

February 24, 1998  
L-97-25.1

**TO** : John L. Thoresdale  
Director of Policy and Systems

**FROM** : Catherine C. Cook  
General Counsel

**SUBJECT** : Entitlement of Stepchildren

The purpose of this memorandum is to modify the advice given in Legal Opinion L-97-25, issued on July 1, 1997. That opinion stated correctly that Public Law 104-121, enacted on March 29, 1996, requires that 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, rather than on the living-with requirement. Legal Opinion L-97-25 then proceeded to apply that conclusion to six different examples set out in your inquiry.

The general rule enunciated in Legal Opinion L-97-25 was that if no determination of actual dependency had been made prior to the death of the railroad employee in connection with a determination of stepchild eligibility, then actual dependency had to be determined before a survivor benefit based that stepchild could be paid. You have pointed out that this rule would have rather severe consequences for certain current RRB beneficiaries when the railroad employee dies. You stated your belief that a dependency determination made for retirement should carry forward after the employee's death. In fact, you stated that the Social Security Administration will not terminate a child's benefit at the death of the wage earner, even if the dependency determination was made under the old standard.

We have reconsidered that question of how the amendment of the dependency requirements made by P.L. 104-121 should be applied to survivor cases. For the reasons set out below, our re-examination indicates that the general rule set out in Legal Opinion L-97-25 should be modified.

Section 104(a)(2) of P.L. 104-121 describes the effective date of the amendment as follows:

The amendment made by paragraph (1) shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted. (Emphasis supplied.)

The statutory language indicates that the amendment was intended to affect only individuals who first "become entitled" to benefits after the effective date of the amendment. In the cases for which you cited your concern, entitlement based upon a stepchild had already been established prior to the death of a railroad employee. In fact, absent the amendment made by P.L. 104-121, there would be no break in entitlement and no new annuity application would be required. See 20 CFR " 217.8(d), (f), and (g). Thus, those cases do not involve individuals who initially "become entitled" to a benefit after the effective date of P.L. 104-121. I therefore agree that in those cases where there would otherwise be no break in entitlement, a dependency determination made for retirement, spouse eligibility, O/M determinations, or Medicare entitlement should carry forward after the employee's death.