



July 5, 2000

Paul Morgenstern
30 Burroughs Road
Lexington, MA 02420-1908

Re: Clarification of November 1, 1999 Opinion Regarding Pass Funds
OLA External Opinion

President
John McKay

Board of Directors
Douglas S. Eakeley
Roseland, NJ
Chairman

John N. Erlenborn
Issue, MD
Vice Chairman

Hulett H. Askew
Atlanta, GA

LaVeeda M. Battle
Birmingham, AL

John T. Broderick, Jr.
Manchester, NH

Edna Fairbanks-Williams
Fairhaven, VT

F. Wm. McCalpin
St. Louis, MO

Maria Luisa Mercado
Galveston, TX

Nancy H. Rogers
Columbus, OH

Thomas F. Smegal, Jr.
San Francisco, CA

Ernestine P. Watlington
Harrisburg, PA

Dear Mr. Morgenstern:

Having reviewed your correspondence with Ms. Mucciolo, I see that some clarification of our office's prior opinion of November 1, 1999 addressed to you is in order. When our office prepared that letter, we looked into the nature of the PASS program, the restrictions on the use of PASS funds, and the ways in which other government assistance programs treat PASS funds for eligibility purposes.

As the Social Security Administration has stated, every federal program has unique priorities and may treat PASS funds differently than others. The information you have from SSA should include the following statement (which can also be found at: <http://www.ssa.gov/pubs/11017.html>):

How Will A Plan Affect Benefits I Get?

You should check with the agency that is responsible for those benefits to find out if the plan (and the extra SSI) might affect those benefits. In many cases, income and resources set aside under a plan will not be counted for food stamps and housing assistance provided through the U.S. Department of Housing and Urban Development. **But, it's important that you contact the particular agency to find out how your benefits will be affected.**

LSC recipients are mandated to set their own guidelines for eligibility and matters handled. The LSC regulations set certain limits that recipients must work within. Each LSC recipient makes its own determination about how best to use its limited resources to serve the overwhelming legal needs of low income people in its service area.

For example, with regards to clients served with LSC funds, the LSC regulations at 45 CFR §1611.3 set the general maximum income limit for client eligibility at 125% of the federal poverty levels. Nonetheless recipients are free to set income limits below that maximum. Thus a recipient may not set the maximum annual income level for clients at 200% of the federal poverty levels, but a recipient may determine that it will only accept clients whose incomes are 100% of the federal poverty level. Also some programs handle a full range of landlord tenant disputes, while other programs only handle evictions after court papers are served.

Similarly each recipient can determine if its program will treat PASS funds as income for eligibility purposes. Our prior letter to you meant to explain why, under the LSC regulations, a recipient may decide to include PASS funds as income. LSC will not interfere with a local eligibility determination on this matter. The recipient is best suited to determine, within their discretion, how to utilize their scarce resources. Regrettably LSC recipients must often turn away applicants in genuine need.

Very truly yours,

Mark Freedman
Assistant General Counsel

Victor M. Fortuno
General Counsel

mfreedman@lsc.gov
202.336.8829