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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Section 104 of the Contract with America Advancement Act of 1996 (Pub. L. 104-121) changed the entitlement and termination requirements for stepchild's benefits under the Social Security Act (the Act).

Under prior law:

- The stepparent's divorce from the stepchild's parent did not terminate the stepchild's entitlement to child's benefits; and
- A stepchild was considered dependent upon the stepparent if the child was either living with or receiving at least one-half support from the stepparent at the applicable time under the statute.

Under the statutory changes:

- A stepchild's entitlement to child's benefits on a stepparent's record ends with the month the divorce between the child's natural parent and stepparent becomes final (unless the stepchild has been adopted by the stepparent and can

qualify for benefits as his or her adopted child); and

- To be entitled to child's benefits based on a stepparent's record, a child is considered dependent upon the stepparent only if the stepparent was providing at least one-half of the child's support at the applicable time. "Living with" the stepparent is no longer a factor in determining stepchild dependency.

One-Half Support as the Sole Basis for a Stepchild's Dependency on a Stepparent

Under section 202(d)(1)(C) of the Act, a stepchild's dependency upon the stepparent at a statutorily specified time is a requirement for entitlement to benefits on the stepparent's Social Security earnings record. Prior to the Contract with America Advancement Act of 1996, under section 202(d)(4) of the Social Security Act, a stepchild was considered dependent upon a stepparent if the stepchild was either living with or receiving at least one-half of his or her support from the stepparent at the applicable time under the statute. Under the legislative amendment to section 202(d)(4) of the Act, in section 104(a) of the Contract with America Advancement Act, a stepchild is considered dependent upon a stepparent only if he or she receives at least one-half support from the stepparent. Living with a stepparent is no longer a basis for a dependency determination. Consequently, we propose to eliminate the reference to the "living with" standard from our regulation on stepchild dependency, § 404.363 of our regulations. Under section 104(a)(2) of the Contract with America Advancement Act of 1996, this policy applies to benefits of individuals who become entitled to such benefits for months after June 1996.

Extending the Stepchild Benefit Termination Requirement to a Divorce Between the Stepchild's Adoptive Parent and Stepparent

Section 104(b) of the Contract with America Advancement Act of 1996 amended section 202(d)(1) of the Act to provide for termination of a stepchild's benefits upon the divorce of the stepparent and the stepchild's *natural* parent. Section 104(b) did not, however, explicitly provide for the termination of a stepchild's benefits upon the divorce of the stepparent and the child's *adoptive* parent. We propose to apply the stepchild termination provision upon the divorce of the stepparent and the stepchild's *natural or adoptive parent*. We believe that there is a clear basis for this approach.

A marriage between the child's adoptive parent and the stepparent establishes a stepchild relationship for entitlement purposes. Under § 404.357, an individual can qualify as the insured's stepchild if the child's natural or adoptive parent married the insured. This established rule parallels other benefit eligibility provisions of the Act that routinely place natural and adoptive parenting on equal footing. *See, e.g.*, sections 202(d)(1), 202(d)(3), 202(d)(8), and 216(e) of the Act. Once a natural or adopted child establishes a right to Social Security benefits, benefit termination does not normally depend on the child's natural or adopted status. *See* section 202(d)(1) of the Act; *see also* § 404.352(b). A rule ending stepchild's benefits upon divorce only when a natural parent and stepparent divorce therefore represents a departure from policies in surrounding statutory benefit provisions.

Apart from using the term "natural parent," the amendments to the Social Security Act's stepchild benefit provisions in the Contract with America Advancement Act of 1996 similarly reflect the above-described parallel treatment of natural and adopted children. Section 104(b)(2) of the Contract with America Advancement Act added section 202(d)(10) to the Social Security Act. Section 202(d)(10) states that for purposes of the new provision requiring termination of stepchild's benefits upon the parents' divorce, "each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final" * * * This provision by its terms affects "each" insured stepparent of a stepchild beneficiary. It requires stepparents to inform SSA of "any divorce," and not simply divorces from a child's natural parent, thus indicating that any divorce by a stepparent is significant for stepchild benefit purposes.

Discussions of the changes to the stepchild benefit rules in the legislative history of the Contract with America Advancement Act of 1996 similarly reflect a preference for equal treatment of natural and adopted children. The relevant legislative history involves a connection between the dependency test applicable to stepchildren and the requirement for stepchild benefit termination upon parental divorce. The Contract with America Advancement Act of 1996 changed the dependency test in section 202(d)(4) of the Social Security Act by making receipt of at least one-half support the sole basis upon which a stepchild can be considered dependent upon his or her stepparent. It did not, however, change