

SOCIAL SECURITY ADMINISTRATION**Rescission of Social Security Acquiescence Rulings 92-3(4), 93-1(4) and 98-2(8)****AGENCY:** Social Security Administration.**ACTION:** Notice of Rescission of Social Security Acquiescence Rulings 92-3(4) and 93-1(4)—*Branham v. Heckler*, 775 F.2d 1271 (4th Cir. 1985); *Flowers v. U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990) and 98-2(8) *Sird v. Chater*, 105 F.3d 401 (8th Cir. 1997)**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Rulings 92-3(4), 93-1(4) and 98-2(8).**EFFECTIVE DATE:** This notice of rescission is effective September 20, 2000.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION: A Social Security 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 or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On March 10, 1992, we published Acquiescence Ruling (AR) 92-3(4)¹ (57FR 8463) to reflect the holdings in *Branham v. Heckler*, 775 F.2d 1271 (4th Cir. 1985) and *Flowers v. U.S. Department of Health and Human Services*, 904 F.2d 211 (4th Cir. 1990). In *Branham*, the United States Court of Appeals for the Fourth Circuit held that when evaluating a claimant's impairment under section 12.05C of our Listing of Impairments, the claimant's inability to do his or her past relevant work established the additional and significant work-related limitation of function required by Listing 12.05C. In *Flowers*, the court applied the holding in *Branham* and stated that a claimant's inability to return to his or her past relevant work due to an impairment established a work-related limitation of function that met the requirement of Listing 12.05C. The AR applied to cases in which the claimant resided in Maryland, North Carolina, South Carolina, Virginia, and West Virginia at the time of the determination or decision at any level of administrative review.On February 24, 1998, we published Acquiescence Ruling 98-2(8) (63 FR 9279) to reflect the holding in *Sird v. Chater*, 105 F.3d 401 (8th Cir. 1997). In *Sird*, the court applied the holding in *Branham* and held that an impairment that prevents a claimant from performing his or her past relevant work constitutes a significant work-related limitation of function that meets the requirements of Listing 12.05C. AR 98-2(8) applied to cases in which the claimant resided in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota at the time of the determination or decision at any level of administrative review.

regulatory change that extended the IQ listing range in section 12.05C from "60 to 69" to "60 through 70." Several technical revisions also were made by AR 93-1(4). Since both AR 92-3(4) and AR 93-1(4) have been rendered obsolete by the publication of the final rules revising the mental disorders listing applicable to adults in part A of the Listing of Impairments, both rulings are being rescinded.

In this issue of the **Federal Register**, we are publishing final rules that, among other things, revise section 12.00A of our Listings and revise Listing 12.05C. The final rules revise section 12.00A to state explicitly that when we adjudicate a claim under Listing 12.05C, we will assess the degree of functional limitation the additional impairment imposes to determine if it significantly limits an individual's physical or mental ability to do basic work activities, *i.e.*, is a severe impairment as defined in 20 CFR 404.1520(c) and 416.920(c). We also have revised section 12.00A of the Listings to restate our policy that, if the additional impairment does not cause limitations that are "severe" as defined in 20 CFR 404.1520(c) and 416.920(c), we will not find that the impairment imposes "an additional and significant work-related limitation of function" under Listing 12.05(c), even if the individual is unable to perform his or her past work because of the unique features of that work.Accordingly, since the regulations that were the subject of the *Branham*, *Flowers* and *Sird* AR's have now been revised, we are rescinding AR's 92-3(4), 93-1(4) and 98-2(8) concurrently with the publication of the revised regulations. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: April 5, 2000.

Kenneth S. Apfel,*Commissioner of Social Security.*

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BILLING CODE 4191-02-M¹ On April 29, 1993, AR 93-1(4) was published in the **Federal Register** (58 FR 25996) to reflect a