

the universe of stepchildren to whom the dependency test applies. Section 202(d)(4) of the Act applies to all children seeking entitlement to benefits as a stepchild. Our regulations set out at § 404.363 provide, with respect to the dependency requirement as it existed before the enactment of the Contract with America Advancement Act of 1996, that stepchild dependency requirements apply to a stepchild “as defined in § 404.357 * * *”, *i.e.*, a child whose natural or adopting parent married the insured. The Contract with America Advancement Act of 1996 did not alter the effect of this language. Therefore, under the law as amended by that Act, and as previously, both a natural child and an adopted child of the stepparent’s spouse must show that the stepparent provided at least one-half of the stepchild’s support at the applicable time.

Reports by the House Ways and Means Committee on the 1996 legislation consistently discuss the above-described stepchild dependency rules in the same context as the new provision mandating benefit termination when the stepchild’s parents divorce. For example, a Report on Legislative and Oversight Activity of the Committee on Ways and Means during the 104th Congress discusses the change in the dependency requirement, which is applicable to all stepchildren. It immediately thereafter states, without qualification, that “[in] cases of a subsequent divorce * * * benefits to stepchildren terminate * * *”. H.R. Rep. 104–872 at 36, 104th Cong., 2nd Sess. 1997, 1996 WL 760037 (Leg. Hist.). The legislative history thereby supports the conclusion that both the dependency requirement and the termination provision apply to the same universe of beneficiaries, *i.e.*, all stepchildren. It suggests an intention to equate natural and adopted children, as under previous law. Significantly, apart from repeating the term “natural parent” as found in the statute, it suggests no basis for an uncharacteristic statutory rule terminating benefits of only the natural children of stepparents’ spouses. Limiting the termination requirement to situations involving divorces of natural parents therefore is not only an unusual departure from previously existing law, but is incompatible with the logical structure of the relevant 1996 legislative changes as well.

We view section 104(b) of the Contract with America Advancement Act of 1996 in light of the overall changes to stepchild benefit provisions of that Act, the legislative history of that Act, and related portions of the Social Security Act. When so considered, apart

from the use of the term “natural parent,” the legislation and its legislative history provide no indication of an intention to terminate benefits only of natural children of the spouses of stepparents upon a divorce. Under the most logical reading of the term “natural parent” in context, it merely distinguishes the other parent involved in a divorce from the stepparent, and that is how we interpret the term in issuing these regulations.

We, therefore, propose to add a new paragraph (b)(7) to § 404.352 of our regulations to apply this policy and would apply it from the effective date of the corresponding provision of the Contract with America Advancement Act of 1996, section 104(b)(1). Accordingly, under section 104(b)(3) of that Act, we propose to apply the policy to final divorces of stepparents from adoptive parents occurring after June 1996.

Extending the Stepchild Benefit Termination Provision to a Prospective Annulment of the Marriage Between the Stepparent and the Child’s Parent

Under our proposed regulations, if a voidable marriage between the stepparent and the child’s natural or adoptive parent is annulled prospectively, the stepchild’s benefits end with the month in which the annulment becomes final. A voidable marriage is flawed at its inception and could be declared invalid at any time after inception. However, the marriage remains valid until a court declares it invalid. If the parties to a voidable marriage do not exercise their legal right to annul the marriage, the marriage is binding. When an annulment operates prospectively, rather than from the beginning (*ab initio*), the annulment is very similar to divorce, since the marriage ceases to exist from the point at which it is annulled. Moreover, if we did not terminate stepchild benefits upon a prospective annulment of the parent and stepparent’s marriage, we would be treating cases involving legally flawed marriages ended by annulment more favorably than cases involving legally valid marriages ended by divorce. We, therefore, propose to include this policy in the new paragraph (b)(7) we would add to § 404.352 and to apply it from the effective date of the corresponding provision of the Contract with America Advancement Act of 1996, section 104(b)(1). Accordingly, under section 104(b)(3) of that Act, we propose to apply the policy to prospective annulments occurring after June 1996.

Termination of Stepchild’s Benefits Upon Annulment *Ab Initio* of the Marriage Between the Stepparent and the Child’s Parent

We also propose to include in new paragraph (b)(7) of § 404.352 our longstanding position that annulment of a voidable marriage from the beginning, or *ab initio*, terminates stepchild’s benefits, and that such benefits end with the month before the month in which the annulment becomes final. There is support for this position and effective date in *Folsom v. Pearsall*, 245 F.2d 562 (9th Cir. 1957), which found that when mother’s insurance benefits have been terminated due to a voidable remarriage which was later annulled *ab initio*, benefits could be reinstated beginning with the month of the annulment. In addition, under section 202 of the Act, when a benefit-terminating event (such as death or marriage) occurs, benefits generally end with the month before the terminating event. We have always followed this pattern regarding termination of stepchild’s benefits in cases involving *ab initio* annulments of the parents’ marriage. The provision of the Contract with America Advancement Act of 1996 ending a stepchild’s benefits with the month in which the divorce becomes final is an exception to the general rule.

Correction of Cross-Reference in § 404.339(a)

Section 404.339 describes how a person becomes entitled to mother’s or father’s benefits. Section 404.339(a) currently requires that the person be the widow or widower of the insured and meet the conditions described in § 404.335(a)(1), which refers to a 9-month duration of marriage requirement for a widow or widower. This cross-reference is incorrect, since it does not include the alternatives to the 9-month duration of marriage requirement, which are contained in § 404.335(a)(2), (a)(3), and (a)(4). We therefore propose to correct the cross-reference to refer to § 404.335(a).

Reintroduction of “Substantially All” Definition for Dependent Grandchild or Stepgrandchild

Consistent with statutory requirements in section 202(d)(9)(A) of the Act, § 404.364 explains when a child applying for benefits as a grandchild or stepgrandchild is considered “dependent” on the insured for benefit purposes. Among the dependency requirements is the rule that a grandchild or stepgrandchild must have been both living with and receiving at least one-half support from the insured