.635](#))

**Texas**

See SSA POMS ([GN 00306.640](#))

**Utah**

See SSA POMS ([GN 00306.645](#))

**Vermont**

See SSA POMS ([GN 00306.650](#))

**Virgin Islands**

See SSA POMS ([GN 00306.655](#))

**Virginia**

See SSA POMS ([GN 00306.660](#))

**Washington**

See SSA POMS ([GN 00306.665](#))

**West Virginia**

See SSA POMS ([GN 00306.670](#))

**Wisconsin**

See SSA POMS ([GN 00306.675](#))

**Wyoming**

See SSA POMS ([GN 00306.680](#))

#### **4.4.62 Birth Certificate for Illegitimate Child**

The provisions of certain state laws require a father's written consent or a court determination of paternity before the birth certificate of an illegitimate child can show the name of the father and/or the child's surname the same as the father's. [Appendix E](#) (State Laws on Entry of Father's Name on Birth Certificate of an Illegitimate Child) gives information about the laws for each state.

A. Presumption that a written consent or court determination exists.

If the birth certificate is from a state that requires a written consent of court determination and information on the certificate indicates or implies the child's illegitimacy, presumption can be made without further development that a written consent or court documentation exists. The birth certificate indicates or implies the child's illegitimacy if any of the following applies:

- The birth certificate has been amended with reference to sections of the annotated code that apply to illegitimate children.
- The child's last name is the same as the mother's and the mother's surname is not the same as the alleged father's surname.
- The birth certificate has a block that can be checked to indicate that the child is illegitimate.

B. Contacting the state of find out if a record exists.

If the birth certificate is from a state that requires a written consent or court determination, but the birth certificate does not contain information indicating or implying the child was considered illegitimate when the certificate was filed, write to the state's Bureau of Vital Statistics (BVS) to find out if they have a consent or court determination in their records.

C. Assumption that the State has no written consent or court documentation on file.

If the birth certificate is from a state that does not require a written consent or court determination, the states BVS is unlikely to have one on file in connection with the birth certificate. If possible, secure the information from some other source.

See [Appendix E](#) for State Laws on Entry of Father's Name on Birth Certificate of an Illegitimate Child.

#### **4.4.65 Deemed Child**

A deemed child is one who would not be considered a child under State law but who may be considered a child for purposes of the RR Act. If the facts indicate that (s)he is the son or daughter of the employee and is the child of an invalid marriage of its parents or an illegitimate child of the employee under certain conditions, (s)he meets the definition of a child for purposes of the RR Act.

A child is deemed to be the stepchild of the employee if the natural or adopting parent went through a marriage ceremony with the employee (who is not the child's natural or adopting parent) resulting in a de facto marriage.

#### 4.4.66 Child Of Invalid Ceremonial Marriage

A. Natural Child of the Employee - A child is deemed to be the "child" of an insured employee if the employee is the child's natural parent, and the employee and the child's mother or father, as the case may be, when through a marriage ceremony resulting in a purported marriage between them which would be a valid marriage except for the existence of a legal impediment. In this situation it is unnecessary to determine whether the child has inheritance rights under State law. The phrase "legal impediment" includes:

- A prior undissolved marriage or an impediment otherwise arising out of a prior marriage or its dissolution; or
- A defect in the procedure followed in connection with the purported marriage.

See chapter 4.3 for a detailed discussion of legal impediment. For purposes of a child's entitlement only, good faith on the part of either or both of the child's parents at the time of the marriage ceremony is not material. (Good faith is also discussed in chapter 4.3.)

A child of an invalid ceremonial marriage is deemed to be legitimate from birth regardless of when the marriage took place. Although a child of an invalid ceremonial marriage has the status of "child" under the SS and RR Acts for benefit purposes, this Federal provision does not give the father the status of "parent" under the SS or RR Acts. If a parent is claiming benefits on the E/R of a child who is born as the result of an invalid ceremonial marriage, the parent-child relationship must be determined under applicable State inheritance law.

NOTE: For months after 8/1960 and before 2/1968, such a child was deemed to be the employee's stepchild. As such, the child could be included in the O/M in a life case and qualify for a CIA in a survivor case.

B. Stepchild of the Employee - Effective 9/1/1960, a child is deemed to be the stepchild if his natural or adopting father or mother went through a marriage ceremony with the employee (who is not his natural or adopting parent) resulting in a purported marriage between them which would have been a valid marriage except for the existence of a legal impediment. The phrase "legal impediment" includes:

- A prior undissolved marriage or an impediment otherwise arising out of a prior marriage or its dissolution; or
- A defect in the procedure followed in connection with the purported marriage.

#### 4.4.67 Evidence To Establish Relationship Of Child Of Invalid Ceremonial Marriage

Documentary evidence of marriage is always required in these cases regardless of whether the marriage occurred before or after the child's birth. Even if the State of domicile follows the Lord Mansfield Rule, disregard the rule in these cases if it is shown that the employee is the biological father. The following paragraphs contain general guides for evaluation the evidence obtained.

When the mother of the child has no legal husband, any pertinent evidence may be used to establish the relationship of the child to the employee. A birth certificate (in addition to POM), hospital record, or school record is sufficient evidence of relationship if it shows the employee as father. The discussion in section 4.4.7, on acceptable proofs of parent-child relationship, applies here also. An acknowledgement by the employee to friends or relatives, or to his employer is also sufficient if it shows the employee is the father.

If the mother is legally married to someone else when the child is conceived but she and the employee are living together at that time as husband and wife, this tends to establish the child's relationship to the employee. When a child is allegedly born to an employee who is not living with the mother when the child is conceived, and the mother of the child has a legal husband other than the employee, the evidence must clearly show that the employee is the child's father. (Use the evidence described in the preceding paragraph for this purpose.) In such a case, if the mother and her legal husband are living together when the child is conceived, only in the most unusual case may the employee be found to be the child's father.

#### 4.4.68 Illegitimate Child Deemed A Child

A. Life Cases - For months after 8/1965, deem a son or daughter of an employee annuitant to be his child for O/M purposes regardless of the child's status under State law. For months after 1/1968, such a child may also qualify a spouse for a full annuity. The child may be included in the O/M or qualify the spouse even though under State law (s)he is presumed to be the legitimate child of another person. However, in order for this provision to apply it must be established that the conditions in 1 or 2 below are met.

1. Court Order or Written Acknowledgement - The employee:
  - Is decreed by a court to be the child's father; or
  - Is ordered by a court to contribute to the child's support because the child is his son or daughter; or
  - Acknowledges in writing that the child is his son or daughter.

Prior to June, 1974, to meet this part of the test the court action or written agreement must have occurred at least one year before the employee became entitled to an annuity or attained age 65, whichever was earlier. Effective June 1, 1974, the court order or written acknowledgement requirement need be met only at the time the child can be included in the O/M (or any month in the retroactive period for inclusion in the O/M).

2. Other Evidence - If the above conditions are not met, the child may still be included in the O/M or qualify the spouse if the employee annuitant:

- Is shown to be the child's father by other satisfactory evidence (which may include a written acknowledgement or court action that is not timely established); and
- Is living with the child or contributing to the child's support at the time he becomes entitled to an annuity or attains age 65, whichever is earlier.

NOTE: Effective June 1, 1974, the living with or contributions requirement need be met only at the time the child can be included in the O/M (or any month in the retroactive period for inclusion in the O/M).

B. Survivor Cases - Effective 2/1968, deem the son or daughter of an employee to be the employee's child for monthly benefits under the RR Act regardless of the child's status under State law, if the requirements below are met. In determining the relationship of a "child" for payment of an RLS, do NOT apply this provision if the employee died before 2/15/1968, the enactment date of the 1968 amendments. For payment of an RLS the new definition of a child applies only when the employee died on or after 2/15/1968.

An illegitimate child is deemed to be the child of the employee if the employee:

- Acknowledges the child in writing; or
- Is decreed by a court to be the child's father; or
- Is ordered by a court to contribute to the child's support because he is the child's father; or
- Is shown by other satisfactory evidence to be the child's father and is living with or contributing to the support of the child at the time of death.

The child may qualify on the employee's E/R under this provision even if under State law he is presumed to be the legitimate child of another person. This provision may be used not only to establish relationship of a child to his father, but also to his mother in those few jurisdictions where a child does not always have status with respect to his mother. A child may qualify on his mother's E/R

under this provision only if either the "court order for support" provision or "written acknowledgement" provision is met.

This provision does not give the father or mother the status of "parent" under the Act. If the parent is claiming on the E/R of the child, the parent-child relationship must be determined under State law.

NOTE: From 9/1/1965 through 1/31/1968, such a child could only be included in the O/M.

#### 4.4.69 Evidence To Qualify Illegitimate Child As Deemed Child

- A. Acknowledgement in Writing Defined - This writing must identify the child in question by name or otherwise and must acknowledge the child as the employee's son or daughter. There is no requirement that the writing be in any special form as long as it is made before the employee's death. A variety of written statements by the employee may suffice. For example, an income tax return listing the child as his, a soldier's application for allotment listing the child as his, a will referring to the child as his child, an application for insurance by the employee naming the child as his child. (Definitions or precedents as to what constitutes written acknowledgement under State laws relating to legitimation or recognition are not controlling here.) If clear and convincing evidence shows that the employee acknowledged the child in writing, the requirements are met even if the acknowledgement is no longer in existence or cannot be obtained. Exercise caution in the evaluation of such evidence or acknowledgement. (A posthumous child can be effectively acknowledged.)

There is a question as to whether a "written acknowledgement" must be signed by the employee. If there is evidence establishing that an unsigned writing was prepared by the employee and the child cannot otherwise qualify, submit the case to your supervisor for a determination as to the acceptability of the evidence.

- B. Child's Birth Certificate – See [RCM 4.4.62](#).
- C. Court Decree of Paternity Defined - The court decree must find that the employee is the father of the child. Even though it does not expressly state this, it is sufficient if the order or decree indicates that he is charged and either pleads guilty or is found guilty under a specific statute or provision of a State Code, referred to only by number in the decree, submit the case to the OGC in the absence of a precedent or other information on the nature of the statute.

The decree must name the employee and identify the child. It is not necessary that the child be identified by name as long as it is clear that the reference is to the child in question. Related court records (e.g., complaint, indictment, sentence, etc.) may be considered.

EXAMPLE 1: The employee is found guilty in a bastardy proceeding naming him as the father of a child born on 2/10/1964 to Mary Jones. The evidence shows the claimant was born 2/10/1964 and is the child of the names Mary Jones.

EXAMPLE 2: The employee is found guilty in a court proceeding naming him as the father of the unborn child of Mary Jones. The claimant is born to

Mary Jones 7 months later (or any date on which the child can be reasonably identified as the subject of the proceeding).

Consider a court decree of paternity issued after the death of the employee as "other evidence" of paternity which may satisfy the requirement of E below, if the employee is living with the child or contributing to the child's support at the time of his death.

- D. Court Order for Support Defined - The court order must identify the child and name the employee and direct the latter to contribute to the child's support. Even though the court order does not name the employee as the child's parent, it is sufficient if the order is issued under a statute requiring a parent to support his child. The discussion in C above as to the identity of the child and reference to a statute or code number also applies here.

Consider a court order for the child's support issued after the employee's death as "other evidence" under E below.

- E. Other Satisfactory Evidence Defined - The evidence must identify the child in question and must establish that the employee is the biological father of the child. There is no requirement that the evidence be in a specific form. Satisfactory evidence may include a court decree, court order, or written acknowledgement which establishes paternity but does not qualify under A-D above. Statements by the employee's relatives that the employee considered the child his own may also constitute evidence.

- F. Living With or Contributions Defined

1. Living With - "living with" means that the child and parent share a common roof under conditions which indicate more than mere coincidence of residence. It also means that the parent has the right to exercise, or is exercising, parental responsibility and authority.

Periodic or temporary separation does not bar "living with" if the circumstances indicate that the child and parent have shared and again expect to share a common roof or resume common residence when conditions permit. Thus, a parent in the Armed Forces who shares a common roof with the child until his induction is deemed to be "living with" the child; "living with" is also deemed when the child is born while the father is in the Armed Forces. However, if the child is in the Armed Forces

or committed to a correctional institution, do not consider him to be "living with" his parent, since the parent does not have the right to exercise parental control.

2. Contributions to Support - Contributing to support means regular and substantial contributions in cash or in kind. The amount of contributions must be a material factor in the reasonable cost of the child's support.

Benefits to a child on the E/R of a living parent are contributions by that parent to support.

Gifts or donations at special times or for special purposes usually are no contributions. Donations are contributions only if they are given for the child's support and are large enough to provide some of the usual necessities.

Funds set aside for the child's future use are no contributions.

An allowance or allotment for a child by a serviceman is a contribution.

Apportionment of a living veteran's VA compensation or pension is a contribution by the veteran. Since these are cash payments out of the veteran's own funds, it is immaterial whether he has agreed to such payments.

Whether contributions or support are voluntary, or compulsory does not matter. Therefore, a court order for support alone is not significant; consider only contributions actually made without regard to the amount the court order specifies.

3. Limited-Interruption Rule - Contributing to the support of the child may be found even though:
  - The normal pattern of contributions is disturbed by a temporary interruption (i.e., it does not involve an assumption of support by someone else on a permanent and continuing basis); and
  - The evidence indicates that the interruption is involuntary and that contributions would continue if conditions permitted. Involuntary means the person is unable to contribute because he is ill, disabled, unemployed, etc.
4. Existence and Relationship of Child - In order to establish dependency, the child must be in existence and have the necessary relationship to the employee at the time of his death. If the employee is living with the mother or contributing to her support during the child's period of gestation, the employee is considered to be living with the child or contributing to the child's support during this period.

### 4.4.70 Development Under Illegitimate Child Provision

- A. General - Obtain a full birth certificate showing the parent's names. Some States will not issue such a certificate because it may disclose the child's illegitimacy; if only a short form birth certificate can be obtained because of this, place a written statement to this effect in the file.

Use discretion and develop the child's relationship under State law, under the invalid ceremonial marriage provision as discussed in section 4.4.66, or under the illegitimate child provision in section 4.4.68 whichever is applicable or more expeditious or develop under each concurrently. However, if benefits for months before 2/1968 are involved, development must be made to determine whether the child meets the inheritance tests under State law.

When the applicant states the child is illegitimate or other information indicates illegitimacy, obtain the full birth certificate and answers to the following questions under "Remarks" on the application, or in a separate statement signed by the applicant.

1. Is the employee living with or contributing to the support of (child's name)?
2. Did he acknowledge in writing that this child is his son or daughter?
3. Is he decreed by a court to be the father of this child?
4. Is he ordered by a court to contribute to this child's support?

If the answer to any of these questions is yes, develop under the following sections.

- B. Development of Court Order - Ordinarily, obtain a copy of the court decree of paternity or court order for support certified by the proper court official. However, accept an excerpt from the order or decree certified by the court official if it contains sufficient information to determine that the child qualifies (i.e., there is a finding of paternity or an order to support the claimant as a child of the employee). Identifying information may be completed by considering other papers as explained in section 4.4.69 C and D.

If there is any indication of a modification in a finding of paternity in the decree or the identity of the parent in the court order, the applicant should furnish a current decree order with the certification by the proper court official as to whether or not the finding is vacated or changed.

Be sure the decree or order shows the date the court made its ruling.

- C. Development of Written Acknowledgement - Include in the file the written acknowledgement or a photocopy of a true and exact copy.

It is not material whether the date is shown as long as it can be determined that the employee made the acknowledgement.

If the acknowledgement is not signed, obtain evidence as to whether the employee prepared it. When the evidence shows that the acknowledgement was prepared by the employee and the child cannot otherwise qualify, submit the case to your supervisor for a determination as to the acceptability of the evidence.

In some instances, the appearance of the employee's name as father on a child's birth certificate may suggest development of a written acknowledgement with the State vital statistics office.

- D. Development of Other Evidence - Since the evidence offered may be in a variety of forms, exercise judgment in evaluating it, keeping in mind that such evidence must establish biological paternity.

Consider such factors as the age of the evidence and date established, the purpose for which it was established, who furnished the information on which the evidence was based, the formality of the evidence, etc.

In addition to the child's birth certificate, obtain the mother's statement as to paternity if she is not the applicant. If the mother's whereabouts are unknown, or if she is incompetent or deceased, secure other evidence to establish paternity. This may be hospital, church, or school records; a court order or decree; or a statement from the attending physician, relative, or person who knows the child's relationship to the employee including the basis for that knowledge. It may also be evidence that the employee and the child's mother are living together when the child is conceived. This list is not exhaustive and there may be other evidence which can establish the child's relationship to the employee.

If the birth certificate shows the employee as the child's father and this is corroborated by the applicant (and mother's statement if she is not the applicant), this is ordinarily sufficient unless there is evidence to the contrary. If the birth certificate does not show the employee as father, or shows the birth was registered after the employee's death, or if a birth registration cannot be located, develop other evidence of paternity as in the preceding paragraph.

NOTE: In addition to establishing paternity based on "other evidence" it is also necessary to establish that the child was either living with the employee or being supported by him at the time of the employee's death.

- E. Development of Living With or Contributions

1. Living With - Obtain the applicant's statement as to whether the child lived with the employee at the time of the employee's death.

Additional evidence of living with is required if information obtained during the normal course of development raises some doubt as to whether the child is living with the employee; or the applicant on behalf of the child does not have personal knowledge of where the child lived at the time of the employee's death.

2. Contributions - If the child is not living with the employee at the time of the employee's death, have the applicant submit a signed statement regarding the contributions to the child's support by the employee during the year preceding the employee's death. Obtain supporting statements from the best available source with personal knowledge, or obtain corroborating evidence, such as cancelled checks, receipts, etc.

#### 4.4.80 Stepchild

A stepchild of the employee (or employee annuitant) is a child whose relationship is created by the employee's marriage to the child's natural or adoptive parent after the child's birth. The marriage which creates the relationship need not be valid provided there is a marriage ceremony, and the marriage is invalid only because of a legal impediment.

A child conceived before the marriage of his mother to the employee who is not the child's natural father, and born after the marriage, is also considered to be the stepchild of the employee.

- A. Life Cases - The marriage of the employee annuitant and the child's parent must take place one year before the child otherwise qualifies for O/M purposes as a stepchild or the spouse otherwise qualifies for a full annuity on the basis of the child. The month in which the first anniversary date occurs is the first month the stepchild may be taken into account under the O/M or may qualify the spouse for a full annuity.

A child conceived and born to one of the parties after the marriage is not the stepchild of the other party. Similarly, a child adopted by one of the parties after the marriage is not the stepchild of the other party.

Death of a spouse does not end the parent-stepchild relationship, but divorce does. Therefore, a stepchild cannot be included in the O/M award of an employee divorced from the child's natural parent. If the divorce occurs after such entitlement, the child's inclusion in computing the O/M ends the month after the month in which the divorce between the employee and the natural parent becomes final.

If a child is adopted in a State where adoption cuts off inheritance rights between the parent and child, a person who later marries the child's natural mother is not the child's stepfather.

- B. **Survivor Cases** - The marriage of the employee and the child's parent must take place nine months (three months if death is accidental or the employee died while on active duty in the Armed Forces) before the day on which the employee died. (Prior to 2/1968, the marriage must have taken place one year before the day on which the employee died.)

If a child is adopted in a State where adoption cuts off inheritance rights between the parent and child, a person who later marries the child's natural mother is not the child's stepfather.

Death of a spouse does not end the parent-stepchild relationship, but divorce does. When a parent-stepchild relationship is terminated by divorce, the remarriage of the child's natural parent and former stepparent reestablishes the parent-stepchild relationship as of the date of the remarriage. Thus, in order for such a child to qualify for a CIA as a stepchild, such remarriage must take place nine months (three months if death is accidental or the employee died while on active duty in the Armed Forces) before the day of the employee's death.

#### **4.4.81 Proof Of Stepchild Relationship**

Obtain proof of relationship of the stepchild to his natural parent as outlined in section 4.4.7 and proof of marriage of that parent to the alleged stepparent.

#### **4.4.85 Grandchild**

A child is the grandchild of the employee or his spouse if the child is the natural child or legally adopted child of a parent who is the child of the employee or the employee's spouse. A great-grandchild cannot be entitled under this provision.

#### **4.4.86 Step-Grandchild - Defined**

A step-grandchild is a child who has only a step-grandchild relationship to the employee or his spouse. If the child is a grandchild of the employee or his spouse and the step-grandchild of the other party, the child is a grandchild rather than a step-grandchild. Following are examples of step-grandchild relationships:

- A stepchild of the employee's natural child
- A stepchild of the employee's stepchild
- A stepchild of the employee's spouse's natural child
- A stepchild of the employee's spouse's stepchild
- A natural child of the employee's stepchild
- A natural child of the employee's spouse's stepchild

#### 4.4.87 When Proof Of Relationship Is Required

A grandchild or a step-grandchild may qualify for benefits or qualify the employee's wife for benefits effective 1/1/1973. In those instances, the relationship of a grandchild to the employee or the employee's wife must be established. A great-grandchild cannot be entitled under this provision.

A. Life Cases - A grandchild or step-grandchild who meets the eligibility requirements can:

- Qualify a wife under age 65 for an unreduced spouse's annuity.
- Be included in the O/M. These benefits cannot be paid prior to 1-1-1973.

B. Survivor Cases

1. Monthly Benefits - A grandchild or step-grandchild who meets the eligibility requirements can:

- Qualify for a CIA; and
- Qualify a widow under age 65 for a WCIA.

These benefits cannot be paid prior to 1/1/1973.

2. Other Than Monthly Benefits - A grandchild may qualify for the accrued annuities due but unpaid at death or for the RLS in some instances. If these benefits are paid, retroactivity is not limited to 1/1/1973. The following rules should be applied to establish a grandchild's relationship when paying the RLS or an annuity due but unpaid at death to a grandchild (for establishing the grandchild's relationship for the purpose of paying monthly benefits, see sec. 4.4.88):

- Establish the relationship between a deceased employee and his grandchild by first establishing the relationship of the grandchild to its parent and then establishing the relationship of that parent to the deceased employee.
- The instructions in section 4.4.2B regarding submission of POR by children in non-recurring payment cases also apply to grandchildren.

#### 4.4.88 Grandchild Relationship Requirements

To establish the relationship of a grandchild to the employee or the employee's spouse for the purpose of paying monthly benefits, it is necessary to establish both of the relationships discussed in A and B below.

- A. Relationship of Grandchild to His or Her Parent - In order to determine the relationship between the grandchild and his or her parent, it is only necessary to establish the fact of biological relationship, legal adoption or step-relationship through a marriage to the biological or legally adopting parent. If step-relationship is involved, the marriage to the child's parent must be a valid marriage or a voidable marriage, and such marriage must not have ended in divorce or annulment. A void marriage will not serve to create a step-relationship, and the deemed marriage provision cannot apply to a "stepchild" (through deemed marriage) of the grandchild's parent.
- B. Relationship of Employee or Employee's Spouse to the Grandchild's Parent - In determining the relationship of the grandchild's parent or stepparent as a child of the employee or the employee's spouse, all of the provisions as to State laws on inheritance, child (or stepchild) of a deemed marriage, and deemed child are applicable. If the relationship to the employee's spouse must be established, consider the spouse as the "insured individual" in applying those provisions. Note that it is not necessary to establish the dependency of the grandchild's parent on the employee or the employee's spouse. However, factors that are normally considered "dependence" factors attach as a condition to relationship in some cases.

#### 4.4.89 Development Of Proof Of Grandchild Relationship

- A. Evidence Necessary to Establish Grandchild's Relationship to His Parent
1. Natural Child or Adopted Child of Parent - Ordinarily, the grandchild's birth certificate showing the name of the employee's or the employee's spouse's child as his parents is sufficient to establish his relationship to such parent. This is true in the case of an original birth certificate of a natural child or an amended birth certificate of a legally adopted child.
- If the employee's or employee's spouse's child is not shown on the grandchild's birth certificate as parent, additional development is necessary. To establish the natural child relationship in such a case, evaluate the evidence submitted, keeping in mind that it must show biological paternity, or in the case of the employee's spouse only, biological maternity. Use sec. 4.4.70D as a guide. The "NOTE" at the end of the section does not apply.
- To establish legal adoption if the birth certificate was not amended, the evidence submitted should be:
- A copy of the court's record from the court which granted the adoption; or
  - A copy of the official notice received by the adopting parents; or

- A copy of the record of the State Attorney or child welfare division regarding the adoption.

A copy of the adoption decree should never be submitted unless no other proof of the adoption can be obtained. The decree can, of course, be accepted as proof of the adoption if either of the adopting parents voluntarily submits it.

2. Stepchild of Parent - In the case of a stepchild, proof of the marriage creating the step-relationship must be obtained in addition to the child's birth certificate. In addition, a statement should be obtained from the person filing on behalf of the child that, to the best of his knowledge, the marriage did not end in divorce or annulment.

B. Evidence Necessary to Establish Relationship of Grandchild's Parent as Child of the Employee or the Employee's Spouse - To establish the relationship of the grandchild's parent to the employee's spouse develop as follows:

1. Natural, Legitimate Child - See sec. 4.4.7.
2. Legitimated or Acknowledged Child (State Law) - See sec. 4.4.57, 4.4.58 and Appendix E. (NOTE: It is not necessary to establish dependency of the grandchild's parent on the employee for purposes of grandchild eligibility.)
3. Child of Void or Voidable Marriage - See Appendix D.
4. Deemed Child - See secs. 4.4.65-4.4.70ff. (NOTE: All factors of this provision are applicable including timeliness of acknowledgement or court action and living with or contributions when relationship is based on other evidence of paternity.)
5. Child of an Invalid Ceremonial Marriage - See sec. 4.4.66.
6. Legally Adopted Child - Accept an amended birth certificate showing the employee or his spouse as parent as proof that the adoption took place. If not available, follow the instructions in A1 above. It does not matter whether the adoption took place before or after the employee's entitlement to an annuity; no dependence requirements need be met.
7. Equitably Adopted Child - See sec. 4.4.35.
8. Stepchild - See secs. 4.4.80 and 4.4.81.

#### 4.4.90 Establishing Brother-Sister Relationship

This relationship is established for the claimant by proving that the deceased employee and the claimant have the same two parents.

The preferred proof of a brother or sister relationship is a certified copy of a civil or church record of such brother's or sister's birth. However, any of the forms of documentary evidence shown in chapter 4.2, "Age", is acceptable if it shows the relationship claimed and if none of the information available or furnished to the Board is inconsistent with the existence of the relationship.

Records originating after the death of an employee are always of doubtful value, unless based upon evidence predating the death of the employee.

Newspaper or magazine clippings are never acceptable as evidence.

If no documentary evidence is obtainable, the applicant must:

- Furnish a written statement giving the reason why documentary evidence is not obtainable; and
- Submit affidavits from two disinterested persons. The affidavits must show the name of the employee and the name of the brother or sister, reflect their relationship, and state the source of the affiant's knowledge.

EXAMPLE: An unpaid retirement annuity is payable to the deceased employee's two brothers. The following genealogical table illustrates the manner in which the relationship can be established.

#### **SEE EXHIBIT 1**

John or Henry must prove that they and Ronald are the children of Frank and Mary to establish that they are Ronald's brothers.

#### **4.4.91 When Submission Of POR By All Brothers-Sisters Not Required**

Establish POR in accordance with the following paragraph, unless the relationship is contested, or the folder contains evidence which indicates the relationship is other than as claimed. Request a person whose relationship is questionable for either of these reasons to furnish regular documentary evidence of relationship.

When shares of the benefit are payable to two or more brothers/sisters and/or lineal descendants of brothers/sisters, consider the relationship of such persons to the deceased employee verified if:

- At least one of the applicants has established such relationship to the employee by regular supporting evidence; and
- (s)he has listed in the application or in another writing the names and relationships of the remaining persons entitled to share in the payment; and

- The relationships so stated are the same as those alleged by such remaining persons who file applications.

#### **4.4.95 Establishing Relationship Of Aunt/Uncle To Deceased Employee**

This relationship is established by the alleged aunt or uncle proving a brother-sister relationship with the deceased employee's parent after establishing a parent-child relationship between the employee and the parent. Any of the evidence described in this chapter to establish a parent-child and brother-sister relationship is acceptable.

EXAMPLE: An RLS is payable under a State intestacy law to John Smith's two aunts and one uncle since no other relatives survive. The following genealogical table illustrates the manner in which the relationship can be established.

#### **SEE EXHIBIT 2**

Etha and Grace are John's paternal aunts, and they must prove that they and Fred are brother and sister (i.e., that they are the children of Frank and Mary). James is John's maternal uncle, and he must prove that he and Betty are brother and sister (i.e., they he and Betty are the children of Wilbur and Amy). They must then prove that John is the child of Fred and Betty to complete the circle of relationship.

#### **4.4.96 Establishing Relationship Of Nephew/Niece To Deceased Employee**

This relationship is established by the alleged nephew or niece proving a brother-sister relationship between the employee and the nephew's or niece's parent and then proving their own parent-child relationship to the employee's brother or sister. Any of the evidence described in this chapter to establish a parent-child and brother-sister relationship is acceptable.

EXAMPLE: An RLS is payable to Ronald Smith's 4 nephews and 2 nieces under a State intestacy law. No other relatives survive. The following genealogical table illustrates the manner in which the relationship can be established.

#### **SEE EXHIBIT 3**

The nephews and nieces must establish their relationship to their parents and then establish their parent's relationship to the deceased employee.

#### **4.4.97 Establishing Relationship Of Cousin To Deceased Employee**

This relationship is established by the alleged cousin proving his or her parent-child relationship, the parent-child relationship of the employee, and the brother-sister relationship of the cousin's parent to the employee's parent. Any of the evidence

described in this chapter to establish a parent-child and brother-sister relationship is acceptable.

EXAMPLE 1: An RLS is payable to John Smith's 6 paternal cousins under a State intestacy law. No other relatives survive. The following genealogical table illustrates the manner in which the relationship can be established.

#### **SEE EXHIBIT 4**

The cousins (James, Betty, Judy, Brad, Leroy, Nancy) have to establish their own parent-child relationship, the parent-child relationship of John and Fred, and the brother-sister relationship of Fred, Esther, and Albert.

EXAMPLE 2: An RLS is payable to John Smith's 3 paternal cousins and 1 maternal cousin under a State intestacy law. No other relatives survive. The following genealogical table illustrates the manner in which the relationship can be established.

#### **SEE EXHIBIT 5**

Ralph, Dennis, and Susan are paternal cousins, and their relationship can be established as shown in example 1 above. Roy, however, is a maternal cousin and must establish his own parent-child relationship, the brother-sister relationship of William and Ann, and the husband-wife relationship of Fred and Ann.

## **Appendices**

### **Appendix A - Right Of Adopted Child To Inherit From Natural Parent**

#### **A1. General**

The list of States in this appendix deals with the right of an adopted child to inherit from his/her natural parent where the adoption occurred before the death of the natural parent. When an adopted child retains inheritance rights, dependency must be established to be eligible for an insurance annuity; the child must have been living with or receiving contributions from his/her natural parent. Dependency is not a requirement for a lump-sum payment (RLS, deferred LSDP, or annuities due but unpaid at death).

Where a child was adopted in a State in which he/she kept the right to inherit from the natural parent and the natural parent died domiciled in a State where an adopted child may not inherit from a natural parent or vice versa, refer the case to RSBD for submission to the OGC.

References below to effective dates based upon the death of the natural parent before or after a given date should also be read to refer to an application for benefits as a child of a living parent filed before or after the given dates.

**A2. States Where Adopted Child May Inherit From The Natural Parent**

Alabama	Maine	Texas
Alaska	Oklahoma	Utah
Illinois	Rhode Island	Vermont
Kansas	South Dakota	Wyoming
Louisiana	Tennessee	

**A3. States Where Adopted Child May Not Inherit From Natural Parent**

Connecticut	New Hampshire
South Carolina - Effective 1/1/76	

**A4. States And Territories Where Adopted Child's Right To Inherit From The Natural Parent Is Questionable**

When the natural parent died before the law was amended to provide that an adopted child may not inherit from the natural parent, the law applied will be that in effect at the time the natural parent died.

American Samoa - RSBD will submit to OGC.

Arizona - If either an interlocutory or final decree of adoption was entered before 6/26/1952, forward to RSBD for submission to OGC. If both decrees were entered on or after 6/26/1952, child may not inherit unless the natural parent is the spouse of the adopting parent.

Arkansas - May inherit if adopted prior to 7/5/1977. Effective with adoptions on or after 7/5/1977, child may not inherit unless the natural parent is the spouse of the adopting parent.

California - Child may not inherit unless natural parent is spouse of adopting parent and retains custody and control of child.

Colorado - If natural parent died before 5/1/1961, the child may inherit. If the natural parent dies after 4/30/1961, the child may not inherit unless the natural parent is the spouse of the adopting parent.

Delaware - If natural parent died before 7/1/1952, child may inherit. If natural parent of child, adopted 6/30/1952, dies after that date, child may not inherit unless natural parent is spouse of adopting parent. If adoption occurs before 7/1/1952, and natural parent dies after that date, RSBD will submit to OGC.

District of Columbia - Child adopted after 8/24/1937 may not inherit unless natural parent is spouse of the adopting parent.

Florida - On and after 1/1/1976, an adopted person can inherit from the adoption parent(s) who die on or after that date but not from the natural parent(s) unless the person is adopted by the spouse of the natural parent. If the adopting or natural parent(s) died prior to January 1, 1976, the adopted person could inherit from either or both the natural and adopting parent(s).

Georgia - Prior to January 1, 1978, may inherit. Effective January 1, 1978, may not inherit, except in limited circumstances where the parent died without having surrendered or terminated parental rights. Circumstances where parental rights have not been surrendered or terminated are: (1) where the child has been abandoned by the parent; (2) where the parent cannot be found after diligent search; or (3) where the parent is insane or otherwise incapacitated from surrendering such rights, and the court is of the opinion that adoption is for the best interest of the child. Also, surrender or termination of parental rights is not a prerequisite to adoption if the petitioner for adoption is the spouse of the other parent of the child, brother, sister, aunt, or uncle of the child, or son or daughter of either parent if: the parent failed for one year or longer prior to the filing of petition for adoption to (1) communicate (or make a bonafide effort to communicate) with the child; or (2) provide for the care and support of the child under law or pursuant to a judicial decree if court believes adoption is in the best interest of the child. Submit case to the OGC if there is a question about whether parental rights have been surrendered.

Guam - RSBD will submit to OGC.

Hawaii - Child may not inherit unless natural parent is spouse of adopting parent and dies on or after 7/1/1953. If natural parent is spouse of adopting parent but died before 7/1/1953, RSBD will submit to OGC.

Idaho - Child adopted on or after 7/1/1971 may inherit if natural parent is spouse of adopting parent. Child adopted between 7/1/1969 and 6/30/1971 inclusive may not inherit. If adoption occurred before 7/1/1969, RSBD will submit to OGC.

Indiana - If natural parent died before 1/1/1954, child may inherit. If natural parent dies after 12/31/1953, child adopted during minority may not inherit unless natural parent is spouse of adopting parent. If natural parent dies after 7/5/1961, child who was adopted during minority may not inherit unless such deceased natural parent or other natural parent is spouse of adopting parent, and child was born in wedlock.

Iowa - If natural parent died before 7/1/1969 or on or after 1/1/1977, the child may inherit. If the natural parent died on or after 7/1/1969 and before 1/1/1977 child may not inherit unless he had attained majority at the time of adoption or was related to one or both of the adopting parents within the fourth degree of consanguinity. Prior to 7/1/1972, a child attained majority at age 21 or marriage, whichever occurred first. 7/1/1972, or later a child attained majority at age 19 or marriage, whichever occurs first. Cases

involving question of whether a child is related to the adoptive parents within the fourth degree of consanguinity will be submitted by RSBD to OGC.

Kentucky - If natural parent died before 2/27/1956, the child may inherit. If a natural parent dies after 2/26/1956, child may not inherit unless natural parent is spouse of adopting parent.

Maryland - If natural parent died prior to 6/1/1963, child may inherit. If natural parent died after 5/31/1963, child may not inherit.

Massachusetts - If natural parent died before 7/4/1967, child may inherit. If child is adopted before natural parent's death and natural parent dies after 7/3/1967, child may not inherit.

Michigan - If natural parent died before 1/1/1975, child may inherit. If natural parent died on or after 1/1/1975, child may not inherit.

Minnesota - Child adopted before April 19, 1951, may inherit from natural parent. After April 18, 1951, child may not inherit unless the natural parent is the spouse of an adopting stepparent.

Mississippi - Child may inherit from the natural parent, unless provided otherwise in the decrees of the adoption.

Missouri - Child may not inherit except in some cases where adoption is by stepparent. When adoption is by stepparent, and where natural parent who is spouse of stepparent is joint petitioner, child may inherit from such natural parent who dies after 5-20-1948. Other cases where natural parent in question is spouse of adopting stepparent will be submitted to OGC by RSBD.

Montana - If the natural parent died before 10/1/1981, the child may inherit. If the natural parent dies after 9/30/1981, the child may not inherit unless a natural parent is the spouse of the adopting parent.

Nebraska - If the natural parent died before January 1, 1977, the child may inherit unless the child was adopted before August 29, 1943, and the terms and conditions of consent and petition for adoption provide otherwise. If the natural parent dies on or after January 1, 1977, the child may not inherit unless the natural parent is the spouse of the adopting parent.

Nevada - If parent died before 3/28/1953, child may inherit. If parent dies after 3-27-1953, child may not inherit unless the natural parent is the spouse of the adopting parent.

New Jersey - If the natural parent died before 1/1/1954, child may inherit. If natural parent dies after 12/31/1953 and prior to 7/21/1966, child may not inherit unless the natural parent is the spouse of the adopting parent and consented to the adoption. If either parent dies after 7/20/1966, child may inherit from such natural parent provided

adopting parent is spouse of one natural parent and natural parent married to adopting parent consented to the adoption.

New Mexico - If natural parent died before 6/8/1951, child may inherit. If natural parent dies on or after 6/8/1951, child may not inherit unless the natural parent is the spouse of the adopting parent.

New York - If natural parent died before 3/1/1964, child may inherit. If natural parent died on or after 3/1/1964, child may not inherit unless natural parent is the spouse of the adopting parent and consented to the adoption.

North Carolina - Child adopted before March 15, 1941, may inherit from natural parent. Child adopted for life after March 14, 1941, and before March 11, 1949, may not inherit except where otherwise the estate would escheat to the State. If adopted only for the minority of the child, adopted child may inherit. Child adopted after March 10, 1949, may inherit, except where adoption proceedings had begun before that date and were completed after that date in accordance with law in effect between March 15, 1941 and March 11, 1949. In such cases above rule covering that period would apply. However, where natural parent dies after 6/30/1955, RSBD will submit to OGC.

North Dakota - Children who are adopted by proceedings which were pending on or before 7/1/1971 may inherit from their natural parents. Where adoption proceedings are instituted after 7/1/1971, an adopted child may no longer inherit from his natural parents, except (a) with respect to his natural parent who is the spouse of the petitioner in the adoption proceedings, and (b) with respect to a natural parent who died without the parent-child relationship having been terminated when the child subsequently is adopted by a spouse of the surviving natural parent.

Ohio - After 8/27/1951, a child generally may not inherit. However, if the natural parent is the spouse of the adopting parent, inheritance rights are not terminated unless there is evidence of relinquishment or forfeiture of rights by the natural parent. Submit the case to the OGC through RSBD if a natural parent is the spouse of the adopting parent and there is reason to believe that the natural parent's rights may have terminated.

Oregon - If the natural parent died before 7/21/1953, child may inherit. If the natural parent dies on or after 7/21/1953, child may not inherit unless the natural parent is the spouse of the adopting parent. These rules apply regardless of the date or place of adoption.

Pennsylvania - Child may not inherit unless the natural parent is the spouse of the adopting parent.

Puerto Rico - Child adopted after September 12, 1953, may not inherit. Child adopted before September 12, 1953, may inherit unless petition that such adoption be governed by law in effect after September 12, 1953, is granted.

Virgin Islands - Any case which arises involving the laws of the Virgin Islands should be referred to RSBD for submission to the OGC.

Virginia - If natural parent died before 6/30/1954, child may inherit. If natural parent dies after 6/29/1954, child may not inherit unless the child is adopted by a stepparent.

Washington - If natural parent died before 7/1/1967, child may inherit. If natural parent died after 6/30/1967, child may not inherit.

West Virginia - If natural parent died before 3/11/1959, child may inherit. If natural parent dies after 3/10/1959, child may not inherit unless the natural parent is the spouse of the adopting parent.

Wisconsin - If natural parent died before 7/1/1956, child may inherit. If natural parent dies after 6/30/56, child may not inherit unless the natural parent is the spouse of the adopting parent.

## **Appendix B - Effective Date And Availability Of Adoption Decree**

### **B1. Explanation Of Entries**

In those States followed by symbol (1), certified copies of adoption decrees may be obtained without a court order. In those States followed by symbol (2), adoptive parents may obtain copies without a court order. In those States followed by symbol (3), copies of adoption decrees may not be obtained without a court order.

### **B2. Effective Date of Adoption Decrees Under State Laws**

This digest of State laws below gives the number and types of decrees and the effective dates for entitlement to child's benefits.

#### Alabama (2)

There is an interlocutory decree to be followed by a final decree after child has lived with adopting parents for 6 months (1 year, prior to 9/15/1961). Court has power to omit interlocutory decree where adoption is by stepparent and child has lived with stepparent for 1-year. Also, after 9/14/1961, court has power to omit interlocutory decree where adoption is by child's grandparent, brother, sister, aunt, uncle (singly or with their spouses) and child has lived with adopter for 1 year.

Adoption is effective from date of final decree.

#### Alaska (3)

There is one decree; adoption is effective from date of decree.

#### American Samoa

There is one decree; adoption is effective from date of the decree. If adoption is by other than judicial proceedings, forward to RSBD for submission to OGC.

### Arizona (3)

There is an interlocutory decree to be followed by a final decree after the child has lived for 6 months in the home of the adopting parents after entry of interlocutory decree (1 year prior to 6/20/1968.)

Adoption is effective from date of final decree.

### Arkansas (3)

The Arkansas Supreme Court issued a decision in 1982 to clarify the effective date of adoptions. This decision provides that, "after November 22, 1982, any adoption decree is a final decree unless subsequent hearing is required by the terms of the decree."

There was one decree before June 12, 1947. From 6/12/1947 through 7/4/1977, an interlocutory decree was granted followed by a final decree after 6 months. The adoption was effective on the date of the interlocutory decree.

On and after 7/5/1977, a court may issue either a final decree or an interlocutory decree which automatically becomes a final decree on a day specified therein. An adoption is effective on the date of the final decree or on the date specified in the interlocutory decree as the date that the decree automatically becomes final.

### California (2)

There is one decree; adoption is effective from date of the decree.

### Colorado (3)

There was one decree before 5/20/1949. From 5/20/1949 through 3/28/1951, there was an interlocutory decree to be followed by a final decree in period of 1 year or less, as court might deem advisable. After 3/28/1951, court has discretion to enter final decree immediately or interlocutory decree to be followed by final decree after one year or less, as court may deem advisable.

Adoption is effective from date of final decree.

### Connecticut (2)

There is an interlocutory decree to be followed by final decree within not less than 12 or more than 13 months. Court has discretion to omit interlocutory decree and enter final decree immediately.

Adoption is effective from date of interlocutory decree or, if omitted, from date of final decree.

### Delaware (3)

Before 7/1/1952, there was an interlocutory order to be followed after 1 year by final order. Court had discretion to omit interlocutory order and enter final order immediately. After 6/30/1952, there was one decree, a final decree.

Adoption is effective from date of final decree if after 6/30/1952. Before 7/1/1952, adoption was effective from date of interlocutory order or, if omitted, from date of final order.

### District of Columbia (3)

In proceedings instituted before 6/9/1954, court could enter either final decree or interlocutory decree reciting date (within 6 months from entry of such decree) upon which it would become final. In proceedings instituted after 6/8/1954, court can enter either final decree, or interlocutory decree reciting date (not less than 6 months, nor more than 1 year, from entry of such decree) upon which it will become final.

Adoption was effective from entry of final decree or date interlocutory decree became final, where proceedings were instituted before 6/9/1954; adoption is effective from date of entry of final or interlocutory decree if proceedings were instituted after 6/8/1954.

### Florida (3)

Before 5/20/1955, there was in interlocutory decree to be followed by a final decree after period not exceeding 1 year. After 5/19/1955, there is a final decree.

Adoption is effective from date of final decree.

### Georgia (3)

Where a petition was filed before 5/1/1966, there was an interlocutory decree followed after 6 months by a final decree.

Adoption was effective from date of the final decree.

Where a petition is filed after 4/30/1966, there is only a final decree which is entered not less than 90 days from the filing of the petition. Adoption is effective from the date of final decree.

### Guam

There is one decree; adoption is effective from date of decree.

### Hawaii (3)

Statute provides for one decree but postpones creation of a complete adoptive status for a period not exceeding 6 months at discretion of court. Adoption is effective from date recited therein.

Adoption is effective for termination purposes from date of entry of decree. Forward to RSBD for submission to OGC if effective date of decree is subsequent to its entry. Adoption is effective for purposes of entitlement to child's benefits from date recited in decree.

### Idaho (3)

There is one decree; adoption is effective from date of decree.

### Illinois (1)

There was one decree before 1/1/1960. After 12/31/1959, there is interim order of custody and control to be followed in 6 months by decree of adoption. Court may waive interim order.

Adoption is effective from date of decree.

### Indiana (3)

There is one decree; adoption is effective from date of decree.

### Iowa (3)

There is one decree; adoption is effective from date of decree.

### Kansas (2)

Before 6/30/1951, there was an interlocutory order to be followed after 6 months by final order. After 6/29/1951, there is only final order which may be entered not less than 30 days after filing of petition.

Adoption is effective from date of final order.

### Kentucky (3)

There is one decree. However, under special acts granting certain orphan homes authority to contract for adoption, no decree is required.

Adoption is effective from date of decree (date contract recorded in County Clerk's office).

### Louisiana (3)

In proceedings involving children under 17, an interlocutory decree is first entered, followed in not less than 6 months by a final decree. Court may dispense with

interlocutory decree procedure and enter final decree immediately in some cases where child has been in adopter's home for 6 months. Adoption is effective from date of final decree.

For children 17 or over, adoption is by notarial act of adoption, filed with the clerk of the court of the parish where executed (Register of Conveyances in parish of Orleans). Adoption is effective from date of filing. Forward copy of instrument to RSBD for submission to OGC for an opinion as to its validity as a deed of adoption.

### Maine (3)

There is one decree; adoption is effective from date of decree.

### Maryland (3)

On and after 6/1/1947, there is usually one decree, but court may enter an interlocutory decree for a period up to 1 year. Adoption is effective from interlocutory or final decree.

With respect to final decrees entered before 6/1/1947, and decrees entered in proceedings pending before such date, there is only one decree, enrolled 30 days from entry. Adoption is effective from date of enrollment for final decrees entered before 6/1/1947, or decrees entered in proceedings pending before such date.

### Massachusetts (2)

There is one decree; adoption is effective from date of decree.

### Michigan (3)

There is an interlocutory order, to be followed after 1 year by final decree. Court may waive 1-year period.

Adoption is effective from final decree.

### Minnesota (3)

There is one decree; adoption is effective from date of decree.

### Mississippi (3)

There is one decree before 7/1/1955. On and after that date the court may enter a final decree or, at its discretion, enter an interlocutory decree with a final decree to be entered not earlier than 6 months from the date of interlocutory decree. Final decree may be entered earlier in cases.

Adoption is effective from date of final decree.

### Missouri (3)

There is one decree; adoption is effective from date of decree.

### Montana (3)

There is one decree before 7/1/1957. After 6/30/1957, interlocutory decree is to be followed after 6 months by final decree. Court may waive 6-month period.

Adoption is effective from date of final decree.

### Nebraska (3)

There is one decree; adoption is effective from date of decree.

### Nevada (3)

There is one decree; adoption is effective from date of decree.

### New Hampshire (3)

On or after August 21, 1973, there is an interlocutory decree to be followed by final decree after the child has lived with the adopting parents for six months. The court may extend the interlocutory period. It may also waive the interlocutory decree where the petitioner or the petitioner's spouse is a natural parent of child.

Adoption is effective from the date of the final order completing adoption.

### New Jersey (3)

There is one decree; adoption is effective from date of decree.

### New Mexico (3)

There is one decree; adoption is effective from date of decree.

### New York (3)

There is one decree; adoption is effective from date of decree.

### North Carolina (3)

Where proceedings were begun before 3/11/1949, interlocutory decree is to be followed after at least 1 year, but not more than 2 years, by final decree. Adoption is effective for termination purposes from date of final decree. Adoption is effective for entitlement purposes from date of petition to adopt (i.e., final decree when granted is retroactive to date petition filed with court.)

Where proceedings are begun after 3/10/1949, interlocutory decree is to be followed by final decree within 3 years of filing petition. When child is blood grandchild, nephew,

niece, or stepchild, court may waive interlocutory decree. Adoption is effective from date of final decree.

When proceedings are begun after 3/29/1953, court may also waive interlocutory decree if child is at least 16 years of age and has resided in home of petitioners for 5 years prior to filing of petition, and child consents to adoption. Adoption is effective from date of final decree.

### North Dakota (2)

After June 30, 1971, the court may issue a final decree of adoption or an interlocutory decree of adoption to become final in not less than 6 months or more than 1 year. The adoption is effective from the date of the final decree of adoption or from the date of the interlocutory decree of adoption if the interlocutory decree has not been vacated, amended, or appealed.

Prior to July 1971, there was one decree, and the adoption was effective from the date of the decree.

### Ohio (2)

There is an interlocutory decree to be followed after 6 months by final decree. Interlocutory decree may be waived in certain specified cases.

Adoption is effective from date of interlocutory decree, or final decree if interlocutory decree has been waived.

### Oklahoma (3)

There is one decree before 8/28/1957. On and after that date there is an interlocutory decree to be followed after 6 months by final decree. Court has discretion to omit interlocutory decree and enter final decree immediately.

Adoption is effective from date of final decree.

### Oregon (3)

There is one decree; adoption is effective from date of decree.

### Pennsylvania (3)

There is one decree; adoption is effective from date of decree.

### Puerto Rico (2)

If adoption occurred before 5/6/1948, submit to regional attorney through channels. On or after 5/6/1948, there is one decree; adoption is effective from date decree is signed by judge of court of issue.

Rhode Island (3)

There is one decree; adoption is effective from date of decree.

South Carolina (1)

There is one decree if proceedings commenced on or before 2/3/1964. After 2/3/1964 there is an interlocutory decree to be followed by final decree after child has lived with adopting parents for 6 months. Court, however, may waive interlocutory decree and 6-month waiting period where child is related by blood to one of petitioners, is a stepchild of petitioner, or court is satisfied that adoption is for child's best interest.

Adoption is effective from date of final decree.

South Dakota (2)

There is one decree; adoption is effective from date of decree.

Tennessee (2)

Prior to 4/11/1949, there is one decree, which may limit rights of child. After 4/10/1949, and prior to 3/16/1951, there is one decree. After 3/15/1951, there is an interlocutory decree to be followed by final decree after 1 year. Final decree may be entered earlier in certain cases. Interlocutory decree may be waived where child is by blood, a grandchild, nephew, or niece, or is a stepchild of one of the petitioners.

Prior to 4/11/1949, adoption is effective from date of decree if there is no limitation. If limitation is made, forward to RSBD for submission to OGC. After 4/10/1949 adoption is effective from date of final decree.

Texas (2)

There is one decree; adoption is effective from date of decree.

Utah (3)

There is one decree; adoption is effective from date of decree.

Vermont (3)

There is one decree approving the adoption, which is appended to an instrument of adoption executed by the parties.

Adoption is effective from date of decree.

Virginia (2)

There is an interlocutory decree to be followed by final decree. Interlocutory decree may be waived, and court may grant final decree upon first hearing.

Adoption is effective from date of interlocutory decree or, if omitted from date of final decree.

#### Virgin Islands (1)

There is one decree; adoption is effective from date of decree.

#### Washington (3)

There is one decree, which remains to a limited extent interlocutory for 6 months. Adoption is effective from date of decree.

#### West Virginia (2)

There is one decree; adoption is effective from date of decree.

#### Wisconsin (3)

There is one decree; adoption is effective from date of decree.

#### Wyoming (3)

Prior to 5/17/1963, there is one decree. After 5/16/1963, there is an interlocutory decree to be followed by a final decree after child has lived with adopting parents for 6 months. If the child has lived with petitioners for a period of 6 months, the court may waive the entry of the interlocutory decree and forthwith grant a final decree of adoption where the child is related by blood to one of the petitioners, is a stepchild of the petitioner, or if the court finds that the best interests of the child will be furthered thereby.

Adoption is effective from date of final decree.

### **Appendix C – State Laws Regarding Equitable Adoption**

See SSA POMS ([GN 00306.225](#)).

### **Appendix D - Void Marriage Statutes**

#### **D1. True Void Marriage Statutes**

A true void marriage statute gives the child of a void marriage legitimate status without court action. The States listed in sec. D4 have adopted such statutes.

Generally, a child of an attempted marriage contracted in good faith by at least one of the parties is deemed to be in legitimate child of both parents. An attempted marriage may include attempted common-law marriages even if common-law marriage is not recognized under applicable State law. An attempted common-law marriage also includes a marriage which is invalid because an impediment exist to a valid common-law marriage. Exceptions to these general statements are noted in D4.

## **D2. Statutes Legitimizing Children Of Marriages Decreed Void**

Some States which have not adopted true void marriages statutes have laws providing that a child of a marriage declared void by judicial decree is or may be decreed legitimate. These States are listed in sec. D5.

In some of these States, the laws have been interpreted to mean that the child of a void marriage may be considered legitimate even though no judicial decree of legitimation was obtained.

## **D3. Determining Which State Law Is Applicable**

The status of a child is determined by applying the law which would be applied by the courts of the State in which the employee was domiciled at his death or, if living, at the time the child's application is filed by applying the law of the State as if the court was deciding the distribution of his personal property in the event that he died without leaving a will.

Sometimes an employee, at his death or when the child's application is filed, is domiciled in a different State than the one in which he was domiciled at the time of the child's birth. In these cases, usually the courts of the State of a person's domicile, in applying laws of inheritance, will look to the law of the State in which he was domiciled at the time of the child's birth to determine the child's status. (See Appendix E of RCM Chapter 4.4, or Appendix K of FOM Part I, Article 9)

Thus, a child may still be considered legitimate even if the State in which the employee is domiciled at death or when the child applies for benefits is not one of those listed under sec. D4, or if listed, has a requirement such as "ceremonial marriage" or "good faith" which prevents a child from being considered legitimate in that State. The child may qualify as legitimate under the laws of the State of his father's domicile at the child's birth, or he may have been legitimated in a State in which the employee had subsequently been domiciled. By referring to the entries or the appropriate States in Appendix E of RCM chapter 4.4, or Appendix K of FOM Part I, Article 9 and in this appendix, you will, in most cases, be able to determine whether a child is legitimate in the State of the father's domicile at the child's birth or has been legitimated in some State of domicile other than the State of the employee's last domicile. A child found to be legitimate in accordance with the foregoing will usually be recognized as legitimate in all States and able to inherit from the father as a child. Where the child's status cannot be determined, the case will be submitted to the OGC by RSBD.

## **D4. States That Have Adopted True Void Marriage Statutes**

Alabama - incestuous marriages only.

Arizona - if child was born after 3/17/1921.

Arkansas - good faith need not be shown if marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.

California - good faith need not be shown if the marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.

Colorado - applies only to child of father alive on 7/1/1957. Good faith need not be shown if marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.

Connecticut - applies to child or father alive on 10/1/1963, if marriage was ceremonial. If father died before 10/1/1963, or if nonceremonial marriage alleged, submit to OGC.

#### Delaware

District of Columbia - legitimate child only of parent capable of contracting a valid marriage.

Georgia - good faith need not be shown if marriage was ceremonial. Good faith by at least one party must be shown if marriage was common-law.

Hawaii - ceremonial marriage only.

#### Idaho

Illinois - ceremonial marriage only.

#### Indiana

#### Kansas

Kentucky - incestuous marriages only.

Maryland - ceremonial marriages only.

Michigan - except bigamous marriage prior to November 2, 1967. Beginning November 2, 1967, unqualified "True Void Marriage Statute" applicable.

#### Minnesota

Mississippi - applies to children conceived after bigamous ceremonial or common-law marriages entered into before 4/5/1956, and to children conceived after bigamous ceremonial marriages entered into on, or after, the date, but does not apply if parent died before 7/16/1962.

#### Missouri

#### Montana

Nevada

New Jersey - ceremonial marriage only. Good faith need not be shown on part of either parent.

North Carolina - ceremonial marriage only. Applies only to child of father alive on 7/1/1951.

North Dakota - if at least one parent did not contract marriage in good faith, or if common-law marriage is alleged, submit to OGC.

Ohio - good faith need not be shown on part of either parent if marriage was ceremonial. If common-law marriage is alleged, good faith on the part of at least one parent must be shown.

Oklahoma

Oregon - Submit to OGC.

Pennsylvania - if void marriage entered into prior to 12/17/1959, void marriage statute applies only if the party to whom the relationship is claimed is alive on that date. Good faith need not be shown if marriage was ceremonial. If common-law marriage is alleged, good faith on the part of at least one parent must be shown.

Rhode Island - applies to all void marriages, whether ceremonial or common-law, if at least one of the parties act is good faith in contracting the marriage and the child was born before the marriage was judicially annulled. If neither party contracted the marriage in good faith or the child was born after the marriage was judicially annulled, submit to OGC.

Unless the marriage is void because it was contracted between persons related within prohibited degrees of consanguinity and affinity; this provision is a change of position, effective 12/10/1968. Claims previously disallowed because the void marriage in question was not contracted by such related persons may be reopened as permitted in change of position cases. Otherwise, entitlement may be based only on a new application.

South Carolina - child born on or after 4/13/1951, of a bigamous marriage contracted on or after that date is deemed legitimate if either parent is contracted such marriage in good faith and in ignorance of incapacity of other party.

South Dakota

Tennessee - ceremonial marriage only; good faith need not be shown.

TexasUtah

Virginia

Washington - alleged marriage, whether ceremonial or nonceremonial, must be of record. Good faith need not be shown.

West Virginia - except bigamous common-law marriage.

Wisconsin - good faith need not be shown on the part of either party to a ceremonial marriage, but good faith on the part of at least one party must be shown where common-law marriage is alleged.

### **D5. States In Which A Child Of A Marriage Declared Void By Judicial Decree Is Or May Be Decreed Legitimate**

Except for New York, submit cases involving application of the statutes of these States to the OGC for determination as to whether the child may be considered legitimate for annuity purposes.

IowaMaineMassachusettsNew Mexico

New York - Unless State court prior to 4/17/1961, has found child to be illegitimate, child born of a void ceremonial marriage is deemed to be legitimate child of either parent. Good faith or competence to marry on the part of either party need not be shown. If common-law marriage is alleged, child born of such "void marriage" may be considered legitimate child of either parent if at least one of the parents entered into the purported marriage in good faith.

VermontWyoming

### **Appendix E – State Laws on Entry of Father’s Name on Birth Certificate of an Illegitimate Child**

State law requirements and applicable effective dates relative to the entry of the father’s name on the birth certificate of an illegitimate child are summarized in the chart below. The first two columns describe state requirements for naming the father on the birth certificate of an illegitimate child. If both columns show “Yes”, the state requires either a written consent or a court determination. If one column is yes and the other is no, the state requires that specific document. If both columns show “No Provision”, the state does not require written consent or a court determination. The third and fourth columns describe state requirements for showing the child’s surname to be the same as the

father's on the birth certificate. The same principle applies for entries in these columns. In these cases, an assumption of written acknowledgement or a court order cannot be made, and additional development is needed (See [RCM 4.4.62C](#)).

**State Laws on Entry of Father's Name on Birth Certificate  
Of an Illegitimate Child**

<b>STATE</b>	<b>Written Consent Required For Father to be named on birth certificate</b>	<b>Court Determination required for father to be named on birth certificate</b>	<b>Written consent required for child's surname to be as father's on birth certificate</b>	<b>Court determination required for child's surname to be same as father's on birth certificate</b>
Alabama	No Provision	Yes effective 05/1992	No Provision	Yes effective 05/1992
Alaska	Yes effective 7/28/1959	Yes effective 7/28/1959	No Provision	No Provision
American Samoa	Yes effective 5/10/1962	No Provision	No Provision	No Provision
Arizona	Yes effective 1/1/1968	Yes effective 1/1/1968	No Provision	No Provision
Arkansas	Yes effective 2/19/1981	Yes effective 2/19/1981	No Provision	No Provision
California	No Provision	No Provision	No Provision	No Provision
Colorado	Yes effective 1/1/1968	Yes effective 1/1/1968	No Provision	No Provision
Connecticut	Yes effective 1/1/1950	Yes effective 6/6/1980	No Provision	No Provision

<b>STATE</b>	<b>Written Consent Required For Father to be named on birth certificate</b>	<b>Court Determination required for father to be named on birth certificate</b>	<b>Written consent required for child's surname to be as father's on birth certificate</b>	<b>Court determination required for child's surname to be same as father's on birth certificate</b>
Delaware	Yes effective 1915	No Provision	No Provision	No Provision
District of Columbia	Yes effective 10/8/1981	Yes effective 10/8/1981	Yes effective 10/8/1981	Yes effective 10/8/1981
Florida	Yes effective 7/1/1977	Yes effective 7/1/1977	Yes effective 7/1/1977	Yes effective 7/1/1977
Georgia	Yes effective 7/1/1964	Yes effective 7/1/1964	Yes effective 7/1/1964	Yes effective 7/1/1964
Guam	Yes effective 6/1/1969	Yes effective 6/1/1969	No Provision	No Provision
Hawaii	No Provision	No Provision	No Provision	No Provision
Idaho	Yes effective 1/3/1978	Yes effective 1/3/1978	Yes effective 1/3/1978	Yes effective 1/3/1978
Illinois	Yes effective 1/1/1962	Yes effective 1/1/1962	No Provision	No Provision
Indiana	No Provision	Yes effective 8/18/1969	No Provision	Yes effective 08/16/1969
Iowa	Yes effective 7/1/1970	Yes effective 7/1/1970	Yes effective 7/1/1970	No Provision

<b>STATE</b>	<b>Written Consent Required For Father to be named on birth certificate</b>	<b>Court Determination required for father to be named on birth certificate</b>	<b>Written consent required for child's surname to be as father's on birth certificate</b>	<b>Court determination required for child's surname to be same as father's on birth certificate</b>
Kansas	Yes effective 6/30/1963	Yes effective 6/30/1963	No Provision	No Provision
Kentucky	Yes effective 7/1/1975	Yes effective 7/1/1975	Yes effective 7/1/1975	Yes effective 7/1/1975
Louisiana	No Provision	No Provision	No Provision	Yes effective 9/7/1979
Maine	Yes effective 7/21/1945	Yes effective 10/24/1977	No Provision	No Provision
Maryland	No Provision	No Provision	No Provision	No Provision
Massachusetts	Yes effective 8/31/1977	No Provision	No Provision	No Provision
Michigan	Yes effective 9/30/1978	Yes effective 9/30/1978	No Provision	No Provision
Minnesota	Yes effective 8/1/1980	Yes effective 3/29/1978	Yes effective 3/29/1978	Yes effective 3/29/1978
Mississippi	Yes effective 7/1/1989	Yes effective 7/1/1989	Yes effective 7/1/1989	Yes effective 7/1/1989
Missouri	No Provision	No Provision	No Provision	No Provision

<b>STATE</b>	<b>Written Consent Required For Father to be named on birth certificate</b>	<b>Court Determination required for father to be named on birth certificate</b>	<b>Written consent required for child's surname to be as father's on birth certificate</b>	<b>Court determination required for child's surname to be same as father's on birth certificate</b>
Nebraska	Yes effective 2/18/1977	Yes effective 2/18/1977	Yes effective 2/18/1977	Yes effective 2/18/1977
Nevada	Yes effective 1/1/1968	Yes effective 1/1/1968	Yes effective 1/1/1968	No Provision
New Hampshire	Yes- effective 5/12/1949	Yes effective 5/12/1949	Yes effective 5/12/1949	Yes effective 5/12/1949
New Jersey	No Provision	No Provision	No Provision	No Provision
New Mexico	Yes effective 6/11/1961	Yes effective 6/11/1961	No Provision	No Provision
New York	Yes effective 1936	No Provision	No Provision	No Provision
North Carolina	Yes effective 7/1/1979	Yes effective 7/1/1979	Yes effective 7/1/1979	Yes effective 7/1/1979
North Dakota	Yes effective 7/1/1975	Yes effective 7/1/1975	Yes effective 7/1/1975	No Provision
Ohio	Yes effective 10/31/1967	Yes effective 6/29/1982	Yes effective 10/31/1967	No Provision
Oklahoma	Yes effective 7/1/1963	Yes effective 7/1/1963	Yes effective 9/1/1994	Yes effective 9/1/1994

<b>STATE</b>	<b>Written Consent Required For Father to be named on birth certificate</b>	<b>Court Determination required for father to be named on birth certificate</b>	<b>Written consent required for child's surname to be as father's on birth certificate</b>	<b>Court determination required for child's surname to be same as father's on birth certificate</b>
Oregon	Yes effective 10/3/1979	Yes effective 10/3/1979	No Provision	No Provision
Pennsylvania	No Provision	No Provision	No Provision	No Provision
Puerto Rico	No Provision	No Provision	No Provision	No Provision
Rhode Island	Yes effective 1/1/1962	Yes effective 1/1/1962	No Provision	No Provision
South Carolina	Yes effective 7/18/1978	Yes effective 7/18/1978	Yes effective 2/24/1988	Yes effective 2/24/1988
South Dakota	Yes effective 7/1/1972	Yes effective 7/1/1972	Yes effective 7/1/1972	No Provision
Tennessee	Yes effective 7/1/1977	Yes effective 7/1/1977	Yes effective 7/1/1977	Yes effective 7/1/1977
Texas	Yes effective 9/1/1985	Yes effective 9/1/1989	No Provision	No Provision
Trust Territories	No Provision	No Provision	No Provision	No Provision
Utah	No Provision	No Provision	No Provision	No Provision
Vermont	No Provision	No Provision	No Provision	No Provision
Virgin Islands	No Provision	No Provision	No Provision	No Provision

<b>STATE</b>	<b>Written Consent Required For Father to be named on birth certificate</b>	<b>Court Determination required for father to be named on birth certificate</b>	<b>Written consent required for child's surname to be as father's on birth certificate</b>	<b>Court determination required for child's surname to be same as father's on birth certificate</b>
Virginia	Yes effective 12/31/1960	Yes effective 12/31/1960	No Provision	No Provision
Washington	Yes effective 3/11/1960	Yes effective 3/11/1960	No Provision	No Provision
West Virginia	Yes effective 1919	Yes effective 1919	No Provision	No Provision
Wisconsin	Yes effective 7/1/1981	Yes effective 12/31/1953	No Provision	No Provision
Wyoming	Yes effective 5/24/1973	Yes effective 5/24/1973	Yes effective 5/24/1973	No Provision

