



UNITED STATES GOVERNMENT
MEMORANDUM

FORM G-115f(1-92)
RAILROAD RETIREMENT BOARD

L-2023-01

November 22, 2022

TO: Randy Hayden
Chief of RRA, Applications and Calculation

FROM: Ana M. Kocur **ANA** Digitally signed
General Counsel **KOCUR** by ANA KOCUR
Date: 2022.11.22
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SUBJECT: Eligibility for Widow(er) Benefits for Applicants in Same-Sex
Marriages in States Without Common Law Marriage

This memorandum is in response to your April 22, 2022 request for an informal legal opinion, asking if the RRB may recognize a same-sex relationship as a deemed marriage for purposes of eligibility for widow and widower annuities under the Railroad Retirement Act when the railroad employee died before same-sex ceremonial marriage became legal in the state of domicile and the state does not recognize common-law marriages. It is my opinion that the RRB may recognize a same-sex relationship as a deemed marriage for purposes of eligibility for survivor annuities under the Railroad Retirement Act on the same terms as the Social Security Administration recognizes such claims, as described below.

The claimant in the pending case, [REDACTED], is the same-sex partner of a deceased railroad employee, [REDACTED], who died on May 30, 2000. Mr. [REDACTED] and Mr. [REDACTED] resided in Nebraska, a state that did not recognize same-sex marriages or common law marriages prior to the employee's death. Mr. [REDACTED] filed for a widower's annuity under the Railroad Retirement Act on March 1, 2022, based on his relationship with Mr. [REDACTED]. Mr. [REDACTED] has cited to a class action lawsuit brought against the Social Security Administration, *Thornton v. Commissioner of Social Security*, No. 2:18-cv-01409 in the U.S. District Court for the Western District of Washington, to support his claim for a deemed marriage under these circumstances.

In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the U.S. Supreme Court held that under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution, same-sex couples may not be deprived of the right to marry. In light of that decision, my predecessor issued Legal Opinions L-2015-3.1 (permitting payment of benefits to same-sex couples who had been ceremonially married in one state, but domiciled in another state that did not recognize that marriage prior to *Obergefell*) and L-2015-48 (permitting payment of a spouse annuity based on a same-sex common law

marriage in a state that did not recognize same-sex marriages prior to *Obergefell*.) These prior opinions did not consider the question of same-sex couples in states that do not recognize common law marriages, or same-sex couples where the railroad employee died before *Obergefell* was decided. Because Mr. [REDACTED] did not obtain a ceremonial marriage to the railroad employee and they resided in a state that does not recognize common law marriages, neither L-2015-3.1 nor L-2015-48 provide a resolution to his claim.

Thornton v. Commissioner of Social Security was a class-action lawsuit filed on September 25, 2018 in the U.S. District Court for the Western District of Washington on behalf of a class of plaintiffs who applied for (and were denied) survivor's benefits under the Social Security Act based on same-sex relationships that never resulted in marriage due solely to unconstitutional State laws prohibiting same-sex marriage prior to *Obergefell*. Like the claimant in the pending case before the RRB, the lead plaintiff in *Thornton* was unable to marry her same-sex partner because the partner died before *Obergefell* was decided and state prohibitions on same-sex marriage were found to be unconstitutional. The district court ultimately concluded on September 11, 2020 that the Commissioner erred in denying Ms. Thornton's claim for survivor benefits, certified a nationwide class, and issued an injunction prohibiting the Social Security Administration from denying widow(er)'s benefits without first determining whether survivors of same-sex relationships who were prevented from marrying by unconstitutional laws barring same-sex marriage would otherwise be entitled to widow(er)'s benefits under the Social Security Act. The district court limited its ruling to claims for benefits filed with the Social Security Administration before November 25, 2020; however, the Social Security Administration did not appeal the injunction and agreed to voluntarily process claims filed after the November 25, 2020 end date for the certified class by the same rules as were applied to class members. The Social Security Administration issued Emergency Message EM-21007 REV 2 on February 24, 2022, providing instructions for processing claims, appeals, and reopening requests for widow(er)'s benefits based on the *Thornton* decision. Under these instructions, if the agency determines the same-sex couple would have met the marriage requirement for widow(er)'s benefits in the Social Security Act but for an unconstitutional State law prohibiting same-sex marriage, and if all other factors for entitlement to widow(er)'s benefits are met, the claim for benefits should be granted and widow(er)'s benefits paid to the surviving same-sex partner.

The RRB was not a party to the *Thornton* case and the injunction issued in that case is not binding on the RRB. Nevertheless, the legal question in *Thornton* and in the pending case are so similar as to be indistinguishable. Section 2(d) of the Railroad Retirement Act defines the conditions for survivors' annuities to be payable under the Railroad Retirement Act. 45 U.S.C. § 231a(d). That section defines a widow, widower, child, parent, and surviving divorced wife of a deceased railroad employee through reference to the definitions for those family relationships in the Social Security Act. Because the critical eligibility issue in *Thornton* and other similarly situated claimants was whether the same-sex partner qualified as a "widow" or "widower" under the Social Security Act, the legal reasoning in the *Thornton* case would apply equally to claims for survivor's annuities under section 2(d) of the Railroad Retirement Act, because the operative definition of "widow" and "widower" comes from the same section of the Social Security Act.

Therefore, it is my opinion that the RRB should permit claimants for survivor annuities under section 2(d) the Railroad Retirement Act to deem a same-sex relationship as a marriage for benefit eligibility purposes on the same terms as the Social Security Administration permits under *Thornton* and EM-21007 REV 2.

Attachments

Thornton v. Commissioner of Social Security, No. 2:18-cv-01409, W.D. Wash,
Order Adopting Report and Recommendation, Sep. 11, 2020
Social Security Emergency Message EM-21007 REV 2, Feb. 24, 2022
L-2015-3.1 (Aug. 14, 2015)
L-2015-48 (Oct. 2, 2015)

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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HELEN JOSEPHINE THORNTON,
11 et al.,

12 Plaintiffs,

13 v.

14 COMMISSIONER OF SOCIAL
15 SECURITY,

16 Defendant.

CASE NO. C18-1409JLR

ORDER ADOPTING REPORT
AND RECOMMENDATION

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I. INTRODUCTION

Before the court is Magistrate Judge J. Richard Creatura's combined report and recommendation on Plaintiffs Helen Josephine Thornton and National Committee to Preserve Social Security and Medicare's (the "National Committee") (collectively, "Plaintiffs") complaint and motion for class certification (the "Report and Recommendation"). (R&R (Dkt. # 74).) Magistrate Judge Creatura issued the Report and Recommendation in response to Plaintiffs' motion on the merits of the complaint and

1 for class certification.¹ (*See* Mot. (Dkt. # 53); *see also* Resp. (Dkt. # 63); Reply (Dkt.
 2 # 64).) Plaintiffs and Defendant Commissioner of Social Security (“the Commissioner”)
 3 also submitted multiple rounds of supplemental briefing to Magistrate Judge Creatura and
 4 participated in oral argument before Magistrate Judge Creatura. (*See* Def. 1st Supp. Br.
 5 (Dkt. # 67); Pl. 1st Supp. Br. (Dkt. # 68); Pl. 2d Supp. Br. (Dkt. # 71); Def. 2d Supp. Br.
 6 (Dkt. # 73); 11/21/19 Minute Entry (Dkt. # 65); 11/21/19 Hr. Tr. (Dkt. # 70).) After
 7 Magistrate Judge Creatura issued the Report and Recommendation, both parties filed
 8 objections to the Report and Recommendation (*see* Def. Obj. (Dkt. # 78); Pls. Obj. (Dkt.
 9 # 79)), and responses to the respective objections (*see* Def. Obj. Resp. (Dkt. # 81); Pls.
 10 Obj. Resp. (Dkt. # 80).)).) The court has considered the motion, the Report and
 11 Recommendation, the parties’ submissions filed in support of and in opposition to the
 12 motion and the Report and Recommendation, the oral argument of the parties, the
 13 relevant portions of the record, and the applicable law. Being fully advised, the court
 14 ADOPTS the Report and Recommendation as detailed below.

15 **II. BACKGROUND²**

16 This case arises out of the Social Security Administration’s (“the Administration”)
 17 decision to deny surviving spousal benefits (“survivor’s benefits”) to the surviving
 18 partners of same-sex couples who were prohibited from marrying because of

19
 20 ¹ The parties stipulated to resolving this matter on the briefing. (*See* 4/11/19 Status Rpt.
 (Dkt. # 51); 4/16/19 Sched. Order (Dkt. # 52).)

21 ² Because the facts and procedural background of this case are well known to the parties
 22 and covered in detail in the Report and Recommendation (*See* R&R at 2-8), the court offers only
 a brief summary here.

1 now-unconstitutional state laws that banned same-sex marriage. (*See generally* 2d Am.
2 Compl. ¶¶ 1-12.) As Magistrate Judge Creatura aptly details, Ms. Thornton—the lead
3 plaintiff in this matter—and her partner, Margery Brown, spent 27 years together and
4 “were partners for life in every meaningful way, except sharing a marriage license.” (*See*
5 R&R at 2-3.) During the time that Ms. Thornton and Ms. Brown were together—from
6 approximately 1978 to 2006 (*see* Admin. Record (“AR”) (Dkt. # 34) (sealed) at 70-76)—
7 the state of Washington did not allow same-sex marriage, *see* RCW 26.04.010 (1998),
8 amended by 2012 Wash. Legis. Serv. ch. 3 (S.S.B. 6239). Unfortunately, Ms. Brown
9 passed away in 2006 (*see* AR at 75), which was approximately one year before
10 Washington recognized domestic partnerships and six years before Washington legalized
11 same-sex marriage in 2012, *see* RCW 26.04.010 (2012). It is undisputed that Ms.
12 Thornton and Ms. Brown would have married but for Washington State’s law at the time,
13 which made same-sex marriage illegal. (*See* Mot. at 3-6; Resp. at 35 (“Defendants have
14 chosen not to dispute in this litigation that, but for Washington law, Ms. Thornton herself
15 would have married . . .”).)

16 In January 2015, Ms. Thornton applied for Social Security survivor’s benefits
17 based on Ms. Brown’s work history pursuant to 42 U.S.C. § 402. (*See* AR at 19-22.)
18 Under the Social Security Act and the Administration’s interpreting regulations, the
19 surviving spouse—either a “widow” or a “widower”—of a deceased person is eligible to
20 be paid monthly survivor’s benefits if the deceased spouse would have been insured
21 under the Social Security Act. *See* 42 U.S.C. §§ 402(e)-(f). The Social Security Act
22 further provides that “[a]n applicant is the . . . widow, or widower of a fully or currently

1 insured individual . . . if . . . the courts of the State in which he was domiciled at the time
2 of death . . . would find that such applicant and such insured individual were validly
3 married . . . at the time he died.” 42 U.S.C. § 416(h)(1)(A)(i).

4 On April 8, 2015, the Administration denied Ms. Thornton’s application for
5 benefits because she was not married to Ms. Brown at the time of Ms. Brown’s death
6 according to Washington law. (*See* AR at 20 (“[W]e cannot pay benefits to you because
7 domestic partnership was not recognized in the State of Washington until January 22,
8 2007 after Margery B. Brown[’s] death. We cannot pay benefits to you because same sex
9 marriage was not recognized in the State of Washington until December 14, 2012 after
10 Margery B. Brown[’s] death.”). On December 8, 2015, the Administration denied Ms.
11 Thornton’s request for reconsideration because “at the time of Ms. Brown’s death in
12 2006, the State of Washington did not recognize same-sex marriages.” (*See* Supp. Admin
13 Record (“Supp. AR”) (Dkt. # 50) at 190.) Ms. Thornton requested a hearing in front of
14 an Administrative Law Judge (“ALJ”), which was held on October 18, 2016. (*See* AR at
15 13.) On January 10, 2017, the ALJ concluded that Ms. Thornton was not entitled to
16 survivor’s benefits because she was not legally married to Ms. Brown under Washington
17 law at the time of Ms. Brown’s death. (*Id.* at 15.) Ms. Thornton appealed, but an appeals
18 council denied review by letter dated July 23, 2018. (*Id.* at 2.)

19 After the Administration denied Ms. Thornton’s request for review, Ms. Thornton
20 filed this action challenging the Administration’s denial of her benefits. (*See generally*
21 2d Am. Compl.) Ms. Thornton alleges that the Administration’s adjudication of her
22 claim for survivor’s benefits and the claims of other surviving same sex partners violates

1 the right to equal protection and the right to due process under the Fifth and Fourteenth
2 Amendments of the United States Constitution. (*See id.* ¶¶ 87-103.) The National
3 Committee—a membership organization that is “committed to ensuring that social
4 security benefits are widely accessible, including to same-sex spouses”—also joins Ms.
5 Thornton’s challenge to the Administration’s actions “in furtherance of its mission and in
6 support of Ms. Thornton and other similarly-situated members.” (*See id.* ¶¶ 11-12, 14-
7 16.)

8 The parties stipulated to address the merits of Ms. Thornton’s challenges to the
9 Administration’s actions and the question of class certification and class relief
10 simultaneously. (*See* 4/11/19 Status Rpt.; 4/16/19 Sched. Order.) Magistrate Judge
11 Creatura issued the Report and Recommendation on January 31, 2020. (*See* R&R at 38.)
12 On the merits of Ms. Thornton’s claim, Magistrate Judge Creatura concluded that the
13 Administration’s actions violated her rights to due process and equal protection. (*See*
14 R&R at 20.) Magistrate Judge Creatura also concluded that the following class definition
15 met all of the requirements for class certification under Federal Rule of Civil Procedure
16 23:

17 All persons nationwide who presented claims for social security survivor’s
18 benefits based on the work history of their same-sex partner and who were
19 barred from satisfying the marriage requirements for such benefits because
20 of applicable laws that prohibited same-sex marriage. This class is intended
21 to exclude any putative class members in *Ely v. Saul*, No.
22 4:18-cv-00557-BPV (D. Ariz.)

(*Id.* at 21.) Based on those conclusions, Magistrate Judge Creatura recommended that the
court (1) grant Ms. Thornton’s motion for class certification and certify the class with the

1 definition provided above, (2) issue nationwide class relief “requiring the Administration
2 to consider whether survivors of same-sex couples who were denied their constitutional
3 right to marry would otherwise qualify for survivor’s benefits,” (3) reverse and remand
4 Ms. Thornton’s individual claim to the Administration for further proceedings, (4)
5 dismiss the National Committee from the action, and (5) grant judgment for Ms.
6 Thornton and the class. (*Id.* at 37-38.)

7 III. ANALYSIS

8 Plaintiffs and the Commissioner object to Magistrate Judge Creatura’s Report and
9 Recommendation. (*See generally* Def. Obj.; Pls. Obj.) The Commissioner argues that
10 (1) Magistrate Judge Creatura incorrectly ruled that the marriage requirements in the
11 Social Security Act are unconstitutional, and (2) Magistrate Judge Creatura erred in
12 recommending that this court grant class certification. (*See* Def. Obj. at 2-12.) Plaintiffs
13 agree with Magistrate Judge Creatura’s recommendation on the merits and on class
14 certification, but argue that Magistrate Judge Creatura’s proposed class is too narrow and
15 wrongfully excludes individuals who have not yet presented claims for survivor’s
16 benefits to the Administration. (*See* Pls. Obj. at 2-4.) The parties also raise objections
17 regarding the appropriateness of nationwide relief in this case and whether the National
18 Committee should be dismissed from this action. (*See id.* at 12; Def. Obj. Resp. at 9-11;
19 Def. Obj. at 12 n.7.) The court first addresses the Commissioner’s objections to
20 Magistrate Judge Creatura’s recommendation on the merits of Ms. Thornton’s claim,
21 before turning to the parties’ objections on class certification and other miscellaneous
22 issues.

1 **A. Legal Standard**

2 A district court has jurisdiction to review a Magistrate Judge's report and
3 recommendation on dispositive matters. *See* Fed. R. Civ. P. 72(b). "The district judge
4 must determine *de novo* any part of the magistrate judge's disposition that has been
5 properly objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole
6 or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.
7 § 636(b)(1). The court reviews *de novo* those portions of the report and recommendation
8 to which specific written objection is made. *United States v. Reyna-Tapia*, 328 F.3d
9 1114, 1121 (9th Cir. 2003) (*en banc*).

10 Pursuant to 42 U.S.C. § 405(g), a claimant may seek judicial review in a federal
11 district court after she obtains from the Commissioner a final judgment of her Social
12 Security claim. *See Johnson v. Shalala*, 2 F.3d 918, 921 (9th Cir. 1993). The district
13 court has jurisdiction to enter a "judgment affirming, modifying, or reversing the decision
14 of the Commissioner of Social Security, with or without remanding the cause for a
15 rehearing." 42 U.S.C. § 405(g). The factual findings of the Commissioner "if supported
16 by substantial evidence, shall be conclusive[.]" *Id.* The court shall review questions of
17 law with respect to "conformity with such regulations and the validity of such
18 regulations." *Id.*

19 **B. The Merits of Ms. Thornton's Claim**

20 The court has thoroughly examined the record and concludes that the
21 Commissioner's objections to Magistrate Judge Creatura's decision on the merits of Ms.
22 Thornton's claims raise arguments that Magistrate Judge Creatura properly addressed and

1 rejected in the Report and Recommendation. Prior to addressing the specifics of the
2 Commissioner's objection, however, the court clarifies its understanding of the contours
3 of Ms. Thornton's challenge to the Social Security Act. The Commissioner attempts to
4 cast Ms. Thornton's challenge in this case too broadly by referring to the "marriage
5 requirement" in the Social Security Act in broad strokes. (*See, e.g., id.* at 1.) As noted
6 above, the Social Security Act requires that individuals be either the "widow" or
7 "widower" of a deceased person in order to receive survivor's benefits, *see* 42 U.S.C.
8 §§ 402(e)-(f), and clarifies that "[a]n applicant is the . . . widow, or widower of a fully or
9 currently insured individual . . . if . . . the courts of the State in which he was domiciled at
10 the time of death . . . would find that such applicant and such insured individual were
11 validly married . . . at the time he died," 42 U.S.C. § 416(h)(1)(A)(i). Ms. Thornton does
12 not challenge this "marriage requirement" *in toto*. Instead, she argues that the
13 Administration's application of this statutory scheme to deny survivor's benefits to
14 same-sex couples who were unable to marry at the time of the decedent spouse's death
15 based on state laws that have now been declared unconstitutional violates equal
16 protection and due process. (*See* Mot. at 1-2; 2d Am. Compl. ¶¶ 82-86, 88, 100; R&R at
17 1.) Thus, the court analyzes the marriage requirement in light of the contours of Ms.
18 Thornton's challenge.³

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³ The court also notes that neither party objects to Judge Creatura's conclusion that "the same or similar analysis applies to both the due process clause of the Fifth Amendment (applied to federal statutes) and the due process and equal protection clauses of the Fourteenth Amendment (applied to state statutes)." (R&R at 9.) Thus, as Judge Creatura did, the court analyzes Ms. Thornton's due process and equal protection claims under the same framework.

1 The Commissioner argues that rational-basis review applies to the court's review
 2 of the marriage requirement (Def. Obj. at 2-7), and that the marriage requirement
 3 survives constitutional review if rational-basis review applies, (*id.* at 7-9). The court
 4 disagrees on both points.

5 First, the court concludes that heightened scrutiny is warranted.⁴ The
 6 Commissioner argues that the challenged portions of the Social Security Act are facially
 7 neutral and do not “target a suspect class nor burden a fundamental right.” (*See* Def. Obj.
 8 at 1.) If the Commissioner is correct that the marriage requirement is facially neutral and
 9 merely disproportionately impacts same-sex couples, then rational-basis review applies.
 10 *See Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265 (1977)
 11 (“[O]fficial action will not be held unconstitutional solely because it results in a racially
 12 disproportionate impact.”). On the other hand, if the marriage requirement incorporates
 13 and relies on state law that discriminates on the basis of sexual orientation, it is subject to
 14 a heightened level of scrutiny. *See SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d
 15 471, 484 (9th Cir. 2014) (“*Windsor*’s heightened scrutiny applies to classifications based
 16 on sexual orientation.”).

17
 18 ⁴ The court recognizes that Judge Creatura eschewed the traditional analysis of “rational
 19 basis” and “heightened scrutiny” review based on recent signals from the Supreme Court that
 20 strict adherence to levels of scrutiny may no longer be necessary in cases that impact
 21 “fundamental rights” like the right to marry. (*See* R&R at 10-12 (citing *Obergefell v. Hodges*,
 22 576 U.S. 644, 663-64 (2015) and *Pavan v. Smith*, --- U.S. ---, 137 S. Ct. 2075, 2078 (2017)).)
 Although the court recognizes that *Obergefell* and *Pavan* did not rely on specific levels of
 scrutiny in reaching their conclusions, those cases also did not explicitly reject the legitimacy of
 that analysis. *See generally* *Obergefell*, 576 U.S. 644; *Pavan*, 137 S. Ct. 2075. Because the
 Ninth Circuit continues to utilize the traditional level-of-scrutiny analysis for due process and
 equal protection challenges, *see, e.g., United States v. Mayea-Pulido*, 946 F.3d 1055, 1059 (9th
 Cir. 2020), the court follows that framework here.

1 The court agrees with Magistrate Judge Creatura and a number of other courts
 2 that the marriage requirement “cannot be read in a vacuum” in this specific context and
 3 must instead be read in conjunction with the provisions of state law defining marriage
 4 that the Social Security Act incorporates. *Ely v. Saul*, No. CV-18-0557-TUC-BGM, 2020
 5 WL 2744138, at *7 (D. Ariz. May 27, 2020); *Schmoll v. Saul*, No. 19-cv-04542-NC, Dkt.
 6 # 36 (“*Schmoll* Order”) at 4 (N.D. Cal. June 15, 2020) (“The duration-of-marriage
 7 requirement is inextricable from underlying California law which classifies on the basis
 8 of sexual orientation.”)⁵; (R&R at 10 (“In this case, since the federal statute providing
 9 survivor’s benefits conditions benefits on a state’s law defining marriage, both must be
 10 read together when evaluating Ms. [Thornton’s] constitutional rights. Indeed, they are
 11 inseparable—the Administration cannot determine a claimant’s eligibility for survivor’s
 12 benefits without looking to state law.”)). The Commissioner’s protestations that this
 13 reading “inappropriately attributes to the Social Security Administration historical
 14 discrimination by the State of Washington” (*see* Def. Obj. at 1) fails to acknowledge the
 15 interconnected nature of the statutory scheme at issue. The Social Security Act explicitly
 16 states that the validity of a marriage shall be defined by state law. *See* 42 U.S.C.

18 ⁵ Unlike Ms. Thornton and the proposed class in this case, the class in *Ely* and the
 19 individual plaintiff in *Schmoll* consisted of individuals who were able to marry their same-sex
 20 partner once the law in their respective states was changed to permit same-sex marriage. *See*
 21 *Schmoll* Order at 1-2; *Ely*, 2020 WL 2744138, at *1-4. However, the Social Security Act
 22 requires that applicants for survivor’s benefits to have been married to the decedent for nine
 months in order to qualify for benefits. *See* 42 U.S.C. § 416(g). The plaintiffs in *Ely* and
Schmoll were unable to satisfy this durational requirement because their spouses died before they
had been legally married for nine months. *See Schmoll* Order at 1-2; *Ely*, 2020 WL 2744138, at
*1-4. Outside of this distinction, however, the issues in those cases mirror the ones presented by
Ms. Thornton.

1 | § 416(h)(1)(A)(i). The Administration's implementing regulations could not state this
2 | more clearly: "To decide your relationship as the insured's widow or widower, we look
3 | to the laws of the State where the insured had a permanent home when he or she died."
4 | 20 C.F.R. § 404.345.

5 | To the extent that there is any doubt about whether the Social Security Act and
6 | underlying state law are inextricably intertwined, Ms. Thornton's administrative record
7 | eliminates that doubt. The Administration and the ALJ who reviewed Ms. Thornton's
8 | claim for survivor's benefits repeatedly denied her claim based on Washington's
9 | unconstitutional failure to recognize same-sex marriage. (*See* AR at 20 ("[W]e cannot
10 | pay benefits to you because domestic partnership was not recognized in the State of
11 | Washington until January 22, 2007 after Margery B. Brown[s] death. We cannot pay
12 | benefits to you because same sex marriage was not recognized in the State of Washington
13 | until December 14, 2012 after Margery B. Brown[s] death."); Supp. AR at 190 (denying
14 | reconsideration because "at the time of Ms. Brown's death in 2006, the State of
15 | Washington did not recognize same-sex marriages"; AR at 15 (concluding that Ms.
16 | Thornton was not entitled to survivor's benefits because she was not legally married to
17 | Ms. Brown under Washington law at the time of Ms. Brown's death).) Because the
18 | Administration repeatedly relied on unconstitutional Washington law to deny Ms.
19 | Thornton "the constellation of benefits that the States have linked to marriage,"
20 | *Obergefell*, 576 U.S. at 670, the court cannot ignore the impact of Washington law when
21 | addressing Ms. Thornton's constitutional challenges.

22 | //

1 Reading the marriage requirement in conjunction with the Washington law that the
2 Administration applied to Ms. Thornton's claim for survivor's benefits makes clear that
3 heightened scrutiny is warranted because Washington law at the time discriminated on
4 the basis of sexual orientation. In 2006, when Ms. Brown died, Washington law
5 described marriage as a civil contract that is valid only if "between a male and a female,"
6 RCW 26.04.010(1) (1998), and explicitly provided that a marriage contract is prohibited
7 for couples "other than a male and a female," RCW 26.04.020(1)(c) (1998). In passing
8 this legislation, the Washington legislature specifically noted that "[i]t is the intent of the
9 legislature by this act . . . to establish public policy against same-sex marriage in statutory
10 law that clearly and definitively declares same-sex marriages will not be recognized in
11 Washington, even if they are made legal in other states." *See* 1998 Wash. Legis. Serv.
12 Ch. 1, § 2(2) (S.H.B. 1130). Washington revised its laws to legalize domestic
13 partnerships and same-sex marriages before *Obergefell* held that state laws that
14 prohibited same sex-couples from marrying "burden the liberty of same-sex couples, and
15 . . . abridge central precepts of equality" in violation of due process and equal protection
16 because those laws deny same-sex couples "all the benefits afforded to opposite-sex
17 couples." 576 U.S. at 675-76; *see also* RCW 26.04.010 (2012). There is no dispute,
18 however, that the Washington law that prevented Ms. Thornton from marrying Ms.
19 Brown before Ms. Brown's death discriminated against Ms. Thornton on the basis of
20 sexual orientation and was unconstitutional. (*See* Resp. at 2 ("Ms. Brown died thirteen
21 years ago, during a time when Washington state laws that we now know to be
22 unconstitutional prohibited the couple from marrying . . .").) Because the

1 Administration relied on an unconstitutional law that discriminated on the basis of sexual
2 orientation in denying Ms. Thornton's claim for survivor's benefits, the marriage
3 requirement must be subjected to heightened scrutiny.⁶ See *SmithKline Beecham Corp. v.*
4 *Abbott Labs.*, 740 F.3d 471, 484 (9th Cir. 2014) ("Windsor's heightened scrutiny applies
5 to classifications based on sexual orientation.").

6 Heightened scrutiny requires the government to provide "a tenable justification
7 [that] describe actual state purposes, not rationalizations for actions in fact differently
8 grounded." *United States v. Virginia*, 518 U.S. 515, 535-36 (1996). Where, as here, the
9 application of heightened scrutiny is as-applied rather than facial, the government must
10 demonstrate that a justification exists for the policy as applied to the individual in
11 question. See *Witt v. Dep't of Air Force*, 527 F.3d 806, 819 (9th Cir. 2008). Those
12 justifications must demonstrate that the government's policy significantly furthers
13 important governmental interests and less intrusive means are unlikely to achieve those
14 interests. *Id.*

15 The Commissioner does not contend that the marriage requirement survives
16 heightened scrutiny. (See Resp. at 23-28 (arguing that there is no basis to apply
17 heightened scrutiny); Def. Obj. at 2-10 (arguing that Magistrate Judge Creatura should
18 have applied rational basis review to uphold the marriage requirement).) The court
19 considers the absence of any argument from the Commissioner on this point as a
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21 ⁶ The court rejects the Commissioner's argument that this case is similar to disparate
22 impact cases where courts upheld "facially neutral" laws for the same reasons that Judge
Creatura rejected that argument. (See R&R at 15-16); see also *Schmoll* Order at 5-6 (rejecting
the Administration's comparison of the marriage requirement to disparate impact cases).

1 concession that the marriage requirement as applied to Ms. Thornton cannot survive
2 heightened scrutiny.

3 This concession is wise. Although the court concludes that heightened scrutiny is
4 appropriate here, the court agrees with Magistrate Judge Creatura and the *Ely* court that
5 application of the marriage requirement to same-sex individuals like Ms. Thornton cannot
6 withstand scrutiny at *any* level. (R&R at 17 (“Even if the ‘rational basis’ test applies,
7 which is questionable, none of the reasons provided by the Administration can provide a
8 rational basis for denying Ms. Thornton survivor’s benefits.”); *Ely*, 2020 WL 2744138, at
9 *7 (“Because the duration of marriage requirement is based upon an unconstitutional
10 Arizona law, it cannot withstand scrutiny at any level.”); *see also Schmoll* Order at 7-8
11 (concluding that the marriage duration requirement cannot survive heightened scrutiny).
12 Magistrate Judge Creatura carefully reviewed and rejected the Commissioner’s
13 arguments that the marriage requirement as applied to Ms. Thornton survives rational
14 basis review because (1) it reduces the risk of fraudulent marriages, (2) it improves
15 administrative efficiency, and (3) it awards benefits based on a rational classification that
16 prioritizes those who are most likely to have been in a financially interdependent
17 relationship with the deceased individual. (*See* R&R at 15-20.) The Commissioner
18 re-raises those same rational bases in its objection to Magistrate Judge Creatura’s Report
19 and Recommendation. (*See* Def. Obj. at 7-9.) The court concludes that it need not
20 re-hash Magistrate Judge Creatura’s thoughtful rejection of the Commissioner’s
21 arguments. Instead, the court adopts the Report and Recommendation’s alternative
22 rational basis analysis and concludes that even if rational basis review applied, the

1 marriage requirement fails rational basis review as applied to Ms. Thornton. (*See* R&R at
2 15-20); *see also Ely*, 2020 WL 2744138, at *7-9.

3 In sum, the court concludes that heightened scrutiny applies to the
4 Administration's application of the marriage requirement to Ms. Thornton and that the
5 marriage requirement cannot survive heightened scrutiny. As such, the marriage
6 requirement violates Ms. Thornton's due process and equal protection rights under the
7 Fifth and Fourteenth Amendments. Alternatively, the court notes that even if rational
8 basis review applied, the marriage requirement would still fail. As such, the court
9 ADOPTS this portion of Magistrate Judge Creatura's Report and Recommendation,
10 GRANTS Ms. Thornton's motion on the merits of her claim, and REVERSES and
11 REMANDS Ms. Thornton's application for benefits to the Administration for
12 proceedings consistent with this order.

13 **C. Class Certification**

14 Both parties object to portions of Magistrate Judge Creatura's recommendation on
15 class certification. First, Plaintiffs object that Magistrate Judge Creatura improperly
16 narrowed the class by concluding that the court lacks jurisdiction over individuals who
17 have not yet presented claims for survivor's benefits to the Administration. (*See* Pls. Obj.
18 at 6-12.) Second, the Commissioner argues that class certification is not appropriate in
19 this case regardless of the class definition and, in the alternative, that Magistrate Judge
20 Creatura's proposed class is defined too broadly. (Def. Obj. at 10-12.) The court first
21 addresses the definition of the class before turning to the merits of the certification
22 question.

1 1. Class Definition

2 The court has thoroughly reviewed Magistrate Judge Creatura's recommended
3 class definition and agrees with Magistrate Judge Creatura that the class should be
4 defined as follows:

5 All persons nationwide who presented claims for social security survivor's
6 benefits based on the work history of their same-sex partner and who were
7 barred from satisfying the marriage requirements for such benefits because
8 of applicable laws that prohibited same-sex marriage. This class is intended
9 to exclude any putative class members in *Ely v. Saul*, No.
10 4:18-cv-00557-BPV (D. Ariz.)

11 (See R&R at 21.)

12 The court rejects Plaintiffs' argument that the court should broaden this definition
13 to include persons who will present claims for survivor's benefits in the future. (See Pls.
14 Obj. at 6-12.) "Section 405(g) specifies the following requirements for judicial review:
15 (1) a final decision of the Secretary made after a hearing; (2) commencement of a civil
16 action within 60 days after the mailing of notice of such decision (or within such further
17 time as the Secretary may allow); and (3) filing of the action in an appropriate district
18 court[.]" *Weinberger v. Salfi*, 422 U.S. 749, 763-64 (1975). The Supreme Court has
19 clarified that the "final decision" requirement breaks down into two parts—a
20 "presentment" requirement and an "exhaustion" requirement. See *Mathews v. Eldridge*,
21 424 U.S. 319, 328 (1976). The only jurisdictional element of Section 405(g) is the
22 "presentment" requirement—that a claim for benefits have actually been presented to the
Administration. *Id.* This requirement is not waivable because it is "central to the
requisite grant of subject-matter jurisdiction[.]" *Salfi*, 422 U.S. at 763-64; see also *Smith*

1 | *v. Berryhill*, --- U.S. ---, 139 S. Ct. 1765, 1773 (2019) (reaffirming that Section 405(g)'s
2 | "requirement that claims be presented to the agency" is "jurisdictional"). Thus, the court
3 | does not have subject-matter jurisdiction over hypothetical claimants who will present
4 | claims to the Administration in the future. *See Salfi*, 422 U.S. at 763-64; *Smith*, 139 S.
5 | Ct. at 1773. As such, the court agrees with Magistrate Judge Creatura that individuals
6 | who will present claims in the future cannot be included in the class. (*See R&R* at 23-
7 | 24.)

8 | The court also rejects Plaintiffs' attempts to bring future presenters within this
9 | court's jurisdiction using mandamus jurisdiction. *See* 28 U.S.C. § 1361; (*see also* Pls.
10 | Obj. at 11-12). The Supreme Court has not yet decided whether 42 U.S.C. § 405(h)—the
11 | portion of Section 405 barring review "except as herein provided"—is the sole means of
12 | reviewing a decision of the Commissioner. *See, e.g., Califano v. Yamasaki*, 442 U.S.
13 | 682, 698 (1979); *see also Heckler v. Ringer*, 466 U.S. 602, 616 (1984) ("We have on
14 | numerous occasions declined to decide whether the third sentence of § 405(h) bars
15 | mandamus jurisdiction over claims arising under the Social Security Act[.]"). Although
16 | the court is skeptical that it could rely on mandamus jurisdiction to get around Section
17 | 405(g)'s jurisdictional presentment requirement, the court need not resolve that issue.
18 | Even if mandamus jurisdiction could be applied in this case, the court would not do so
19 | here. Mandamus—which is an extraordinary remedy—is only available to compel a
20 | federal official to perform a duty if "(1) the individual's claim is clear and certain; (2) the
21 | officials' duty is non-discretionary, ministerial, and so plainly prescribed as to be free
22 | from doubt; and (3) no other adequate remedy is available." *Kildare v. Saenz*, 325 F.3d

1 1078, 1084 (9th Cir. 2003) (internal quotation marks and citation omitted). Here, as the
2 analysis above reveals, individuals who will present a claim for survivor's benefits in the
3 future have an adequate remedy available to them. They may do as Ms. Thornton did and
4 present their claims to the Administration and then file a lawsuit and seek redress under
5 Section 405(g) in the event that their claim is denied on grounds that they believe are
6 objectionable or unconstitutional.

7 The court also disagrees with the Commissioner's arguments that Magistrate
8 Judge Creatura erred in waiving the exhaustion requirement and the 60-day statute of
9 limitations included in Section 405(g). (*See* Def. Obj. at 12.) Unlike the presentment
10 requirement, the parties agree that these Section 405(g) requirements are waivable (*see*
11 Mot. at 28-30; Resp. at 29-31), and the court agrees with Magistrate Judge Creatura that
12 they should be waived in this case (*see* R&R at 24-27). Where there is no dispute
13 regarding the facts or application of statutory law, and the only issue is the
14 constitutionality of a statutory requirement, waiver of exhaustion is particularly
15 appropriate. *See Salfi*, 422 U.S. at 766–67. The Commissioner protests that claims for
16 survivor's benefits are highly fact-specific and should be resolved by the
17 Administration's ALJs. (*See* Resp. at 30.) As discussed in more detail, below, the court
18 agrees with the Commissioner on that point and clarifies—as Magistrate Judge Creatura
19 did—that it expects the Administration to conduct such a review to comply with this
20 court's order. (*See* R&R at 25.) However, the Commissioner's argument on this point
21 ignores the fact that the Administration does not even consider claims for survivor's

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1 benefits for persons like Ms. Thornton who were not married. (See AR at 15, 20; Supp.
2 AR at 190.) Thus, it would be futile to require exhaustion.

3 The court also agrees with Magistrate Judge Creatura that once the court waives
4 the exhaustion requirement on futility grounds, the 60-day statute of limit should also be
5 waived. Although the Administration typically determines whether or not to extend the
6 60-day limitation on filing a district court appeal after exhaustion of administrative
7 remedies, “cases may arise where the equities in favor of tolling the limitations period are
8 so great that deference to the agency’s judgment is inappropriate.” *Bowen v. New York*,
9 476 U.S. 467, 480 (1986). The court concludes that the equities in this case presented by
10 the Administration’s blanket refusal to consider claims for survivor’s benefits made by
11 individuals who were unable to marry their partner based on unconstitutional state laws
12 favor waving the limitations period. Moreover, the court notes that the now-waived
13 exhaustion requirement is a prerequisite to filing an appeal in district court. It makes
14 little sense to waive the exhaustion requirement but strictly enforce the limitations
15 period.⁷

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20 ⁷ The Commissioner claims that the court should not enforce the presentment requirement
21 but waive the exhaustion and statute of limitations requirements. (See Def. Obj. at 12.) But, as
22 already discussed, binding authority dictates that the presentment requirement is jurisdictional
and non-waivable, while the exhaustion and statute of limitations are non-jurisdictional and
waivable. *Salfi*, 422 U.S. at 763-64; *Smith*, 139 S. Ct. at 1773. Thus, the court has little
difficulty exercising its authority to waive the exhaustion and statute of limitations requirements
while simultaneously concluding that the presentment requirement must be enforced.

1 2. Class Certification

2 After carefully considering the record, the parties' extensive briefing, and
3 Magistrate Judge Creatura's Report and Recommendation, the court concludes that the
4 requirements of Rule 23 have been met in this case and, as such, class certification is
5 appropriate. The Commissioner's primary objections merely recycle arguments that
6 Magistrate Judge Creatura properly considered and rejected. (*See* Def. Obj. at 11 ("For
7 the reasons stated in [the Commissioner's] prior filings, the recommended class fails to
8 satisfy the commonality, typicality, and numerosity requirements of Rule 23(a).").) The
9 court rejects this blanket objection to Magistrate Judge Creatura's analysis and adopts the
10 Report and Recommendation's analysis on class certification in full. (*See* R&R at
11 27-33.) However, in the interest of completeness, the court addresses the more-specific
12 arguments raised in the Commissioner's objections.

13 First, the Commissioner's arguments that Ms. Thornton has failed to establish the
14 commonality requirement of Rule 23(a) misunderstands the question presented by this
15 case. (*See* Def. Obj. at 11-12); Fed. R. Civ. P. 23(a)(2), 23(b). The commonality
16 requirement states that there must be "questions of law or fact common to the class."
17 Fed. R. Civ. P. Rule 23(a)(2). For commonality, "[w]hat matters . . . is not the raising of
18 common 'questions'—even in droves—but rather, the capacity of a class-wide
19 proceeding to generate common answers apt to drive the resolution of the litigation."
20 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

21 The Commissioner claims that commonality has not been established here because
22 "class members will have to make individualized factual arguments about how their

1 relationship would have progressed in a counterfactual universe in which same-sex
2 marriage was lawful earlier,” which allegedly means that class-wide proceedings will not
3 yield common answers to class members’ problems. (*See* Def. Obj. at 11.) If the
4 common question in this case was whether class members were entitled to survivor’s
5 benefits, the court might agree with the Commissioner that commonality would present
6 challenges for the Plaintiffs. But that is not the common question at issue. Instead, the
7 common question presented for each of the class members is whether the
8 Administration’s practice of denying same-sex partners survivor’s benefits because the
9 same-sex partner was unable to marry according to a state law that has now been deemed
10 unconstitutional violates class members’ equal protection and due process rights. (*See*
11 R&R at 30-32.) As discussed above, the court concludes that, for same-sex partners like
12 Ms. Thornton who were barred from marrying their partner by state law, the
13 Administration has erected an unconstitutional barrier to survivor’s benefits by
14 conditioning those benefits on the marriage requirement. *See supra* § III.B. The
15 common question in this case for each class member is whether that barrier should be
16 removed. As Magistrate Judge Creatura noted, once the barrier is removed, it will be up
17 to the Administration to adjudicate class members’ claims for survivor’s benefits. (*See*
18 R&R at 31 (“Although each claimant will have an individual case to be made to support
19 his or her claim for survivor benefits, certifying the class will give each class member the
20 opportunity to make that claim—something they have been unable to do in the past.”).)
21 However, those factual issues do not prevent the court from resolving the common
22 constitutional question presented by this case on a class-wide basis.

1 Although the Commissioner objected to Magistrate Judge Creatura's findings on
2 numerosity (*see* Def. Obj. at 11), the parties stipulated that the numerosity requirement
3 has been met after the court ordered the parties to conduct additional discovery on
4 numerosity (*see* 5/18/20 Order (Dkt. # 82) at 5-8 (ordering the parties to conduct
5 additional discovery); *see* Stip. (Dkt. # 83) ¶ 3 (stipulating that the numerosity
6 requirement is satisfied in this case).) Given that the Commissioner has withdrawn these
7 objections and now stipulates to numerosity, the court concludes that the numerosity
8 requirement is satisfied by the proposed class.

9 Finally, the Commissioner's objections that this class should not be certified under
10 Rule 23(b)(2) repeat the same mistake that the Commissioner made on the commonality
11 requirement. (*See* Def. Obj. at 11-12.) Rule 23(b)(2), "allows class treatment when the
12 party opposing the class has acted or refused to act on grounds that apply generally to the
13 class, so that final injunctive relief or corresponding declaratory relief is appropriate
14 respecting the class as a whole." *Wal-Mart*, 564 U.S. at 360 (citations and internal
15 quotations omitted). "The key to the (b)(2) class is the indivisible nature of the injunctive
16 or declaratory remedy warranted—the notion that the conduct is such that it can be
17 enjoined or declared unlawful only as to all of the class members or as to none of them."
18 *Id.* (citation omitted). The Commissioner claims that the proposed class cannot be
19 certified under Rule 23(b)(2) because "every class member will need to go through
20 additional, individualized litigation." (Def. Obj. at 11-12.) As discussed above,
21 however, the issue in this case is whether the Administration's blanket refusal to consider
22 class members' claims for survivor's benefits violates the class's constitutional rights.

1 The class suffers the same constitutional injury as a result of the same action by the
2 Administration, such that “final injunctive relief or corresponding declaratory relief is
3 appropriate respecting the class as a whole” because the Administration’s actions “can be
4 enjoined or declared unlawful only as to all of the class members or as to none of them.”
5 *Wal-Mart*, 564 U.S. at 360. Thus, certification under Rule 23(b)(2) is appropriate.

6 In sum, the court rejects the parties’ objections to the Report and
7 Recommendation’s analysis on the proposed class definition and class certification. The
8 court ADOPTS this portion of the Report and Recommendation and GRANTS Plaintiffs’
9 motion for class certification.

10 **D. Nationwide Class Relief**

11 Both parties’ objections briefly touch on the issue of the appropriateness of
12 nationwide relief. (*See* Pls. Obj. at 12; Def. Obj. at 12 n.7.) In the Report and
13 Recommendation, Magistrate Judge Creatura rejected the Commissioner’s argument that
14 any class certified by the court should not be a nationwide class and instead concluded
15 that nationwide class relief is appropriate. (*See* R&R at 33-36.) The Commissioner
16 clarified, however, that he objects only to nationwide injunctive relief in the absence of
17 class certification. (*See* Def. Obj. at 12 n.7.) Although the Commissioner reiterated that
18 he does not believe that a class should be certified under Rule 23, he conceded that if the
19 court disagrees and certifies a class in this case, he has no objection to the class extending
20 nationwide and receiving nationwide relief. (*See id.*) Thus, given that the court has now
21 concluded that class certification is appropriate, there is no objection to certification of a
22 nationwide class or the issuance of nationwide class relief. As such, the court concludes

1 that the class in this case extends nationwide and that the class is entitled to injunctive
2 relief.

3 Plaintiffs argue, however, that even if the court certifies a nationwide class in this
4 case, it should nevertheless opine on whether it would be appropriate to issue a
5 nationwide injunction even if class certification was inappropriate. (*See* Pls. Obj. at 12.)
6 The court declines to weigh in on that hypothetical. Class certification is warranted on a
7 nationwide basis, and certifying the class in this case affords complete relief to the
8 injured class members. *See Yamasaki*, 442 U.S. at 701-03 (concluding that nationwide
9 class relief under 42 U.S.C. § 405(g) was appropriate and adequate to afford complete
10 relief to the parties).

11 **E. The National Committee**

12 The court is perplexed by the National Committee's inclusion in this case
13 alongside Ms. Thornton. The complaint indicates that "[t]he National Committee joins
14 this action in furtherance of its mission and in support of Ms. Thornton and other
15 similarly-situated members who are wrongfully denied Social Security survivor's
16 benefits based on SSA's unconstitutional incorporation of, and reliance upon,
17 discriminatory state laws previously barring same-sex couples from marriage." (2d Am.
18 Compl. ¶ 11.) However, Ms. Thornton brought this lawsuit as a class action and Ms.
19 Thornton, not the National Committee, is the proposed class representative. (*See* Mot. at
20 25-26 ("Ms. Thornton seeks to represent a class of similarly situated surviving same-sex
21 partners who face the same discriminatory treatment by [the Administration].").) Beyond
22 //

1 providing “support” for Ms. Thornton’s claim, the National Committee has not filed any
2 of its own claims. (*See* 2d. Am. Compl. ¶¶ 11, 80.)

3 It thus appears as though the National Committee was included in this action
4 solely to give Plaintiffs a second bite at nationwide injunctive relief in the event that the
5 court chose not to certify a class in this case. (*See* Pls. Obj. at 12 (arguing that the
6 National Committee is entitled to nationwide injunctive relief independent of class
7 certification).) As noted above, the court need not address Plaintiffs’ request for
8 nationwide injunctive relief because the court has certified a nationwide class in this case.
9 To the extent that any of the National Committee’s members are similarly situated to Ms.
10 Thornton, they are class members and will be afforded relief by the court’s order.

11 Nevertheless, in the interest of completeness, the court concludes that it lacks
12 subject matter jurisdiction over the National Committee because the National Committee
13 has not satisfied the jurisdictional presentment requirement. Section 405(g) states that
14 “any individual” may file a claim for judicial review and makes no mention of
15 organizational standing to present claims to the Administration or to bring a civil action
16 in federal court. *See* 42 U.S.C. § 405(g). The National Committee’s “presentment letter”
17 highlights the problem presented by the National Committee’s attempts to join this case
18 as an organization on behalf of its members. (*See* Philips Decl. (Dkt. # 56) ¶ 7, Ex. A.)
19 The letter states that “[t]he National Committee’s membership includes individuals
20 otherwise entitled to receive Social Security survivor’s benefits who were
21 unconstitutionally barred from being married to their long-term committed same-sex
22 partners for a sufficient period of time prior to those partners’ deaths,” but the only

1 individual claimant identified in the letter is Ms. Thornton. (*Id.* at 2-4.) Merely sending
2 a letter on behalf of unnamed members without any details about those individuals'
3 claims for survivor's benefits is not sufficient to satisfy Section 405(g)'s presentment
4 requirement. The letter did not provide the Administration with any meaningful
5 opportunity to review the alleged underlying claims. Indeed, the court concludes that the
6 National Committee's attempt at satisfying the presentment requirement—and its
7 presence in this litigation on the whole—is little more than gamesmanship. Thus, the
8 court agrees with Magistrate Judge Creatura—albeit, on different grounds (*see* R&R at
9 36-37)—that the National Committee should be dismissed from this case.

10 **F. Order to Show Cause**

11 The court believes that its analysis above resolves the remaining issues on the
12 merits of this case. Out of an abundance of caution, however, the court concludes that
13 additional briefing is necessary regarding the exact scope of class-wide injunctive relief
14 warranted as a result of the court's order. To recap, the court certifies the nationwide
15 class defined above and concludes that the class is entitled to relief. *See supra*
16 §§ III.C-D. The court also believes that the appropriate form of relief to provide to the
17 class is an order that requires the Administration to (1) re-adjudicate class members'
18 claims for survivor's benefits, and (2) refrain from denying class members' claims solely
19 on the basis that class members were not married to their same-sex partner. The court is
20 contemplating an order that includes the following language:

21 The court ORDERS the Administration to re-adjudicate class members'
22 claims on terms consistent with this order and ENJOINS the Administration
from denying social security survivor's benefits to class members without

1 considering whether class members would have satisfied the marriage
2 requirements but for applicable laws that prohibited same-sex marriage.

3 Accordingly, the court ORDERS the parties to show cause and provide briefing regarding
4 the adequacy of this proposed relief in light of the court's rulings herein and whether any
5 other relief is both necessary and otherwise consistent with the court's rulings. The
6 briefing schedule for this order to show cause is set forth below.

7 IV. CONCLUSION

8 For the reasons set forth above, the court:

- 9 (1) ADOPTS the Report and Recommendation (Dkt. # 74) as described above;
- 10 (2) GRANTS Ms. Thornton's claim for individual relief on the merits and
11 REVERSES and REMANDS her claim to the Administration for further proceedings
12 consistent with this order and the Report and Recommendation;
- 13 (3) GRANTS Ms. Thornton's motion for class certification (Dkt. # 53) for a
14 class represented by Ms. Thornton and defined as:

15 All persons nationwide who presented claims for social security survivor's
16 benefits based on the work history of their same-sex partner and who were
17 barred from satisfying the marriage requirements for such benefits because
18 of applicable laws that prohibited same-sex marriage. This class is intended
19 to exclude any putative class members in *Ely v. Saul*, No.
20 4:18-cv-00557-BPV (D. Ariz.);

- 21 (4) APPOINTS Plaintiffs' counsel as class counsel in this matter pursuant to
22 Federal Rule of Civil Procedure 23(g);

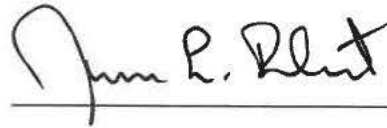
- (5) DISMISSES the National Committee from this case; and

- (6) ORDERS the parties to show cause regarding the appropriate form of relief
to grant class members in this case in light of this order. Ms. Thornton shall file her

1 response to the court's order to show cause within 14 days of the filing date of this order.
2 The Commissioner's response, if any, shall be due within 14 days of the filing date of
3 Ms. Thornton's response. There shall be no reply unless the court orders otherwise. The
4 parties' briefing shall not exceed six pages in length.

5 The court DIRECTS the Clerk to send copies of this order to Magistrate Judge
6 Creatura.

7 Dated this 11th day of September, 2020.

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10 JAMES L. ROBART
11 United States District Judge
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Social Security

Emergency Message

Identification Number: EM-21007 REV 2

Intended Audience: All RCs/ARCs/ADs/FOs/TSCs/PSCs
/OCO/OCO-CSTs/OHO/OARO

Originating Office: ORDP OISP

Title: Thornton District Court Decision: Claims, Appeals, and Reopening Requests - One-Time Instruction

Type: EM - Emergency Messages

Program: Title II (RSI)

Link To Reference: See **References** at the end of this EM.

Retention Date: 03/24/2023

Summary of Changes

This Emergency Message (EM) replaces the prior version.

We are making these instructions viewable by the public.

A. Purpose

This EM provides instructions for handling claims, appeals, and reopening requests for widow(er)'s benefits based on the *Thornton* District Court decision. These instructions apply to cases involving survivors of same-sex relationships who were unable to marry the number holder (NH) prior to the NH's death due to an unconstitutional State law prohibiting same-sex marriage. Under *Thornton*, we may not deny benefits to such a survivor if, based on the information provided, the adjudicator determines the survivor and the NH would have met the marriage requirement but for an unconstitutional State law that prohibited same-sex marriage (provided the survivor meets all other factors of entitlement for widow(er)'s benefits).

Follow the instructions in this EM to:

- Process claims, appeals, and reopening requests for widow(er)'s benefits based on the *Thornton* District Court decision when the application filing date is **on or before November 25, 2020**; and

- Process claims, appeals, and reopening requests for widow(er)'s benefits based on the *Thornton* District Court decision when the application filing date is **November 26, 2020 or later**. This includes those previously on hold.

For policy on application filing date, see [GN 00204.007](#).

NOTE: If you are able to establish a marital relationship based on [GN 00210.002](#), follow the instructions in that section and do not apply the instructions in this EM.

B. Background

Thornton v. Commissioner of Social Security, 2:18-cv-01409-JLR (W.D. Wash.)

The *Thornton* case involves the surviving partner of a same-sex relationship who never married her deceased partner due to an unconstitutional State law that banned same-sex marriage. The Social Security Administration (SSA) denied the surviving partner's claim for widow's benefits because the surviving partner did not meet the Act's marriage requirement to qualify for benefits as a widow.

On September 11, 2020, the United States District Court for the Western District of Washington ruled against the agency in *Thornton* and reversed the agency's final decision denying Ms. Thornton's claim for widow's benefits. The court also certified a nationwide class and, in a later order, prohibited the agency from denying benefits without determining whether survivors of same-sex relationships, who were prevented from marrying by unconstitutional laws barring same-sex marriage, would otherwise be entitled to widow(er)'s benefits. The District Court limited its ruling to claims filed before November 25, 2020.

This injunction applies to survivors of same-sex relationships who filed claims for widow(er)'s benefits on or before November 25, 2020, where (1) the claimant was unable to marry the NH prior to the NH's death due to an unconstitutional State law prohibiting same-sex marriage, and (2) the claim for widow(er)'s benefits was denied or held because the claimant did not meet the marriage requirement.

To end the ongoing litigation, SSA agreed to allow surviving partners of same-sex relationships who file applications on or after November 26, 2020 and allege that unconstitutional state laws prevented them from marrying before the NH's death to have claims processed under the instructions in this EM. Although a surviving partner of a same-sex relationship who files an application on or after November 26, 2020, is not a class member, that individual will benefit from additional consideration pursuant to the decision in *Thornton* and this EM.

C. Determine if we can treat the marriage requirement as satisfied based on the decision in *Thornton v. Commissioner*

For information on what factors and evidence to consider, see Sections D and E of this EM and GN 00301.010.

Based on the information provided, determine whether the couple would have married before the NH's death but for an unconstitutional State law that prohibited same-sex marriage and can therefore be treated as meeting the marriage requirement under *Thornton*.

If you determine the couple would have met the marriage requirement but for an unconstitutional State law prohibiting same-sex marriage and all other factors of entitlement for widow(er)'s benefits are met, follow instructions in Section F of this EM to process the claim for benefits recognizing the claimant as a surviving spouse.

If you determine the couple would not have married even if there had been no unconstitutional prohibition of same-sex marriage, follow instructions in Section F of this EM to refer the claim, reconsideration request, or refusal to reopen to a management official or Claims Technical Expert (CTE) for secondary review of the determination before adjudicating (for refusals to reopen, manually clearing) the claim. If the surviving partner is not entitled to additional consideration pursuant to *Thornton* after applying Sections D.1, D.2, D.3 of this EM, secondary review is not needed.

NOTE: If you are unable to make a determination based on the evidence submitted, or if you determine the couple would have married less than 9 months before the NH died, submit the claim for a legal opinion following instructions in GN 01010.815.

D. Evaluating circumstances that prevented the couple from meeting the marriage requirement

1. Conduct a thorough interview with the claimant about the circumstances that resulted in the claimant not marrying the NH. Document those circumstances on the REMARKS (RMKS) screen in the Modernized Claims System (MCS) application path, a Report of Contact (RPOC) in MCS, or other electronic writing.

NOTE: If the claimant is deceased, obtain information about the claimant's relationship with the NH from others, such as an individual who contacted SSA about the claim of the deceased claimant.

2. When did the claimant begin a relationship with the NH?

- a. If the relationship began before June 26, 2015, the date same-sex marriage became legal in all states, proceed to Section D.3 of this EM.
- b. If the relationship began on or after June 26, 2015, the date same-sex marriage became legal in all states, at no time did an unconstitutional State law prevent them from marrying. As a result, do not find that the couple would have married but for an unconstitutional State law and do not find that the claimant is entitled to additional consideration pursuant to *Thornton*. Proceed to Section F of this EM for further instructions on denying claim, affirming initial determination at reconsideration level, or refusal to reopen.

NOTE: If the relationship began on or after June 26, 2015, the claimant will not receive additional consideration pursuant to the *Thornton* decision and a secondary review is not needed.

- c. Example: Tim and John met in California on July 4, 2016 and became engaged on February 14, 2017. Tim unexpectedly passed away on July 1, 2017. Same-sex marriage became legal in all states on June 26, 2015. Because Tim and John met after the date same-sex marriage became legal in all states, at no time did an unconstitutional State law prevent them from marrying. As a result, John is not entitled to additional consideration pursuant to *Thornton*. Also, do not find that Tim and John would have married but for an unconstitutional State law.

3. When did the NH die?

- a. If before June 26, 2017, proceed to Section D.4 of this EM.
- b. If on or after June 26, 2017, we will presume that the claimant and NH were not prevented from marrying by unconstitutional state law unless the claimant provides evidence showing that the presumption is rebutted by the totality of the circumstances (see instructions following the "NOTE").

NOTE: If the claimant does not provide evidence showing the presumption is rebutted by the totality of the circumstances, the claimant will not receive additional consideration pursuant to the *Thornton* decision. Proceed to Section F of this EM for further instructions on denying the claim, affirming the initial determination at reconsideration level, or refusal to reopen. A secondary review is not needed.

To determine if totality of the circumstances explains the couple's failure to marry by June 26, 2017:

- Conduct a thorough interview with the claimant about the circumstances that resulted in the claimant not marrying the NH.

Document those circumstances on the REMARKS (RMKS) screen in the Modernized Claims System (MCS) application path, a Report of Contact (RPOC) in MCS, or other electronic writing.

- Consider all available evidence (see Sections D.4 and E of this EM, GN 00301.010, and GN 00301.305) of the factual circumstances that resulted in the couple not marrying by June 26, 2017. Keep in mind the examples below are not all-inclusive. Here are some questions you may consider in making the determination:

- Ask the claimant why they did not marry between June 26, 2015, and June 26, 2017.
- Was one member of the couple incapacitated by illness or injury between June 26, 2015, and June 26, 2017?
- Was one member of the couple deployed overseas without interruption between June 26, 2015, and June 26, 2017?

c. Examples

The following examples help illustrate the above considerations:

- **Example 1:** Beginning in January 1980, Beth and Maria lived together continuously in Florida. During their relationship, they purchased a house and three cars together. Beth named Maria as the beneficiary on her life insurance policy, and Maria named Beth as the beneficiary on her policy. Maria also named Beth as the beneficiary of her retirement benefit at work. Beth and Maria expressed to friends and family their desire to be married, and Beth alleges she and Maria would have married as early as June 1990, had they been permitted to do so. Maria was diagnosed with Alzheimer's disease in 2010. She became incapacitated and unable to care for herself in 2012. Beth cared for Maria until she died on March 1, 2019. Same-sex marriage became legal in Florida on January 5, 2015. When Beth applied for widow's benefits on Maria's earnings record, her application was denied solely because she was not Maria's spouse. In this case, the evidence supports the conclusion that but for Florida's unconstitutional prohibition on same-sex marriage, Beth and Maria would have married in June 1990, and were unable to marry before June 26, 2017, because Maria was incapacitated due to her illness. The totality of the circumstances

rebutts the presumption. As a result, find that Beth and Maria would have married on June 1, 1990 (the earliest date supported by the evidence) but for Florida's unconstitutional State law. Process Beth's claim for benefits as Maria's surviving spouse. Accept Beth's allegation (which is accompanied by credible supporting evidence) that she and Maria would have married in June 1990 and use June 1, 1990 as the marriage date.

• **Example 2:** Beginning in January 1990, Joe and Larry lived together continuously in Hawaii. Same-sex marriage became legal in Hawaii on December 2, 2013. Joe and Larry talked about getting married but never did so. Larry had a stroke on June 26, 2016 and became incapacitated and unable to care for himself as of that date. Joe cared for Larry until he died on March 1, 2019. When Joe applied for widower's benefits on Larry's earnings record, his application was denied solely because he was not Larry's spouse. Joe's application for widower's benefits should not be granted because the evidence does not show the couple would have married but for a State law prohibiting same-sex marriage. Instead, under Hawaii law, the couple could have married as early as December 2013, more than two years before Larry's stroke, but they chose not to. It was the couple's personal decision to wait that prevented them from satisfying the marriage requirement, not any unconstitutional State law. The totality of the circumstances does not rebut the presumption. As a result, do not find that Joe and Larry would have married but for an unconstitutional State law and do not find that Joe, the claimant, is entitled to additional consideration pursuant to *Thornton*.

4. Consider all available evidence of the factual circumstances that resulted in the couple not marrying. Keep in mind the examples below are not all-inclusive. Here are some questions you may consider in making the determination:

- Would the claimant have married their partner if not for a State law that prohibited same-sex marriage?
- What date would the couple have married if they were not prohibited from doing so?
- Did the law of the State where the couple lived permit same-sex marriages before the NH died? For information about when States and U.S. territories permitted same-sex marriages, refer to [GN 00210.003](#).
- Did the couple have a commitment ceremony or attempt to have the relationship formally recognized in any other way prior to the NH's death?

- Did the couple exchange commitment rings?
- Was the claimant in a committed relationship with the NH? If so, for how long?
- Did the couple live together? If yes, how long did they live together?
- Did they own property together?
- Did the claimant inherit from the NH based on a will?
- Did the NH name the claimant as a beneficiary for life insurance or retirement benefits?
- Did the couple have children together or did they raise any children together from prior relationships?
- Did the claimant and the NH share joint responsibility to care for one another?
- Would the claimant and the NH have been otherwise eligible to marry if the law had not barred same-sex couples from marriage? Consider the following questions when determining whether the parties were eligible to marry:
 - Were the claimant and NH related to each other in a way that would prevent them from marrying?
 - Were the claimant and NH both over the age of 18 during their relationship (or, if not, over the relevant age of majority to marry)?
 - Were the claimant and NH prevented from marrying each other because one of them was married to someone else?
- Did the couple choose not to marry prior to the NH's death for reasons other than a State law prohibition on same-sex marriages?
- Is there any other available evidence regarding whether the couple would have married, and what date they would have married, if State law did not prohibit same-sex marriages?

Examples:

The following examples help illustrate the above considerations:

- **Example 1:** Beginning in January 1980, Janice and Abigail lived together continuously in Georgia. During their relationship, they purchased a house

and three cars together. Janice named Abigail as the beneficiary on her life insurance policy, and Abigail named Janice as the beneficiary on her policy. Abigail also named Janice as the beneficiary of her retirement benefit at work. Janice and Abigail expressed to friends and family their desire to be married, and Janice alleges she and Abigail would have married as early as June 1990, had they been permitted to do so. Abigail died in December 2010. Same-sex marriage became legal in Georgia on June 26, 2015. When Janice applied for widow's benefits on Abigail's earnings record, her application was denied solely because she was not Abigail's spouse. In this case, the evidence supports the conclusion that but for Georgia's unconstitutional prohibition on same-sex marriage, Janice and Abigail would have married in June 1990. As a result, find that Janice and Abigail would have married on June 1, 1990 (the earliest date supported by the evidence) but for Georgia's unconstitutional State law. Process Janice's claim for benefits as Abigail's surviving spouse. Accept Janice's allegation (which is accompanied by credible supporting evidence) that she and Abigail would have married in June 1990 and use June 1, 1990 as the marriage date.

- **Example 2:** Beginning in January 1990, Greg and Larry lived together continuously in Hawaii. Same-sex marriage became legal in Hawaii on December 2, 2013. Greg and Larry talked about getting married but never did so. Larry died in October 2015. When Greg applied for widower's benefits on Larry's earnings record, his application was denied solely because he was not Larry's spouse. Greg's application for widower's benefits should not be granted because the evidence does not show the couple would have married but for a State law prohibiting same-sex marriage. Instead, under Hawaii law, the couple could have married as early as December 2013, nearly two years before Larry's death, but they chose not to. It was the couple's personal decision to wait that prevented them from satisfying the marriage requirement, not any unconstitutional State law. As a result, do not find that Greg and Larry would have married but for an unconstitutional State law and refer the claim to a management official or a CTE for secondary review of the determination before adjudicating (for refusals to reopen, manually clearing) the claim.

- **Example 3:** Beginning in January 1995, Tim and Ricardo lived together continuously in Ohio. On January 1, 2000, they held a commitment ceremony with family and friends, officiated by the minister of their church. Their minister issued them a certificate of holy union. Tim alleges that he and Ricardo would have gotten married on that day if they were able to do so under State law. Ricardo died in June 2010, five years before same-sex

marriage became legal in Ohio on June 26, 2015. When Tim applied for widower's benefits on Ricardo's earnings record, his application was denied solely because he was not Ricardo's spouse. In this case, the evidence supports the conclusion that Tim and Ricardo would have married on January 1, 2000, the date of their commitment ceremony, if not for Ohio's unconstitutional prohibition on same-sex marriage. As a result, find that Tim and Ricardo would have been married on January 1, 2000 but for an unconstitutional State law, and process Tim's claim for benefits as Ricardo's surviving spouse. Accept Tim's allegation (which is accompanied by credible supporting evidence) that he and Ricardo would have married on January 1, 2000, for purposes of indicating a marriage date.

E. Development of Evidence

Evidence is any information presented orally or in writing that helps to establish a fact. Oral statements must be put in written form to be considered evidence for our purposes (see [GN 00301.010](#) and [GN 00301.305](#)).

While it is the claimant's responsibility to submit evidence to establish entitlement to benefits, you must provide assistance in accordance with [GN 00301.180](#). If the claimant does not present the evidence needed for entitlement, you must deny the claim if, after providing assistance:

- the claimant has not responded to the closeout letter discussed in [GN 01010.410C.2](#);
or
- the claimant clearly indicated a lack of interest or failure to cooperate; or
- we cannot locate the claimant.

If you are unable to make a determination based on the evidence submitted, submit the claim for a legal opinion following instructions in [GN 01010.815](#).

For more information on failure to submit essential evidence, see [GN 01010.410](#).

F. Processing instructions for claims, appeals, and requests to reopen

These instructions apply to claims for widow(er)'s benefits involving a survivor of a same-sex relationship who was unable to marry the NH prior to the NH's death due to an unconstitutional State law prohibiting same-sex marriage, and who meets all of the factors of entitlement for widow(er)'s benefits except the marriage requirement, as well as requests for further review through the appeal or reopening processes for such claims.

Earlier versions of this EM specified that claims, appeals and reopening requests for widow(er) benefits where claimants allege to be entitled to widow(er)'s benefits pursuant to the *Thornton* District Court decision, but the application filing date is on or after November 26, 2020, were to be

held. To end the litigation, the agency has agreed to process these held claims and claims filed on or after November 26, 2020, under this EM. As a result, while these claims are not a part of the *Thornton* class, they should be processed pursuant to the instructions in this section.

NOTE: Class counsel submitted a general waiver of 406(b) fees associated with cases processed pursuant to *Thornton*.

1. Claims

- If the claim is not already pending in MCS with "529" in the unit code, take a claim in MCS. On the RMKS screen, include this statement: "Claimant is pursuing a claim as a result of *Thornton v. Commissioner of Social Security* and, per the court's order, is entitled to allege a marriage date despite having not participated in a ceremonial marriage with the deceased NH."
 - If the claim is not already pending in MCS with "529" in the unit code, enter "529" in the last 3 positions of the unit code on the DW01 in MCS. This code will help us identify these cases. If a pending claim already has "626" and a letter in the first 4 positions of the unit code, delete the "626" and letter coding before entering "529" in the last 3 positions. For new claims, do not enter "626" and a letter in the first 4 positions of the unit code as you normally would for a same-sex relationship claim per GN 00210.020A. When a claim is coded with a "529", the instructions in this EM supersede and replace the instructions in GN 00210.020A regarding the unit type code for same-sex relationship claims.
 - Advise the claimant we need more information to determine if we can treat the marriage requirement as satisfied based on the decision in *Thornton v. Commissioner*.
 - Use Sections C, D, and E of this EM to develop evidence and determine whether the couple would have married but for an unconstitutional State law prohibiting same-sex marriage, and, if so, what date the couple would have married.
 - Prepare an RPOC in MCS clearly stating the rationale for determining the Claimant either is or is not entitled to benefits under *Thornton v. Commissioner*. Explain (1) your reasons for concluding the couple would or would not have married if an unconstitutional State law had not prohibited same-sex marriage before the NH died; (2) if you find the couple would have married, how you determined what date they would have married; and (3) whether or not the claimant is entitled to widow(er)'s benefits pursuant to *Thornton*.
- NOTE:** If you are unable to make a determination based on the evidence provided, or if you determine the couple would have married less than 9 months before the

NH died, submit the claim for a legal opinion following instructions in GN 01010.815.

a. The couple would have married but for an unconstitutional State law

If, based on the information provided, you determine the Claimant would have met the marriage requirement but for an unconstitutional State law prohibiting same-sex marriage, and the claimant meets all other factors of entitlement for widow(er)'s benefits, determine what date the Claimant would have married the NH and process the application recognizing the Claimant as a surviving spouse.

- If the evidence supports the date the Claimant alleges, they would have married the NH if not prohibited by State law, as recorded on the NH Marriage (NMAR) and Beneficiary Marriage (BMAR) screens, enter "Y" in the marriage date "Proof" field on these screens. When the evidence supports a different date of marriage from what the claimant alleged, update the NMAR and BMAR screens in MCS with the date of marriage that was determined by evaluation of the evidence and enter "Y" in the marriage date "Proof" field on these screens.

NOTE: If the Claimant identifies a time period when they would have married the NH, and that time period is supported by the information provided, enter the earliest date within that time period for the Claimant's marriage date. For example, if the Claimant alleges the couple would have married in June or July 1990, enter June 1, 1990 as the marriage date.

NOTE: If you determine the couple would have married at least 9 months before the NH's death but the information provided does not allow you to identify a specific date on which they would have married, enter a date that is exactly 9 months earlier than the date of the NH's death. If, however, you determine the marriage date would not have been at least 9 months before the NH's death, submit for a legal opinion following the instructions in GN 01010.815.

- Review the Claimant's record to determine whether the Claimant is currently receiving other benefits. If the claimant is entitled to

widow(er)'s benefits pursuant to *Thornton* and is currently receiving other benefits, see Section F.1.c in this EM.

- Enter listing code "529" on the Decision Input (DECI) screen in MCS.
- If the claimant is entitled to widow(er)'s benefits pursuant to *Thornton*, enter a "Y" next to "Incomplete" on the NOT3 screen for an incomplete notice and adjudicate the award using standard procedures.

b. The couple would not have married but for an unconstitutional State law

If the claimant is entitled to additional consideration pursuant to *Thornton*, see Section F.1.b.i below. If the claimant is **not** entitled to additional consideration pursuant to *Thornton*, see Section F.1.b.ii below.

i. If you determine the claimant is entitled to additional consideration pursuant to *Thornton* and you determine that the couple would not have married even if there had been no unconstitutional State law prohibiting same-sex marriage, follow these instructions:

- Obtain secondary review of the claim from either a management official or CTE.
- If the management official or CTE concurs with your conclusion, the management official or CTE will prepare a RPOC in MCS clearly stating the rationale for determining the surviving partner does not qualify for benefits under *Thornton v. Commissioner*.
- If the management official or CTE disagrees with the conclusion, the management official or CTE will prepare a RPOC in MCS clearly stating the rationale for determining the surviving partner qualifies for benefits under *Thornton v. Commissioner*. Contact Regional Support Staff for any additional guidance to resolve conflicting rationales. If the final determination is the claimant qualifies for benefits under *Thornton v. Commissioner*, see instructions in F.1.a in this EM.
- If the final determination is the claimant would not have married,

enter an "N" in the marriage date "Proof" field on the NMAR and BMAR screens in MCS.

- Enter listing code "529" on the DECI screen in MCS.
- Enter a "Y" next to "Incomplete" on the NOT3 screen for an incomplete notice.
- Adjudicate the denial using standard procedures.

ii. If you determine the claimant is **not** entitled to additional consideration pursuant to *Thornton* (see Sections D.1, D.2, and D.3 of this EM) and you determine that the couple would not have married even if there had been no unconstitutional State law prohibiting same-sex marriage, follow these instructions:

- **Do not** obtain a secondary review.
- Enter an "N" in the marriage date "Proof" field on the NMAR and BMAR screens in MCS.
- Enter a "Y" next to "Incomplete" on the NOT3 screen for an incomplete notice.
- Adjudicate the denial using standard procedures.

c. Adjudicating a claim where an individual eligible for widow(er)'s benefits under *Thornton* is receiving other benefits

If an individual eligible for widow(er)'s benefits under *Thornton* is currently receiving other benefits, determine whether an award of widow(er)'s benefits would affect (1) the claimant's eligibility for those other benefits, or (2) the monthly benefit amount the claimant is receiving:

- Consider benefits that were available to the claimant at the time of their prior application(s).

- Consider prior filings when presenting the claimant with the possible options available because of the eligibility for widow(er)'s benefits under the NH's record.
- Consider entitlement to AUXSPO benefits during the established period of marriage to the deceased NH and apply deemed filing as appropriate per GN 00204.035.
- Present options that consider prior filings, deemed filing, monthly benefit amounts, retroactive payments, delayed retirement credits (DRC), Government Pension Offset, and the Supplemental Security Income (SSI) requirement to file for other program benefits.

Under this EM, if we determined that a claimant and the NH would have been married had they not been prevented from marrying by unconstitutional laws barring same-sex marriage, the claimant may file for the benefits that they would have been entitled to as a spouse. While current regulations and policy limit withdrawals of Retirement Insurance Benefits (RIB) to one approved RIB withdrawal per lifetime, because of the court's decision and the agency's agreement to end litigation, we will permit withdrawal requests by claimants who are awarded widow(er)'s benefits under this EM. In these cases, we will:

- allow an individual eligible for widow(er)'s benefits pursuant to *Thornton* who is receiving RIB on their own record to submit a withdrawal request more than 12 months after the first month of entitlement on their own record; and
- will not count an approved withdrawal of a previous RIB claim toward the limit of one approved RIB withdrawal in the claimant's lifetime.

NOTE: These instructions also apply to awards resulting from an appeal or request to reopen.

Follow instructions in Section F.1.a of this EM for processing award.

2. Appeals

- Confirm the initial claim was denied using denial code 030 (Not the spouse/widower, under State law or deemed marriage provision), 208 (Cash benefits (same sex marriage) Pre-Windsor Court decision 06/26/13), or 209 (Cash benefits (same sex marriage) denied based on non-recognition state of domicile).
- Load the appeal in MCS.
- Enter "529" in the last 3 positions of the unit code on the DW01 in the MCS. This code will help us identify these appeals. If the appeal already has "626" and a letter in the first 4 positions of the unit code, delete the "626" and letter coding before entering "529" in the last 3 positions. When an appeal is coded with a "529", the instructions in this EM supersede and replace the instructions in GN 00210.020B regarding unit type code for same-sex relationship appeals.
- Advise the claimant we need more information to determine if we can treat the marriage requirement as satisfied based on the decision in *Thornton v. Commissioner*, which is a requirement for entitlement to widow(er)'s benefits.
- Use Sections C, D, and E of this EM to develop evidence and determine whether the couple would have married before the NH's death but for an unconstitutional State law that prohibited same-sex marriage and can be treated as meeting the marriage requirement under *Thornton*.
- Prepare an RPOC in MCS clearly stating the rationale for determining the surviving partner either does or does not qualify for benefits under *Thornton v. Commissioner*. Explain (1) your reasons for concluding the couple would or would not have married if an unconstitutional State law had not prohibited same-sex marriage before the NH died; (2) if you find the couple would have married, how did you determine what date they would have married; and (3) whether or not the claimant is entitled to widow(er)'s benefits pursuant to *Thornton*.
 - a. For claims pending at the reconsideration level of the administrative review process, if reversing a prior denial of benefits based on the decision in *Thornton v. Commissioner*:**

- If the evidence supports the date the Claimant alleges, they would have married the NH if not prohibited by State law, as recorded on the NH Marriage (NMAR) and Beneficiary Marriage (BMAR) screens, enter "Y" in the marriage date "Proof" field on these screens. When the evidence supports a different date of marriage from what the claimant alleged, update the NMAR and BMAR screens in MCS with the date of marriage that was determined by evaluation of the evidence and enter "Y" in the marriage date "Proof" field on these screens.

NOTE: If the Claimant identifies a time period when they would have married the NH, and that time period is supported by the information provided, enter the earliest date within that time period for the Claimant's marriage date. For example, if the Claimant alleges the couple would have married in June or July 1990, enter June 1, 1990 as the marriage date.

NOTE: If you determine the couple would have married at least 9 months before the NH's death but the information provided does not allow you to identify a specific date on which they would have married, enter a date that is exactly 9 months earlier than the date of the NH's death. If, however, you determine that the marriage date would not have been at least 9 months before the NH's death, submit for a legal opinion following the instructions in GN 01010.815.

- Review the Claimant's record to determine whether the Claimant is currently receiving other benefits. If the claimant is entitled to widow(er)'s benefits pursuant to *Thornton* and is currently receiving other benefits, see Section F.1.c in this EM
- Enter listing code "529" on the DECI screen in MCS.
- If the claimant is entitled to widow(er)'s benefits pursuant to *Thornton*, enter a "Y" next to "Incomplete" on the NOT3 screen for an incomplete notice and effectuate the award using standard procedures.

b. For claims pending at the reconsideration level of the administrative review process, if you determine the couple would not have married

even if there had been no unconstitutional State law prohibiting same-sex marriage:

If you determine the claimant is entitled to additional consideration pursuant to *Thornton* and the couple would not have married even if there had been no unconstitutional State law prohibiting same-sex marriage, follow these instructions:

- Obtain secondary review of the claim from either a management official or CTE.
- If the management official or CTE concurs with your conclusion, the management official or CTE will prepare a RPOC in MCS clearly stating the rationale for determining the couple either does or does not qualify for benefits under *Thornton v. Commissioner*.
- If the management official or CTE disagrees with the conclusion, the management official or CTE will prepare a RPOC in MCS clearly stating the rationale for determining the couple either does or does not qualify for benefits under *Thornton v. Commissioner*. Contact Regional Support Staff for any additional guidance to resolve conflicting rationales. If the final determination is the claimant qualifies for benefits under *Thornton v. Commissioner*, see instructions in F.1.a in this EM.
- If the final determination is the claimant would not have married, enter an "N" in the marriage date "Proof" field on the NMAR and BMAR screens in MCS.
- Enter listing code "529" on the DECI screen in MCS.
- Enter a "Y" next to "Incomplete" on the NOT3 screen for an incomplete notice.
- Adjudicate the appeal using standard procedures.

If you determine the claimant is **not** entitled to additional consideration pursuant to *Thornton* (see Sections D.1, D.2, and D.3 of this EM) and an unconstitutional State law prohibiting same-sex marriage did not prevent the couple from being married:

- **Do not** obtain a secondary review.
- Enter an "N" in the marriage date "Proof" field on the NMAR and BMAR screens in MCS.
- Enter listing code "529" on the DECI screen in MCS.
- Enter a "Y" next to "Incomplete" on the NOT3 screen for an incomplete notice.
- Adjudicate the appeal using standard procedures.

c. Hearing Requests

Confirm the initial claim and reconsideration were denied using denial code 030 (Not the spouse/widower, under State law or deemed marriage provision), 208 (Cash benefits (same sex marriage) Pre-Windsor Court decision 06/26/13), or 209 (Cash benefits (same sex marriage) denied based on non-recognition state of domicile).

- Follow instructions in EM 21000 SEN REV 4.
- Ensure the comment "*Thornton* court case" is included in the subject line of any email correspondence.
- FO will add comment "Use case characteristic THOR to identify as *Thornton* District Court Decision Case" to any email correspondence.

3. Requests to reopen

These instructions apply to survivors of same-sex relationships who question a prior final determination or decision in which their claim for widow(er)'s benefits was denied for failure to meet the marriage requirement.

NOTE: If the claimant is deceased and someone contacts SSA on their behalf, see Section F.3.c of this EM.

Because these prior final determinations or decisions may have been based on unconstitutional State laws prohibiting same-sex marriage, reference GN 04010.020A and GN 04020.080 on how to reopen such claims.

- Ensure the claim was denied using denial code 030 (Not the spouse/widower, under State law or deemed marriage provision), 208 (Cash benefits (same sex marriage) Pre-Windsor Court decision 06/26/13), or 209 (Cash benefits (same sex marriage) denied based on non-recognition state of domicile).
- Load a new segment in MCS. On the RMKS screen, include a statement that the claimant thinks the prior determination was incorrect. Since this is not a new application requiring attestation, **do not** include the following statement that is to be added in RMKS for new claims: "Claimant is pursuing a claim as a result of *Thornton v. Commissioner of Social Security* and, per the court's order, is entitled to allege a marriage date despite having not participated in a ceremonial marriage with the deceased NH."
- Enter "529" in the last 3 positions of the unit code on the DW01 in MCS to identify these cases. If the claim already has "626" and a letter in the first 4 positions of the unit code, delete the "626" and letter coding before entering "529" in the last 3 positions. When a claim is coded with a "529", the instructions in this EM supersede and replace the instructions in GN 00210.020A regarding the unit type code for same-sex relationship claims.
- Advise the Claimant we need more information to determine if we can treat the marriage requirement as satisfied based on the decision in *Thornton v. Commissioner*.
- Use Sections C, D, and E of this EM to develop evidence and determine whether the couple would have married but for an unconstitutional State law prohibiting same-sex marriage, and, if so, what date the couple would have married.

NOTE: If you are unable to make a determination based on the evidence provided, or if you determine that the couple would have married less than 9 months before the NH died, submit the claim for a legal opinion following instructions in GN 01010.815.

a. If, after developing the evidence, you determine the couple would have been married but for an unconstitutional State law prohibiting same-sex marriage:

- Reopen the claim pursuant to GN 04010.20A and GN 04020.80.

- Prepare a RPOC in MCS clearly stating the rationale for determining the surviving partner qualifies for benefits under *Thornton v. Commissioner*. Explain (1) your reasons for concluding the couple would have married if an unconstitutional State law had not prohibited same-sex marriage before the NH died; (2) if you find the couple would have married, how you determined what date they would have married; and (3) whether or not the claimant is entitled to widow(er)'s benefits pursuant to *Thornton*.
- Follow the instructions in Section F.1.a of this EM.

b. If, after developing the evidence, you determine the couple would not have married even if there had been no unconstitutional State law prohibiting same-sex marriage:

- Do not reopen the claim.
- Prepare a RPOC in MCS clearly stating the rationale for determining the surviving partner does **not** qualify for benefits under *Thornton v. Commissioner*. Explain your reasons for concluding the couple would not have married even if there had been no unconstitutional law prohibiting same-sex marriage.
- Refer the case to a management official or CTE for a secondary review of your conclusion not to reopen the prior denial, **before** sending any notice in section H.

NOTE: If the claimant is **not** entitled to additional consideration pursuant to the Thornton decision (see Sections D.1, D.2, and D.3 of this EM), a secondary review is not needed.

- If the management official or CTE concurs with your conclusion, the management official or CTE will prepare a RPOC in MCS clearly stating the rationale for determining the surviving partner does not qualify for benefits under *Thornton v. Commissioner*.
- If the management official or CTE disagrees with your conclusion, the management official or CTE will prepare a RPOC in MCS clearly stating the rationale for determining the surviving partner qualifies for benefits under *Thornton v. Commissioner*. Contact Regional Support Staff for any additional guidance to resolve conflicting rationales. If the final determination is the claimant qualifies for benefits under *Thornton v. Commissioner*, see instructions in F.1.a in this EM.
- If the final determination is the surviving partner does not qualify for benefits under *Thornton v. Commissioner*, manually clear the claim.
- Prepare and send the "*Thornton* Class Action - Refusal to Reopen" notice via DPS, which includes Universal Text Identifiers (UTI) CAS029

and CAS027. For UTI language, see Section H of this EM.

c. If the claimant is deceased and someone contacts SSA on their behalf based on the *Thornton* decision

- If that person provides the deceased claimant's name and SSN, and would be eligible to receive an underpayment on the deceased claimant's record (see GN 02301.030), follow the instructions in F.3, F.3.a, and F.3.b. of this EM.
- If that person would **not** be eligible to receive an underpayment on the deceased claimant's record (see GN 02301.030), explain to them that we can take another look at the deceased person's claim **if** someone who would be due an underpayment on the deceased person's record contacts us.

G. Program Service Center Instructions

When you receive a case with an incomplete notice, check the DW01 screen in MCS for a "529" code in the last 3 positions of the unit code. If the "529" code is present in the last 3 positions of the unit code on the DW01, follow these instructions.

- If the most recent RPOC rationale for the determination states the couple qualifies for benefits under *Thornton v. Commissioner*:
 - For initial claims, include UTIs CAS026, CAS027, and CAS031 in the notice.
 - For claims that have been reopened, include UTIs CAS025, CAS026, CAS027, and CAS031 in the notice.
- If the most recent RPOC rationale for determination states the couple does not qualify for benefits under *Thornton v. Commissioner*, include UTIs CAS028 and CAS027 for disapproved claims.
- If request to reopen was for deceased claimant pursuant to Section F.3.c, send notice to the individual who is eligible for an underpayment on the deceased claimant's record who contacted SSA on behalf of the deceased claimant. For example, send notice to Jessica Smith on behalf of Troy Brown (Deceased).

For UTI language, see Section H of this EM.

H. New UTIs for award, denial, and reopening notices for claims processed pursuant to *Thornton*

IMPORTANT: If an initial claim, appeal, or request to reopen is processed using the instructions in this EM use these UTIs. **Do not** use standard notice language.

CAS025 with Fill-ins (Used only when widow(er)'s benefits are awarded as a result of reopening pursuant to *Thornton*):

As requested, we reviewed *F1 case again to determine if we should revise our *F2 denial for *F3 benefits based on the Social Security record of *F4 late partner.

Fill-in values:	
Fill-in *F1	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)
Fill-in *F2	Date of the denial notice for widow's or widower's benefits that the individual requested SSA reopen
Fill-in *F3	.
Choice 1	widow's
Choice 2	widower's
Fill-in *F4	.
Choice 1	your
Choice 2	his
Choice 3	her

CAS026 with Fill-ins (Used in award notices for claims processed pursuant to *Thornton*):
Payments Ordered by the District Court

On September 11, 2020, the United States District Court for the Western District of Washington certified a nationwide class in the case, *Thornton v. Commissioner of Social Security*. *Thornton* involves certain claims for Social Security widow's or widower's benefits filed by the surviving member of a same-sex couple who never married due to an unconstitutional State law prohibiting same-sex marriage. In *Thornton*, we denied a claim because we found that the same-sex couple did not meet the marriage requirement for the surviving partner to qualify for benefits as a widow under the Social Security Act.

The District Court decided that we could not deny claims for Social Security widow's or widower's benefits filed by the surviving member of a same-sex couple just because the couple was not married, if they were prevented from marrying prior to their partner's death due to an unconstitutional State law. The District Court decided that we also had to determine whether the couple would have married if an unconstitutional State law did not prohibit same-sex marriage.

After reviewing *F1 for *F2 benefits based on the Social Security record of *F3 late partner, we determined that *F4 entitled to additional consideration pursuant to *Thornton*. We reviewed *F5 claim and decided that *F6 would have married *F7 partner if an unconstitutional State law did not prevent same-sex marriage before *F8 partner's death. Because *F9 and *F10 partner would have married if *F11 could have, we find that *F12 the marriage requirement under the Social Security Act to qualify for *F13 benefits. After reviewing the information in *F14 case, we decided that *F15 and *F16 partner would have married as of *F17 if not for an unconstitutional State law.

Fill-in values:	
Fill-in *F1 for initial claim awards	.
Choice 1	your application
Choice 2	Beneficiary's Name (possessive) application
Fill-in *F1 for awards that are the result of a reopening	.
Choice 1	your case again
Choice 2	Beneficiary's Name (possessive) case again
Fill-in *F2	.
Choice 1	widow's
Choice 2	widower's
Fill-in *F3	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F4	.
Choice 1	you are
Choice 2	he is
Choice 3	she is
Fill-in *F5	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F6	.

Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F7	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F8	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F9	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F10	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F11	.
Choice 1	you
Choice 2	they
Fill-in *F12	.
Choice 1	you meet
Choice 2	[Beneficiary's Name] meets
Fill-in *F13	.
Choice 1	widow's
Choice 2	widower's
Fill-in *F14	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)
Fill-in *F15	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F16	.
Choice 1	your
Choice 2	his

Choice 3	her
Fill-in *F17	Date the surviving partner and number holder would have married

CAS027 (No Fill-ins) (Used in award, denial, and refusal to reopen notices for claims processed pursuant to *Thornton*):

Lambda Legal and Nossaman LLP represent the members of the *Thornton* class action. Their contact information is below. You may contact them if you have any questions about the *Thornton* class action.

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CAS028 with Fill-ins (Used in denial notices for claims processed pursuant to *Thornton*):

On September 11, 2020, the United States District Court for the Western District of Washington certified a nationwide class in the case, *Thornton v. Commissioner of Social Security*. *Thornton* involves certain claims for Social Security widow's or widower's benefits filed by the surviving member of a same-sex couple who never married due to unconstitutional State laws prohibiting same-sex marriage. In *Thornton*, we denied a claim because we found that the same-sex couple did not meet the marriage requirement for the surviving partner to qualify for benefits as a widow under the Social Security Act.

The District Court decided that we could not deny claims for Social Security widow's or widower's benefits filed by the surviving member of a same-sex couple just because the couple was not married, if they were prevented from marrying prior to their partner's death due to an unconstitutional State law. The District Court decided that we also had to determine whether the couple would have married if an unconstitutional State law did not prohibit same-sex marriage.

We reviewed *F1 application for *F2 benefits based on the Social Security record of *F3 late partner. As required by the District Court's decision in *Thornton*, we considered whether *F4 would have married *F5 partner if an unconstitutional State law did not prevent same-sex marriage before *F6 partner's death. After reviewing the information in *F7 case, we decided that *F8 and *F9 partner would not have married even if there had been no unconstitutional State law prohibiting same-sex marriage. Therefore, we find that *F10 qualify for *F11 benefits.

Fill-in values:	
Fill-in *F1	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)
Fill-in *F2	.
Choice 1	widow's
Choice 2	widower's
Fill-in *F3	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F4	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F5	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F6	.
Choice 1	your
Choice 2	his
Choice 3	her

Fill-in *F7	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)
Fill-in *F8	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F9	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F10	.
Choice 1	you do not
Choice 2	(Beneficiary's Name) does not
Fill-in *F11	.
Choice 1	widow's
Choice 2	widower's

CAS029 with Fill-ins (Used in refusal to reopen notices for reopening requests processed pursuant to *Thornton*):

As requested, we reviewed *F1 case again to determine if we should revise our *F2 denial for *F3 benefits based on the Social Security record of *F4 late partner.

On September 11, 2020, the United States District Court for the Western District of Washington certified a nationwide class in the case, *Thornton v. Commissioner of Social Security*. *Thornton* involves certain claims for Social Security widow's or widower's benefits filed by the surviving member of a same-sex couple who never married due to unconstitutional State laws prohibiting same-sex marriage. In *Thornton*, we denied a claim because we found that the same-sex couple did not meet the marriage requirement for the surviving partner to qualify for benefits as a widow under the Social Security Act.

The District Court decided that we could not deny claims for Social Security widow's or widower's benefits filed by the surviving member of a same-sex couple just because the couple was not married, if they were prevented from marrying prior to their partner's death due to an unconstitutional State law. The District Court decided that we also had to determine whether the couple would have married if an unconstitutional State law did not prohibit same-sex marriage.

As required by the District Court's decision in *Thornton*, we considered whether *F5 would have

married *F6 partner if an unconstitutional State law did not prevent same-sex marriage before *F7 partner's death. After reviewing the information in *F8 case again, we decided that *F9 and *F10 partner would not have married even if there had been no unconstitutional State law prohibiting same-sex marriage.

Because *F11 and *F12 partner never married, *F13 not entitled to Social Security benefits as a *F14. Therefore, we cannot revise our previous denial for benefits based on the Social Security record of *F15 late partner.

Fill-in values:	
Fill-in *F1	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)
Fill-in *F2	Date of the denial notice for widow's or widower's benefits that the individual requested SSA reopen
Fill-in *F3	.
Choice 1	widow's
Choice 2	widower's
Fill-in *F4	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F5	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F6	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F7	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F8	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)

Fill-in *F9	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F10	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F11	.
Choice 1	you
Choice 2	Beneficiary's Name
Fill-in *F12	.
Choice 1	your
Choice 2	his
Choice 3	her
Fill-in *F13	.
Choice 1	you are
Choice 2	(Beneficiary's Name) is
Fill-in *F14	.
Choice 1	widow
Choice 2	widower
Fill-in *F15	.
Choice 1	your
Choice 2	Beneficiary's Name (possessive)

CAS031 with fill-ins (Used in award notices for claims processed pursuant to *Thornton*)

We invite you to visit our website to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, call your local Social Security office at *F1, or contact your Regional Communications Director (RCD). To find your RCD's phone number and email address, visit the Social Security Administration online. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

*F2

*F3

*F4

*F5

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

Fill-in values:	
Fill-in *F1	FO Phone Number
Fill-in *F2	FO Address Line 1
Fill-in *F3	FO Address Line 2
Fill-in *F4	FO Address Line 3
Fill-in *F5	FO Address Line 4

I. Field Office (FO) and National 800 Number Network (N8NN) Instructions for Handling Inquiries

You may receive questions from advocacy groups and members of the public regarding the *Thornton* case.

- Advise callers that the agency has updated its procedures to comply with the *Thornton v. Commissioner* court order.
- Refer the caller to the "Notice of Class Action Order: *Thornton v. Commissioner of Social Security*" webpage.
- Follow the instructions in TC 10010.020 and TC 10001.070 to create initial claims appointments or referrals. Use the REMARKS field in eLAS to provide the FO any special information about the case and enter the code "529".

Note: Individuals filing claims, appeals, or requests for reopening can follow-up in 90 days after SSA receives their claim if the agency has not notified them of the status.

J. Regional Office (RO) Instructions for Handling Inquiries

Regional Office Support Staff should contact OPSOS for any additional guidance.

Direct all program-related and technical questions to your Regional Office (RO) support staff or Program Service Center (PSC) Operations Analysis (OA) staff. RO support staff or PSC OA staff may refer questions, concerns or problems to their Central Office contacts.

K. References

RS 00207.001 Widow(er)'s Benefits Definitions and Requirements

GN 00204.007 Application Filing Date

GN 00210.002 Determining Marital Status (Marriages and Non-Marital Legal Relationships) for Title II and Medicare Benefits.

GN 00210.003 Dates States and U.S. Territories Permitted Same-Sex Marriages

GN 00210.020 Processing Instructions for Title II Same-Sex Relationship Claims, Reconsiderations, and Hearing Requests

GN 00305.055 Deemed Marriages

GN 02301.000 Policy and Disposition of Underpayments – Table of Contents

GN 04010.020 Reopenings - Error on the Face of the Evidence

GN 04020.080 Unrestricted Reopening - Clerical Error or Error on the face of the Evidence

NL 00601.010 Award Notices

MS 03509.013 Decision Input (DECI)

EM-21000 SEN REV 4 Instructions for Sending Non-Medical Appeals (NMA) to the Office of Hearings Operations (OHO) and Office of Appellate Operations (OAO) using Electronic Non-Medical (ENM) application's Create, Upload, and Transfer of Jurisdiction Functionality

EM-21007 REV 2 - Thornton District Court Decision: Claims, Appeals, and Reopening Requests - One-Time Instruction - 2/24/2022