Management Advisory Committee (AFMAC) will host a public meeting on Friday, September 23, 2005. The meeting will be take place at the U.S. Small Business Administration, 409 3rd Street, SW., Office of Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416. The AFMAC was established by the Administrator of the SBA to provide recommendation and advice regarding the Agency's financial management including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

Anyone wishing to attend must contact Thomas Dumaresq in writing or by fax. Thomas Dumaresq, Chief Financial Officer , 409 3rd Street SW., Washington DC 20416, phone (202) 205–6506, fax: (202) 205–6869, e-mail: *thomas.dumaresq@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

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BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Acquiescence Ruling 05–1(9); Gillett-Netting v. Barnhart; Application of State Law and the Social Security Act in Determining Eligibility for a Child Conceived By Artificial Means After an Insured Individual's Death—Title II of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 05–1(9).

EFFECTIVE DATE: September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Aviles, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3457, or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: We are publishing this acquiescence ruling in accordance with 20 CFR 402.35(b)(2).

An acquiescence ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the court of appeals' decision as explained in this acquiescence ruling to claims at all levels of administrative review within the Ninth Circuit. This acquiescence ruling will apply to all determinations or decisions made on or after September 22, 2005. If we made a determination or decision on your application for benefits between June 9, 2004, the date of the court of appeals' decision, and September 22, 2005, the effective date of this acquiescence ruling, you may request application of the acquiescence ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2), that application of this acquiescence ruling could change our prior determination or decision in your claim.

Additionally, when we received this precedential court of appeals' decision and determined that an acquiescence ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication should we decide to issue an acquiescence ruling. Because an acquiescence ruling is required, we will send a notice to those individuals whose claims may be affected by the acquiescence ruling. The notice will provide information about this ruling and the right to request readjudication under it. It is not necessary for an individual to receive a notice in order to request application of this acquiescence ruling to the prior determination or decision on his or her claim.

If this acquiescence ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this acquiescence ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: August 24, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Acquiescence Ruling 05–1(9)

Gillett-Netting v. *Barnhart*, 371 F.3d 593 (9th Cir. 2004), reh'g denied (9th Cir. Dec. 14, 2004)—Applicability of State Law and the Social Security Act in Determining Whether a Child Conceived By Artificial Means after an Insured Person's Death is Eligible for Child's Insurance Benefits—Title II of the Social Security Act.

Issues: Whether a child conceived by artificial means after the death of the insured is a ''child'' for purposes of child's insurance benefits under section 202(d)(1) of the Social Security Act (Act) solely because he or she is the biological child of the insured. Whether such child can be deemed dependent on the deceased insured individual under section 202(d)(3) of the Act [1] because he is considered legitimate under State law.

Statute/Regulation/Ruling Citation: Sections 202(d)(3), 216(e) and (h) of the Social Security Act (42 U.S.C. 402(d)(3), 416(e) and (h)); 20 CFR 404.355.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington).

Gillett-Netting v. *Barnhart*, 371 F.3d 593 (9th Cir. 2004), reh'g denied (9th Cir. Dec. 14, 2004).

Applicability of Ruling: This ruling applies to determinations or decisions at all administrative levels, i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing, and Appeals Council.

Description of Case: On August 19, 1996, Rhonda Gillett-Netting filed applications for child's insurance benefits on behalf of her twin children as survivors of the insured, Robert Netting. The twins, born 18 months after the insured's death, were conceived through in-vitro fertilization using sperm that the insured had frozen and stored before he died. The Social Security Administration (Agency) denied the claims, finding that neither twin met the statutory definition of ''child'' and that neither twin was dependent on the father at the time of his death as required by the Act. The district court upheld the Agency's decision. After the district court denied the plaintiff's motion for reconsideration, Gillett-Netting filed an appeal with the Court of Appeals for the Ninth Circuit.

Holding: On appeal, the Ninth Circuit reversed the decision of the district court and held that the twins were entitled to benefits because, as the insured's biological children, they met

[1] Section 202(d)(3) provides, in pertinent part, that ''A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection. * * * [A] child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) * * * shall be deemed to be the legitimate child of such individual,'' and therefore presumptively dependent.

the ''child'' definition of the statute. Finding that there was no dispute about the twins' parentage, the court held that section 216(h)(2), (3) of the Act had ''no relevance to the issue before [it]'' and thus there was no need to consult State inheritance law. The court concluded that the twins were deemed dependent upon the insured under section 202(d)(3) of the Act because under Arizona law, they were his ''legitimate'' children. Under Arizona law, ''[e]very child is the legitimate child of its natural parents and is entitled to support and education as if born in lawful wedlock.'' [2] The court reasoned that because the insured was married to the mother of the twins and was the twins' biological father, the twins are legitimate under State law.

Statement as to How Gillett-Netting Differs From SSA's Interpretation of the Social Security Act

We determine that an individual may be eligible for child's insurance benefits under section 202(d)(1) of the Act if he is the ''child'' of an insured individual as defined in section 216(e) and was dependent on the insured at the time of his death under section 202(d)(3). Section 216(e)(1) defines a ''child'' as ''the child or legally adopted child of an individual.'' Section 216(h) provides the analytical framework that we must follow for determining whether a child is the insured's child for the purposes of section 216(e). Section 216(h)(2)(A) directs us to ''apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled * * * at the time of his death * * *'' (See also 20 CFR 404.355(a)(1)). A child who cannot inherit personal property from the deceased insured individual under State intestacy law may nonetheless be eligible for child's insurance benefits under limited circumstances under sections 216(h)(2)(B) and (3)(C); these circumstances do not apply to an after-conceived child. (See also 20 CFR 404.355(a)).[3] Consequently, to meet the definition of ''child'' under the Act, an after-conceived child must be able to inherit under State law.

If the individual satisfies the definition of ''child'' under section 216(e), the child must also show he or she ''was dependent upon'' the insured individual ''at the time of [the insured's] death'' in order to be eligible for benefits under section 202(d)(1)(C)(ii). Under section 202(d)(3), a ''legitimate'' child is ''deemed dependent'' upon the insured individual at the time of his death unless the child has been adopted by someone else. A child who satisfies the requirements of section 216(h)(2), (3) is deemed legitimate for purposes of section 202(d)(3) and, therefore, deemed dependent. Section 202(d)(3); Social Security Ruling 77–2c. Other children, though, must establish that they were living with their father at the time of his death or that he was contributing to their support in order to be found dependent under section 202(d)(3).

The Ninth Circuit in Gillett-Netting held that the twins established ''child'' status under the Act solely because they are the biological children of the insured. The court found that section 216(h) did not apply unless a child's parentage is disputed. The court also found that, under Arizona law, an insured individual's biological child conceived by artificial means after the death of the insured would be considered ''natural'' if the parents were married at the time of the insured's death. Further, the court concluded that every child in Arizona is the legitimate child of his natural parents. As a result, the Ninth Circuit deemed the twins dependent on the insured under section 202(d)(3) because it considered them to be legitimate under Arizona law. The court concluded that the twins were eligible for child's benefits under section 202(d) of the Act.

Explanation of How SSA Will Apply the Gillett-Netting Decision Within the Circuit

This ruling applies only to cases involving an applicant for surviving child's benefits who applies on the earnings record of a person who, at the time of death, had his permanent home in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington. While the court based its dependency determination on State law, it ruled that State law was irrelevant for determining ''child'' status if parentage was not in dispute.

In a claim for survivor's benefits, we will determine that a biological child of an insured individual who was conceived by artificial means after the insured's death is the insured's ''child'' for purposes of the Act. We will not apply section 216(h) of the Act in determining the child's status. In addition, if such child is considered legitimate under State law, we will consider the child to be the insured's ''legitimate'' child and thus deemed dependent upon the insured for purposes of section 202(d)(3) of the Act. All of the States and jurisdictions within the Ninth Circuit, except Guam, have eliminated distinctions between legitimate and illegitimate children. These States allow all children the same rights which flow between parents and their children, regardless of the parents' marital status. A child acquires these rights if he establishes that an individual is his parent under State family law provisions. Accordingly, if all other requirements are met, adjudicators will consider such child entitled to child's benefits under section 202(d).

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BILLING CODE 4191–02–P

[2] Ariz. Rev. Stat. § 8–601 (1975).

[3] An applicant will be deemed a ''child'' under section 216(e)(1) if he or she is the biological child of the insured and his or her parents went through a marriage ceremony that would have been valid but for a legal impediment. See section 216(h)(2)(B) of the Act; 20 CFR 404.355(a)(2). An applicant will also be considered a ''child'' if: (1) the insured had, before his death, acknowledged parentage in writing, been decreed a parent by a court, or been ordered to pay child support; or (2) there is satisfactory evidence that the deceased insured is the biological parent of the applicant and the insured was, at the time of his death, living with the applicant or contributing to his support. See section 216(h)(3)(C) of the Act; 20 CFR 404.355(a)(3)–(4). These additional tests for eligibility require action by the insured during the lifetime of the child.

DEPARTMENT OF STATE

[Public Notice 5192]

Determination on Provision of Assistance to the United Nations Democracy Fund

Pursuant to section 451 of the Foreign Assistance Act of l961, as amended (the ''Act'') (22 U.S.C. 2261) and section 1–100 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $2,561,508 in fiscal year 2004 funds made available under chapter 3 of part I of the Act, up to $6,938,492 in FY 2004 and FY 2005 funds made available under chapter 4 of part II of the Act, and up to $500,000 in FY 2005 funds made available under chapter 9 of part II of the Act, in order to provide assistance authorized by part I of the Act for a contribution to the United Nations Democracy Fund. This Determination supersedes and replaces the Determination of July 27, 2005, on Provision of Assistance to United Nations Democracy Fund.

This Determination shall be reported to the Congress promptly, and shall be published in the **Federal Register**.