July 1, 1997
L-97-25

TO   :   John L. Thoresdale
                    Director of Policy and Systems

FROM   :   Catherine C. Cook
                    General Counsel

SUBJECT :   Section 104 of Public Law 104-121 - Entitlement of Stepchildren to Child's
                    Insurance Annuities Based on Actual Dependency on Stepparent Support

This is in reply to your memorandum of June 18, 1997, regarding proposed procedure for the entitlement of stepchildren. Section 104 of Public Law 104-121 amended section 202(d)(4) of the Social Security Act to eliminate the "living with" requirement as an alternative to actual dependency as a basis for eligibility for an annuity as the stepchild of an employee, effective with respect to the benefits of individuals who become entitled to those benefits for months after the third month following the month of enactment. Public Law 104-121 was enacted March 29, 1996. Accordingly, entitlement of a stepchild to an annuity, or entitlement based on a stepchild, which begins after the effective date of the amendment must be based on actual dependency.

You propose procedures for survivor cases where some determination relating to stepchild eligibility may have been made before the death of the employee. Your proposal, insofar as it would result in the award of benefits in cases where a dependency determination is required and has not been made previously, is not consistent with the requirement that actual dependency is necessary in cases where the amendment is applicable.

Example 1: The first example concerns a spouse of an employee who has received a spouse annuity based on her having a stepchild of the employee in her care. You propose to convert the spouse annuity to a young mother's benefit without redetermining the dependency of the child.

Example 2: The second example involves an employee annuity which was increased under the social security minimum guaranty provision based on the employee's having a stepchild living in his or her household. You propose to determine in connection with the child's survivor application that the child meets the stepchild dependency requirement based on the determination made in connection with the social security minimum guaranty provision.

Example 3: The third example involves an employee's stepchild who has been determined to be disabled and who has been enrolled in Medicare. Again, you propose to determine in connection with the child's survivor application that the child meets the dependency requirement based on the previous determination.

In other words, in all of these cases you propose to rely, in connection with the adjudication of survivor applications, on determinations made in connection with the employee's annuity or at least while the employee was alive. In my opinion, you may not rely on those determinations which did not involve determination of the existence of dependency.

Example 4: The fourth example involves a case where the employee had minor stepchildren but the employee's annuity was not computed under the social security minimum guaranty provision. In that case, there has not been any previous determination as to dependency, and you propose to develop information regarding the dependency of the stepchildren. I agree that this is the proper procedure in this case.

Example 5: The fifth example is the same as the fourth, except that the stepchildren received social security benefits on the employee's account prior to his death. As in the first three examples, you propose to rely on the earlier determination in adjudicating the survivor applications. Again, in my opinion you may not rely on the earlier determination unless it involved an adjudication of dependency.

Example 6: The sixth example involves an employee annuity which was increased under the social security minimum guaranty provision based on the employee's having a stepchild living in his or her household, where the computation under the social security minimum guaranty provision terminated before the death of the employee. You propose not to rely on the previous determination and to develop information regarding the dependency of the stepchildren. I agree that this is the proper procedure in this case.