IN THE MATTER OF TREND COLLEGES, INC.,
Respondent.

Docket No. 90-56-ST
Student Financial Assistance Proceeding

DECISION

Appearances: Thomas Hylden, Esq. of Baker & Hostetler, Washington, D.C. for the Respondent.

Frances C. Moran, Esq. of the Office of the General Counsel, United States Department of Education for the Office of Student Financial Assistance, Washington, D.C.

Before: Judge Allan C. Lewis

This is an action initiated by the United States Department of Education (ED) to terminate the eligibility of Trend Colleges, Inc. (Trend) to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.See footnote 1 1/ This action was proposed based upon Trend's purported failure to satisfy the current ratio test under the financial responsibility regulations, 34 C.F.R. § 668.13(c)(2) (1989).See footnote 2 2/ Based upon the findings of fact and conclusions of law, infra, Trend has violated this regulation. Trend shall submit a letter of credit in the amount of $500,000 to ED. In the event this letter of credit is not submitted, Trend's eligibility to participate in the student financial programs is terminated.

I. FINDINGS OF FACT

1. Trend, a wholly owned subsidiary of Merkurian Enterprises, Inc. (MEI), operates ten private postsecondary vocational schools in the states of Washington and Oregon.See footnote 3 3/ These schools are fully licensed and accredited. Many of the schools have been in operation since the early 1990's and are the only facilities for postsecondary vocational training in their communities. In addition, many of its employees are recognized leaders in their communities and professions.

2. Trend's corporate philosophy stresses service to its communities and students. Trend's admissions standards are geared to obtaining students who will not just enroll, but complete their education, successfully obtain employment upon graduation, and become productive members of their communities.

3. Trend's retention rates, graduation rates and placement rates are above industry standards, and its student loan default rate is below industry standards. In 1989, 93.7 percent of Trend's students who were actively seeking employment, found employment. In September of 1990, 93.2 percent of Trend's students who were seeking employment, found employment.

4. At Trend, the average Perkins default rate as of June 30, 1989, was 11.9% and the average Stafford default rate for the 1988 cohort was 15.9%, down from 23.9% in 1987.

5. Trend executed program participation agreements with ED which authorizes Trend to participate in the various student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, and requires that it comply with the program statutes and regulations, including 34 C.F.R. Part 668.

6. Trend submitted its fiscal 1988 and 1989 audited financial statement to ED. This statement was reviewed by ED under its standard procedure.See footnote 4 4/ As a result thereof, ED requested on November 14, 1989, Trend to submit within 30 days an irrevocable letter of credit in the amount of $3.5 million with an expiration date no earlier than January 31, 1991, if Trend wished to continue to participate in Title IV programs. The amount of credit represented approximately 28% of the $12,350,231 of Title IV aid received by Trend's students during the fiscal 1988 and was within the 25 to 33% range generally requested by ED.

7. ED agreed to extend the due date for the irrevocable letter of credit to December 28, 1989, and advised Trend that ED would consider any information that Trend wished to submit in response to the November 14, 1989, letter.

8. On December 27, 1989, Trend submitted additional information to ED and urged that no letter of credit was warranted and that, at any rate, the amount requested, $3.5 million, was excessive.

9. On February 2, 1990, ED agreed to lower the amount of the letter of credit from $3.5 million to $500,000. ED requested the letter of credit by March 4, 1990.

10. On March 13, 1990, ED allowed Trend an additional 15 days, i.e. until April 18, 1990, in which to submit the letter of credit.

11. On April 17, 1990, Trend proposed a three-step phase-in over six months in which Trend would post letters of credit totalling $500,000. Jt.Ex. 9. On May 1, 1990, ED rejected the phase-in plan and reasserted its request for a $500,000 letter of credit within 20 days. Jt.Ex. 10. Subsequently, ED agreed to the phase-in approach in which letters of credit totalling $500,000 would be submitted by Trend by October 1, 1990. Jt.Ex. 11. As of the date of the hearing, Trend has not submitted a letter of credit.

12. On August 9, 1990, ED notified Trend that it intended to terminate its eligibility to participate in Title IV programs on account of its failure to meet the financial responsibility requirement of 34 C.F.R. § 668.13 relating to its current ratio. In addition, ED notified Trend that it intended to fine Trend $50,000 based on the violation of the above financial responsibility regulation.See footnote 5 5/

13. Trend employs the accrual basis method of accounting and maintains a fiscal year ending June 30th. Under its method of accounting, Trend accounts for revenues in the following manner in its balance sheet and income statement. When the student begins class, the accounts receivable on the asset side of the balance sheet is debited in the total amount of the tuition cost and the deferred revenue account on the liability side is credited in the same amount.See footnote 6 6/ Under the student contract, the student has an obligation to pay the amount of his or her tuition to Trend and, therefore, this amount is included in the accounts receivable. As payments are

received from the student, either as cash payments on his account or from financial aid proceeds, the accounts receivable is credited (reduced) and a corresponding debit (increase) in the cash account is made.See footnote 7 7/

For purposes of revenue recognition, Trend debits the deferred revenue account each month in the amount of the pro rata revenue earned with respect to the student for the month and credits the same amount to the earned tuition revenue account. This latter entry will be reflected in the income statement and the net income or loss from the income statement will, in turn, be reflected in the accumulated earnings account in the stockholders' equity section of the balance sheet.

In the event a student withdraws before completing his or her program, the following entries are made. Inasmuch as the revenue is earned on a pro-rata basis, the income statement is largely unaffected other than to accrue any additional revenue earned as a result of the withdrawal. One significant entry occurs, for instance, where the student completed more than half of the program before withdrawing. Here, Trend accrues the remaining unearned tuition as revenue. This is accomplished by debiting deferred revenue and crediting the earned tuition account.

After the adjustments are made to recognize the proper amount of earned revenue for a withdrawn student and where the student is owed a refund of tuition or other charges, the amount of the refund resides in the deferred revenue account. Deferred revenue is then debited (reduced) by this amount and the trade accounts payable is credited (increased) by the same amount. Since these accounts are within the current liabilities section of the liability side of the balance sheet, this has no effect on the overall balance sheet. Upon payment of the refund, Trend debits (reduces) the trade accounts payable and credits (reduces) the cash account.See footnote 8 8/ These entries will be reflected on the balance sheet by a reduction in the asset and the liability sides of the balance sheet.

14. Even though Trend is legally entitled to retain the full amount of the tuition once a student has completed one-half of the course of study, it continues to debit the deferred revenue account and credit the earned tuition account on a monthly basis for the pro-rata amount of the tuition earned as opposed to debiting the deferred account with respect to the remaining amount of the tuition therein and crediting this amount to the earned tuition account.

15. Under Trend's refund policy for its Washington schools, withdrawing students are entitled to receive the following refunds:

Withdrawal Date	Refund Owed
Within the First Week or 10% of Program	90%
Within the First 25% of Program	75%
Before the First Half of Program	50%
After First Half of Program	0

Trend's refund policy for its Oregon schools provided for a pro rata refund if the student withdraws before the first half of the program is completed, and no refund thereafter.

Trend is obligated to refund all payments by the student in the event it fails to furnish the program of instruction undertaken by the student.

16. Trend had a student census as follows:

Fiscal Year	Census
1987	2,329
1988	2,660
1989	1,903
1990	1,597

The period between April to October is the time when Trend's student census declines. This is because the largest start dates are September and October and the nine month classes graduate between June and August. In addition May through August are the months with the fewest number of new students. Trend's projected number of new students for May 1990 through October 1990 were--

May 235
June 190
July 223
Aug 297
Sept 389
Oct 418

17. Total Title IV aid received by students of Trend was approximately $12.3 million for fiscal 1988 and $13 million for fiscal 1990. Trend does not physically segregate, set aside, or reserve the tuition payments received from its students and draw upon them as they are earned. Tuition payments are commingled with other general corporate funds and are available for general use.

18. Trend's total refunds payable for the 12 month period preceding June 30, 1989, was $1,867,231. It was $1,599,847 for the 12 month period preceding June 30, 1990, and $1,505,433 for the 12 month period preceding October 31, 1990. Trend failed to pay approximately 50% of the refunds due students between October 1989 and the hearing in December 1990. During this period, it paid approximately $880,000 in refunds. As of December 5, 1990, Trend owed approximately $1,065,000 in refunds.

19. In its audited financial statement for the fiscal year ending June 30, 1988, Trend reported total assets of $9,534,919, total liabilities of $8,247,355, and stockholder's equity of $1,287,564 of which its retained earnings were ($2,027,969). Its current assets were $6,152,492 of which $3,645,625 represented student accounts receivable and $621,724 represented an unsecured demand note from its parent MEI. Its current liabilities were $7,705,159 of which the trade accounts payable was $1,275,846 and deferred revenue was $4,803,575. Accordingly, Trend's current ratio was 0.80, i.e. $6,152,492/$7,705,159. The difference between its current assets and its current liabilities or its net working capital was ($1,552,667).

20. In its audited financial statement for the fiscal year ending June 30, 1989, Trend reported total assets of $8,290,514, total liabilities of $7,550,864, and stockholder's equity of $739,650 of which its retained earnings were ($2,575,883). Its current assets were $5,121,680 of which $3,036,721 represented student accounts receivable and $687,138 represented primarily an unsecured demand note from its parent MEI. Its current liabilities were $7,143,705 of which its trade accounts payable was $1,083,560 and its deferred revenue was $3,892,239. Accordingly, Trend's current ratio was 0.72, i.e. $5,121,680/$7,143,705. The difference between its current assets and its current liabilities or its net working capital was ($2,022,025). A subsequently revised statement of fiscal 1989 reflected current assets of $4,976,680 (of which $2,826,307 represented student accounts and notes receivable) and current liabilities of $7,143,705. As revised, Trend's current ratio was 0.70.

21. In its audited financial statement for the fiscal year ending June 30, 1990, Trend reported total assets of $8,984,504, total liabilities of $8,161,439, and stockholder's equity of $823,065, of which its retained earnings were ($3,942,468).See footnote 9 9/ Its current assets were $5,506,449 of which $3,628,965 represented student accounts receivable and $732,980 represented primarily an unsecured demand note from its parent MEI. Its current liabilities were $7,823,218 of which the trade accounts payable was $2,358,002 and its deferred revenue was $3,488,867. Accordingly, Trend's current ratio was 0.70, i.e. $5,506,449/$7,823,218. The difference between its current assets and its current liabilities or its net working capital was ($2,316,769).

22. For fiscal 1987 and 1988, Trend reported the following statements of income:

	1987	1988
Revenues	12,724,886	15,244,769
Operating expenses	12,503,072	14,185,945
Income from operations	221,814	1,058,824
Other income (expense)	(125,722)	(79,901)
Income before income taxes	96,092	978,923
Prov. for (benefit from) taxes	--	50,000
Net income	96,092	928,923
	....	....

23. For the fiscal 1987 and 1988, Trend reported the following statements of cash flows:

1987 1988
Cash flows from
operations 1,260,787 1,568,860
Cash flows from
investing activ. (399,532) (186,816)
Cash flows from
financing activ. (953,328) (1,322,135)
Net increase
(decrease) cash (92,073) 59,909

Cash at beg. of yr. 314,758 222,685

Cash at end of yr. 222,685 282,594
....

24. For the fiscal 1989 and 1990, Trend reported the following statements of income:

1989 1990

Revenues 15,275,327 13,583,686
Operating
expenses 14,619,339 13,953,448
Income from
operations 655,988 (369,762)

Other income
(expense) (142,147) (438,835)

Income before
income taxes 513,841 (808,597)

Prov. for (benefit
from) taxes 70,000 (111,446)

Net income 443,841 (697,151)
....

25. For the fiscal 1989 and 1990, Trend reported the following statements of cash flows:

1989 1990
Cash flows from
operations 760,862 387,936
Cash flows from
investing activ. (168,107) (185,522)
Cash flows from
financing activ. (785,678) (201,939)

Net increase
(decrease) cash (192,923) 475

Cash at beg. of yr. 282,594 89,671

Cash at end of yr. 89,671 90,146
....

26. Under the terms of a loan agreement with First Interstate Bank of Oregon (First Interstate), Trend had available a $1,000,000 revolving line-of-credit for fiscal 1988 and 1989 and a $750,000 line-of-credit for fiscal 1990. Trend has pledged substantially all of the company's assets as collateral for this line-of-credit. In addition, all of the company's debt to the bank has been guaranteed by Trend's parent, MEI, and MEI's stockholders. The loan agreement contains, among others, provisions requiring the maintenance of certain levels of working capital and stockholders' equity. As of June 30, 1989 and 1990, Trend was not in compliance with these provisions; however, the bank waived the compliance requirement. As of June 30, 1989, Trend's outstanding borrowing under the line-of-credit was $1,000,000. As of June 30, 1990, the outstanding balance was $715,000.

27. As of June 30, 1989, Trend was contingently liable as guarantor of $1,788,976 of bank indebtedness of MEI. As of June 30, 1990, the amount of the indebtedness decreased to $1,591,835.

28. As of June 30, 1989, Trend was obligated to pay its former owners $780,000 at a rate of $10,000 per month under a covenant not to compete. For fiscal 1988, 1989, and 1990, Trend paid $120,000, $120,000 and $95,000, respectively. These amounts were treated as a charge to operations. On June 29, 1990, the covenant not to compete agreement was amended and the former owners agreed to accept 1,000 shares of Class B common stock in lieu of the monthly payments. Trend agreed to redeem the stock on February 15, 1997, for $750,000.

29. On June 29, 1990, Trend exchanged $1,000,000 of indebtedness owed to First Interstate for 8,000 shares of Class B preferred stock. Under an agreement with First Interstate, Trend will redeem 1,000 shares at $125 per share every six months beginning April 1, 1994 through October 1, 1997. Thus, Trend will expend $125,000 in fiscal 1994 and $250,000 in fiscal 1995 for redemptions required under the agreement.

30. While Trend did not introduce details concerning the acquisition of Trend by MEI from School Management, Inc., several of the details of the financing arrangement are apparent from the record. In December 1985, MEI acquired the stock of Trend. The majority of the acquisition debt was incurred by MEI and Trend issued preferred stock to MEI. The transaction was structured so that each month Trend paid a dividend on the preferred stock to MEI in the amount of about $82,000. MEI then used the funds to repay the acquisition debt, a lease MEI assumed from Trend, and the premiums on some key-man life insurance policies. The remaining funds were returned to Trend as interest and principal payments on a note MEI owes to Trend, a note which was created at the time MEI purchased Trend.

31. For fiscal 1988, 1989, and 1990, Trend paid dividends to MEI in the amount of $991,775 in 1988 and 1989 and $593,686 in 1990. Trend's articles of incorporation were amended sometime after July 15, 1990, to significantly reduce the mandated dividend payments on its outstanding preferred stock held by MEI. While the yearly dividends were $991,755, the amendment decreased the annual dividends to $309,924. The reduction in preferred dividends was possible due to two factors. The restructuring of the remaining balance of the acquisition debt owed to First Interstate reduced from $56,783 to $10,816 the monthly debt service between December 1989 and February 1991. The second factor was reduction in the monthly lease payment due Benj. Franklin Leasing Co. from $10,500 to $3,600. This reduction will remain in effect from June 1990 through December 1991.

32. Trend asserts that its current ratios for the prior fiscal years 1983 through 1987 were as follows:

1983 1984 1985 1986 1987
0.88 0.75 1.00 0.93 0.79

While this information and other summary information was typed on paper and submitted by Trend as Ex. RX-24, this hearsay information is deemed insufficient to establish these facts. Accordingly, the proposed finding by Trend is rejected.

33. The current ratio for Trend on a monthly basis for the period from July 1989 through November 1990 was as follows:

Month	Current ratio
July, 1989	0.69
August	0.68
September	0.68
October	0.69
November	0.67
December	0.64
January, 1990	0.63
February	0.65
March	0.66
April	0.67
May	0.67
June	0.70
July	0.73
August	0.72
September	0.75
October	0.74
November	0.75

34. In January 1989, the Association of Independent Colleges and Schools prohibited its member-institutions, which included Trend, from using a survey program to recruit individuals

to enroll in their programs. Under this technique, Trend employees asked questions of people outside of unemployment offices and, if they were able to obtain a name and telephone number, the person was actively recruited to enroll. Historically, a large number of leads and actual starts came from the survey program. In some of Trend's schools, the program produced up to 40 percent of the enrollments. Trend has not been successful in replacing this former source of leads. Since January 1990, it has relied upon commercially developed leads and campus based leads as its marketing activities.

35. As a result of its declining enrollment and declining revenues in fiscal 1990, Trend undertook various actions designed to increase its income and financial stability and meet the challenges posed by the declining enrollments. In dealing with its financial crisis, Trend decided not to sacrifice the education of its students, but rather to look at other areas to increase its financial stability. Trend took numerous and various steps to ameliorate its financial situation as a result of the decline in enrollment, including among other things: the president, Mr. Moises, took over responsibility for admissions; Trend reduced its operating expenses; Trend sold its school in Olympia, Washington; Trend merged its Vancouver school into its Portland school, and used the Vancouver space for corporate offices; Trend changed some of its course offerings to reflect the changing economies in the Northwest; Trend expanded its evening programs; Trend reduced its selling and marketing costs; Trend met with its creditors and restructured its relations with some of them;See footnote 10 10/ Trend decreased or held constant the salaries of its owners, who also were actively involved in the management of the company. These efforts were aimed at four objectives: reduce expenses, increase net worth, increase revenue attributable to students' presence in school, and develop new sources of revenue.See footnote 11 11/

36. Trend turned around its financial situation. The downturn in Trend's financial situation was discernible by the slow increase (in relation to prior years) in total revenue in October 1988 through March 1989 and manifested itself on the "bottom line" in July 1989 through January 1990. As a result of these various actions referred to above, Trend began showing an upturn in January of 1990, when operating income and net profit both became positive through the end of the fiscal year, although a net loss for the year (due to heavy losses the first six months of the fiscal year) remained.See footnote 12 12/ In addition, the first four months of fiscal 1991 reflected a net loss of $49,000 whereas the comparable period for fiscal 1989 reflected a net income of $68,000 and for fiscal 1990 reflected a net loss of $642,000. Thus, Trend achieved substantially lesser losses in the four month period in fiscal 1991 than the corresponding period in fiscal 1990 with fewer total students in each month. This was achieved primarily through a reduction in expenses.

37. Trend's budget for fiscal 1991 was prepared over a four month period (and before Trend received the August 11 termination letter) and attempts to present a realistic statement of anticipated financial operations. It projects a net profit for the year of approximately $475,000. Under this budget, trade accounts payable (which includes student refunds and non-student accounts payable) would decrease by $150,000 from the previous fiscal year--fiscal 1990. Its projected best case budget for fiscal 1991 estimates a $650,000 after-tax profit. Here, Trend projects a decrease in the trade accounts payable by $300,000 from the prior fiscal year. In both cases, these budget figures, if realized, would result in a reduction of the retained earnings deficit and an increase in current ratio, although the current ratio would still be less than one.

38. Trend is currently exceeding its budget for the five-month period ending November 30, 1990. The following table compares Trend's fiscal 1991 budgeted net after-tax profit with actual results for the five-month period ending November 11, 1990:

Month	Budget	Actual	Difference
July	(170,208)	(36,161)	+ 134,047
August	(205,425)	(127,586)	+ 77,839
Sept	(12,525)	44,786	+ 57,311
Oct	29,714	70,389	+ 40,675
Nov.	28,352	158,164	+ 129,812
Total (5 mos)	(330,092)	109,592	+ 439,684

Accordingly, Trend's prospects, based on its performance as of the hearing, to exceed even its best case budgeted profit of $650,000 for fiscal 1991 are favorable. However, the record does not reflect the adverse impact on its earnings created as a result of the imposition of the reimbursement payment system by ED in December 1990.

39. The consolidated financial statements for MEI and subsidiaries for the fiscal years ending June 30, 1988, and 1989 reveal the following balance sheets:

	1988	1989
Current assets	6,022,167	4,731,656
Other assets	4,287,323	4,436,958
Prop. & equip.	2,118,951	1,849,885
Total assets	12,428,441	11,018,499
	....	....
Current liabilities	8,585,077	7,964,722
Long-term debt	2,489,931	2,113,556
Total liabilities	11,075,008	10,078,278
Stockholders' equity	1,353,433	940,221
Total liab. and equity	12,428,441	11,018,499
	....	....

40. The consolidated financial statements for MEI and subsidiaries for the fiscal years ending June 30, 1988, and 1989 reveal the following statements of operations:

	1988	1989
Revenues	16,315,415	16,315,955
Operating		

expenses 15,303,541 15,723,844
Income from
operations 1,011,875 592,111

Other income
(expense) (438,855) (602,408)

Income (loss) before
income taxes, extra-
ordinary item, and
minority interest 573,020 (10,297)

Prov. for taxes 72,102 70,000

Extraordinary item,
minority interest 41,968 -

Net income (loss) 542,616 (80,297) ....

41. The consolidated financial statements for MEI and subsidiaries for the fiscal years ending June 30, 1988, and 1989 reveal the following statements of cash flows:

1988 1989

Cash flows from
operations 1,334,320 429,571
Cash flows from
investing activ. (337,655) (673,390)
Cash flows from
financing activ. (674,989) (97,132)
Exchange rate
effect 3,171 (25,529)
Net increase
(decrease) cash 324,847 (366,480)

Cash at beg. of yr. 232,236 557,083

Cash at end of yr. 557,083 190,603
....

42. Dun & Bradstreet Banker's Advisory Service Report of November 1, 1989, assigned Trend a banker's risk rating of 9, its highest risk category.

43. Guaranteed student loan borrowers who are not paid refunds owed by their schools are still fully liable for those amounts to their lenders. Students are subject to a Federal income tax

refund offset for that amount if they default on the loans. Grant funds that are not returned to program accounts by institutions are unavailable to other students.

44. The record does not reveal the extent to which ED has paid any additional monies as a result of Trend's failure to pay refunds. ED pays, however, approximately 11 percent interest and special allowance benefits to lenders on outstanding principal that should have been refunded by Trend.

II. OPINION

In this action, ED seeks to terminate the eligibility of Trend to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended.See footnote 13 13/ In this regard, Section 487(c)(1)(D) of the Higher Education Act of 1965, as added by Section 451.(a) of the Education Amendments of 1980, Pub. L. 96-374, 94 Stat. 1367 (to be codified at 20 U.S.C. § 1094(c)(1)(D)) authorizes ED to prescribe regulations for--

(D) the limitation, suspension, or termination of the eligibility for any program under this subchapter . . . of any otherwise eligible institution, or the imposition of a civil penalty under paragraph (2)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing on the record, that such institution has violated or failed to carry out any provision of this subchapter . . . or any regulation prescribed under this subchapter . . . .

Pursuant to this authority, ED promulgated 34 C.F.R. § 668.86(a) (1990) which provides that--

the eligibility of an institution to participate in any or all Title IV, HEA programs [may be limited or terminated] if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title.See footnote 14 14/

Section 668.13 of 34 C.F.R. sets forth the conditions regarding the financial responsibility of an institution to begin and to continue to participate in the student assistance programs. In general, an institution is financially responsible if it is able to provide the requisite educational and administrative services and is able "to meet all of its financial obligations, including . . . [r]efunds of institutional charges." 34 C.F.R. § 668.13(b). However, an institution is not considered financially responsible under 34 C.F.R. § 668.13(c)(2) where--

(2) [u]nder an accrual basis of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1;

Where an institution is considered not financially responsible, the institution may, however, submit a letter of credit in an amount determined by ED which will then permit it to continue to participate in the Title IV student assistance programs. 34 C.F.R. § 668.13(d)(1).

The initial controversy between the parties is whether the deferred revenue account, which is included as a current liability in Trend's balance sheet, should be excluded from the current liabilities in determining the current ratio under 34 C.F.R. § 668.13(c)(2). Assuming Trend's current ratio remains less than one, a second controversy arises concerning the nature of appropriate sanctions. Trend proposes certain limitations while ED asserts that termination of Trend's eligibility to participate in the student assistance programs is mandated.

Under Trend's accrual basis method of accounting, the current liabilities section of the balance sheet includes an account designated as deferred revenue. When a new student begins class, Trend debits (increases) the deferred revenue account on the liability side of the balance sheet by the full amount of tuition and credits (increases) the accounts receivable on the asset side of the balance sheet. At this point, the student is attending school and Trend does not have an obligation to pay any amount to the student. Under the student contract, the student has an obligation to pay the amount of his or her tuition to Trend and, therefore, this amount is included in the accounts receivable.

As the student progresses through the program, Trend delivers its services and therefore, under its accounting system, it is entitled to realize the revenue as it is earned. Accordingly, it transfers, on a monthly basis, a pro rata amount from the deferred revenue account to the earned tuition account which moves the amount from an unearned status to an earned status. The immediate effect of the transfer on the balance sheet is to decrease the liabilities section and to increase the accumulated earnings in the stockholders' equity section. Thus, the asset side of the balance sheet is unaffected.See footnote 15 15/

ED asserts that the plain meaning of 34 C.F.R. § 668.13(c)(2) requires that all items reported as current liabilities on the balance sheet, including the deferred revenue account, must be included as a current liability in the determination of the current ratio. In addition, ED argues that the nature of the deferred revenue account represents a liability or claim against Trend and, as such, it is similar to other liabilities included as current liabilities. Under this view, Trend's current ratio for the fiscal year 1989, its latest fiscal year for purposes of 34 C.F.R. § 668.13(c)(2), was 0.70 which is substantially less than one.See footnote 16 16/ Therefore, according to ED, Trend is not financially responsible under 34 C.F.R. § 668.13(c)(2). Since Trend failed to submit a $500,000 letter of credit demanded by ED in order to continue to participate in the student assistance programs, ED urges that Trend's eligibility be terminated.

While Trend does not dispute that, as traditionally defined, its current ratio for fiscal 1989 was substantially less than one,See footnote 17 17/ it asserts that the term current liabilities within 34 C.F.R. § 668.13(c)(2) should be construed to exclude, in whole or part, its deferred revenue account which is presently included within the current liabilities section in its balance sheet. Trend argues that, unlike a typical current liability, the deferred revenue account does not represent a liability of Trend; rather it is merely an accounting entry which reflects unearned income. Therefore, since the purpose of the current ratio is to view a school's current assets in relation to the amounts of money it is reasonably expected to pay out over the next twelve months, Trend urges that the inclusion of the full amount of the deferred student revenue account in the current liabilities overstates the amount of the current liabilities which, in turn, causes a downward and adverse impact on its current ratio.

Under Trend's approach, it would include as a current liability only that portion of the school's anticipated revenue which is likely to be refunded over the next twelve months and exclude the deferred revenue account. As such, its current ratio for fiscal 1989 is 0.97 or slightly less than one. Therefore, Trend argues that it is inappropriate for ED to demand a letter of credit in any amount.See footnote 18 18/

In United States v. Missouri Pacific Railroad Co., 278 U.S. 269, 277 (1929), the Court noted that "[i]t is elementary that where no ambiguity exists there is no room for construction." Here, the plain language of 34 C.F.R. § 668.13(c)(2) is clear that the current ratio is "a ratio of current assets to current liabilities" determined "under an accrual basis of accounting."

Under accrual accounting, current assets is a term "used to designate cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business." S. Davidson, Handbook of Modern Accounting (McGraw- Hill 1970) at 1-6. Similarly, current liabilities are generally claims against a company during the normal operating cycle and will be paid from among the assets listed as current assets. Id. at 1-8. However, under the accrual basis method of accounting, unearned income is treated as a deferred credit within the current liability portion of the balance sheet--

Included within the general liability section may be found items described as deferred credits. The expression "deferred credits" reminds the reader that ultimately some part or all of the item will be credited to income. This is because the deferred credit includes an element of profit. For example, a company may receive an advance payment on a future sale to a customer. The advance payment may be sufficient to cover not only the cost of delivering the product to the customer but a margin of profit also. For this reason the item may be considered a deferred credit to income.

Id. at 1-8.

Thus, unearned income must be included as a current liability under the accrual accounting concept even though it is not a claim against the organization.See footnote 19 19/

Here, Trend's deferred revenue account represents unearned tuition income.See footnote 20 20/ As such, the accrual basis method of accounting requires that it is included as a current liability and Trend's method of accounting conforms with this requirement. Therefore, in determining the current ratio under 34 C.F.R. § 668.13(c)(2), Trend must include this account as a current liability.

Trend urges that the purpose of the current ratio is to view a school's current assets in relation to the amounts of money it is reasonably expected to pay out over the next twelve months. This view has merit. Under generally accepted accounting principles, the current ratio or current position of a company represents a "direct relationship between the current liabilities and the current assets" and reflects a "company's ability to meet its immediately maturing obligations in the ordinary course of business with the assets at hand." Id. 1-6 and 1-8.

In Trend's view, the deferred revenue account is only an accounting entry and therefore distorts the actual current liabilities present. In a narrow sense, Trend's view is correct. However, in the over-all financial perspective, Trend's position lacks merit because as a practical matter the dollar amount of the deferred revenue closely approximates the expenses that will be incurred in the future in order to realize the unearned revenue. The following example will illustrate these conclusions. Assume a new student pays $100 for a program which costs Trend $90 (for its teacher) and produces a $10 profit. Assume that Trend incurs its costs for the teacher pro rata over the program but does not pay him until the last day of the program. As of the first day of class, Trend debits deferred revenue $100 and credits cash $100. At this point, current assets equals current liabilities. At the half-way point, current assets are still $100. Current liabilities are $50 in the deferred revenue account and $45 in the teacher accounts payable account. Stockholders equity has $5 of profit representing the difference between $50 of income and $45 of teacher expense. Thus, the current liability account totals $95 although only $45 represents actual unpaid liabilities. In this regard, Trend is correct. The current liabilities account overstates the actual liabilities. However, with current assets of $100 and current liabilities of $95, the current ratio exceeds one and presents an over-all favorable financial picture. Thus, Trend's method of accounting does not distort its financial position.See footnote 21 21/

Under Trend's primary position, the current liabilities should exclude the deferred revenue account and include only that portion of the school's anticipated revenue which is likely to be refunded over the next twelve months due to students' premature termination.See footnote 22 22/ Under this approach, the current liabilities for fiscal 1989 are reduced over-all by approximately $2 million (the net figure resulting from a $3.9 million decrease due to the elimination of the deferred revenue account and an increase of $1.9 million representing refunds payable in the next twelve months).See footnote 23 23/ Trend's "revised" current ratio under this approach is 0.97 for fiscal 1989.See footnote 24 24/ From an accounting view point, this approach is impermissible since it reduces significantly the liability and equity side of the balance sheet while retaining on the asset side the previously created corresponding assets. Even if this method was adopted, the current ratio remains less than one for fiscal 1989--the year in issue. Thus, Trend still violates 34 C.F.R. § 668.13(c)(2).

In view of the violation of 34 C.F.R. § 668.13(c)(2), the next issue is the appropriate nature of the sanction. In this regard, the administrative law judge may--

issue a decision to fine the institution or impose one or more limitations on the institution rather than terminating its eligibility to participate.

34 C.F.R. § 668.90(a)(2).

Under this regulation, Trend urges the tribunal to impose one set of limitations and, in the alternative, a second set of limitations. The primary difference between the proposals centers on whether the reimbursement payment system for the disbursal of financial assistance due its students from ED is continued. In the event the program is discontinued, Trend seeks essentially a three-year payoff period for unpaid refunds and other items due to the cost savings realized from the elimination of this program. It will expend in excess of $370,000 per year for the first three years in order to comply with the proposed limitations. Where the program is continued, Trend seeks a four- year payoff period.

Where an action involves an institution's failure to provide a letter of credit, ED argues that the tribunal's discretion under 34 C.F.R. § 668.90(a)(2) is limited by virtue of paragraph (a)(3) to sanctions which supplement rather than supplant the termination remedy. Section 668.90(a)(3) provides in part--

(3) Notwithstanding the provisions of paragraph (a)(2) of this section--
. . .
(ii) If the action brought against an institution involves its failure to provide a letter of credit or performance bond in the amount specified by the Secretary under § 668.13, the administrative law judge must find that the amount of the performance bond or letter of credit established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable.

In view of the determination, infra, that the amount of the letter of credit demanded by ED was reasonable, it is not necessary to address the issue whether sanctions other than a letter of credit may be imposed in lieu of or in addition to the letter of credit where it is determined that the amount of the letter of credit requested was unreasonable.See footnote 25 25/

While the initial request for a letter of credit by ED was $3.5 million, this amount was subsequently reduced to $500,000 following the submission by Trend of an explanation of its accounting method, particularly the deferred revenue account, and the State of Washington's tuition recovery plan which is available to students who are owed a refund.See footnote 26 26/

ED justifies the $500,000 amount on several grounds. It points to the magnitude of unpaid student loan refunds, the increase in trade accounts payable (which includes refunds), and the generally poor financial condition of Trend as reflected by various aspects of its financial statements for fiscal 1989 and 1990. Trend, on the other hand, acknowledges that it has suffered financial setbacks which it attributes to various causes, asserts that it has turned the corner toward profitability, and given three or four years under various controls to protect ED's interest, will be able to eliminate the unpaid refund problem.

Initially, the magnitude of Trend's unpaid refunds with respect to student loans is significant. While it paid approximately $900,000 of refunds between October 1989 and the December 1990 hearing, Trend had approximately $1 million in unpaid refunds as of December 1990. Secondly, Trend receives, yearly, the proceeds of approximately $12 million in student loans. This creates two problems in ED's view. First, it creates a significant potential liability for Trend beyond the existing unpaid refunds in the event Trend ceases operations since, as to any student who has not completed his or her course of instruction, it is obligated to refund all payments made by the student. Second, a portion of these proceeds will have to be repaid to students in the ordinary course of business since some students will withdraw and be owed refunds. To provide some protection against present and future losses, ED placed Trend on the reimbursement system for student financial assistance under the Pell, Perkins, SEOG and CWS programs immediately following the December 1990 hearing.

With respect to Trend's financial position, it reflects, as of the December 1990 hearing, an institution whose financial condition is precarious but has some prospect of improvement in the future.See footnote 27 27/ While its revenues were level at $15.3 million in fiscal 1988 and 1989, they decreased to $13.6 million in fiscal 1990. Trend attributes its significant revenue decline in fiscal 1989 and 1990 to the strong economy in the Pacific Northwest which resulted in increased employment. As a result thereof, fewer people felt the necessity to seek vocational training to increase their employability. While this may well constitute an important factor, Trend's student decline was also attributable to its inability to solicit recruits through the use of a survey program technique. This source of recruitment produced up to 40 percent of the students in some of Trend's schools and, as of January 1989, this technique of recruitment was prohibited by Trend's accrediting organization. Thus, this prohibition would impact fiscal 1989 to a limited degree and fully affect fiscal 1990, the year in which Trend's revenue significantly declined. While Trend has raised its tuition recently, significant increases in revenue are not, based on the record, foreseeable.

Trend's net income decreased from $930,000 in 1988, to $445,000 in 1989 and to a loss of $700,000 in 1990. This decline was caused by a combination of a loss of revenue and a failure to control expenses in light of the declining revenue. While Trend instituted various actions and made arrangements with creditors and other parties to reduce costs, the timing of these actions came generally too late to avoid the significant loss in fiscal 1990.See footnote 28 28/ However, it appears that Trend curbed the losses by January of 1990 when operating income and net profit became positive and remained so through the end of the fiscal year. In addition, the first four months of fiscal 1991 reflected a net loss of $49,000 whereas the comparable periods for fiscal 1990 and 1989 reflected a net loss of $642,000 and a net income of $68,000, respectively. Thus, it appears that Trend has its expenses under control.

Trend's working capital and cash flow present significant problems. Trade accounts payable which includes refunds owed on student loans increased significantly from approximately $1.1 million in 1988 and 1989 to $2.3 million in 1990--an increase of more than 100 percent. Over these three fiscal years, Trend's current ratio was adversely affected, decreasing from 0.80 to 0.70 which reflects a decrease in its net working capital from ($1.5 million) to ($2.3 million). The net increase or decrease in cash flow on a yearly basis was not markedly affected although its reserve at the end of 1990 was $90,000 which, together with the current ratio, suggests a significant cash problem. Since its acquisition, Trend has paid "dividends" in significant amounts to its parent MEI, i.e. approximately $1 million per year. This payment, together with the $120,000 yearly payment for the covenant not to compete, were two factors which depleted its cash reserves. While the mandatory payment to MEI was reduced to $310,000 annually in July 1990, this situation cannot apparently continue much beyond February 1991 without further concessions by two major creditors of MEI.See footnote 29 29/

Trend's budget for fiscal 1991 projects a net profit for the year of approximately $475,000. Its projected best case budget for fiscal 1991 estimates a $650,000 after-tax profit. Trend is currently exceeding its budget for the five-month period ending November 30, 1990. Accordingly, Trend's prospects, based on its performance as of the hearing, to exceed even its best case budgeted profit of $650,000 for fiscal 1991 are favorable. However, the record does not reflect the adverse impact on its earnings created as a result of the imposition of the reimbursement payment system in December 1990 by ED. Thus, in view of the yearly $310,000 or more of cash demands by MEI, Trend's working capital and cash flow problems may persist in the short term and Trend may have difficulty reducing substantially its unpaid refunds due its former students.

Lastly, Trend adverted a negative net worth for fiscal 1990 by virtue of a legitimate arrangement with its primary lender at the end of fiscal 1990 in which Trend was permitted to convert $1 million of debt for preferred stock. In addition, substantially all of its assets are pledged as collateral for its line-of- credit and it is also contingently liable as a guarantor of $1.6 million of bank indebtedness of its parent MEI.

In view of the above financial circumstances, it is apparent that ED's demand for a letter of credit in the amount of $500,000 was reasonable. Trend's financial condition is precarious and its financial survival is a day-to-day struggle. Unfortunately, its prospects for the future cannot alter its present financial condition and the risks associated therewith--the basis upon which this decision must be grounded.

Where, as here, an institution has challenged the amount of the letter of credit, it is appropriate to allow the institution an opportunity to deliver the letter of credit in the amount ultimately determined as reasonable. Trend shall have 40 days from the date the decision in this action becomes final in which to deliver to ED a letter of credit in the amount of $500,000. In the event the letter of credit is not submitted within this period, then Trend's eligibility to participate in the student financial programs is terminated.

The 40-day period is necessary in light of the most recent emergency action taken by ED on May 22, 1991, while this action is pending. It will afford ED an opportunity to revisit its emergency action notice to determine whether it will modify the notice in such a manner that it will not constitute an impediment, as it presently exists, toward Trend's effort to secure the $500,000 letter of credit.See footnote 30 30/ The primary basis for the emergency action is also the underlying foundation for the present termination action.See footnote 31 31/ While this termination is based upon Trend's current ratio, the manifestations of the poor current ratio lie in Trend's unpaid refunds and poor cash position. Indeed, it would be a rare case where an institution had a poor current ratio and yet is current in its refund obligations. Thus, to consider the present case and the emergency action (or the institution of the reimbursement payment system) as separate, independent matters as ED asserts is to view these actions through rose colored glasses. In the event ED modifies its emergency action notice, there should be sufficient time remaining for Trend to obtain the letter of credit--if it can be obtained.

III. ORDER

On the basis of the foregoing findings of fact and conclusions of law, and the proceedings herein, it is hereby--

ORDERED, that Trend submit to the United States Department of Education a letter of credit in the amount of $500,000 within 40 days after the decision in this action becomes final; and in the event such a letter of credit is not submitted within this period, it is further

ORDERED, that the eligibility of Trend Colleges, Inc. to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, is terminated.

....
Allan C. Lewis
Administrative Law Judge

Issued: May 28, 1991
Washington, D.C.

Footnote: 1 1/ More specifically, ED seeks to terminate Trend from participating in the Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, and College Work-Study programs, and the Guaranteed Student Loan programs which includes the Stafford Loan, PLUS, and Supplemental Loans for Students programs.

Footnote: 2 2/ Previously, this action also included a fine in the amount of $50,000. However, ED withdrew its notice of intent to fine prior to the hearing and this matter was dismissed by the tribunal with prejudice.

Footnote: 3 3/ To the extent that proposed findings of fact or conclusions of law by a party has not been adopted in this decision, they are rejected as being inaccurate or unnecessary to the disposition of this case.

Footnote: 4 4/ Trend has been reporting on an annual basis to ED since at least October 20, 1986. In each reporting year, Trend's current ratio has been below one. In November of 1987, ED advised Trend that if its June 30, 1988 financial statements showed improvement over the previous year's financial statement, the school would not be required to post a letter of credit. Trend showed improvement the following year, and ED withdrew its request for a letter of credit.

Footnote: 5 5/ On November 5, 1990, ED withdrew its notice of intent to fine and this matter was dismissed with prejudice by the tribunal on November 13, 1990.

Footnote: 6 6/ Trend's method of accounting for unearned tuition is similar to the method utilized by other private career schools.

Footnote: 7 7/ Trend requires its students to pay over the financial aid monies as received by the student until the tuition and books are paid in full.

Footnote: 8 8/ Trend's trade accounts payable reflects refunds due to former students or their lenders on their behalf as well as amounts owed other trade creditors.

Footnote: 9 9/ On June 29, 1990, Trend entered into an agreement with its major creditor, First Interstate Bank of Oregon, in which Trend exchanged $1,000,000 of debt for 8,000 shares of Class B preferred stock. The agreement calls for redemption of 1,000 shares of First Interstate *preferred stock at $125 per share every six months beginning April 1, 1994 through October 1, 1997. ED argues that these securities should, in fact, be treated as long term debt rather than equity for purposes of evaluating Trend's financial responsibility to participate in Title IV programs. However, it proffers neither any additional facts concerning the nature of these securities nor any case law supporting its position that these securities are debt. In light of these deficiencies, ED's proposed finding is not supported by the record and is, accordingly, rejected.*

Footnote: 10 *10/ While Trend's action plan reflects that four major textbook vendors, three of its major landlords and four other major creditors agreed to extended payment plans, the record does not reflect the nature of the arrangements, especially the additional monetary demands placed on Trend in the near term.*

Footnote: 11 *11/ These new sources of revenue involve sales of products, publishing and financial aid support services--areas in which Trend has not participated extensively in the past. Thus, whether its anticipated profit of $54,000 in fiscal 1991 from these sources will be realized is highly speculative.*

Footnote: 12 *12/ Unaudited financial results indicate that Trend was profitable in the last five months of the fiscal 1990 and such*
profits had increased by approximately $180,000 over the same period of the prior year.

Footnote: 13 *13/ On August 9, 1990, ED notified Trend of ED's intent to terminate Trend's eligibility. On September 4, 1990, and within the period specified by 34 C.F.R. § 668.86(b)(1)(iii) (1990) to request a hearing on the record, Trend filed its request for a hearing.*

For the record, an evidentiary hearing was held in Portland, Oregon on December 4 and 5, 1990. During posthearing briefing, Trend filed a motion to reopen proceedings as a result of ED's action on December 6, 1990--one day after the hearing--to convert Trend to the reimbursement payment system for various student financial assistance programs. This matter was addressed in a hearing held on March 12, 1991. Thereafter, Trend submitted on March 25, 1991, an additional exhibit, Ex. RX-52, detailing proposed limitations. Counsel for ED requested until April 19, 1991, to file its response and filed it on that date.

Footnote: 14 *14/ All regulations are cited in their current form unless otherwise noted.*

Footnote: 15 *15/ When Trend receives a tuition payment, simultaneous offsetting adjustments are made in the asset accounts which does not affect the total amount of assets on the asset side of the balance sheet. The accounts receivable are decreased by the amount of the payment and a corresponding increase to the cash account is made.*

Footnote: 16 *16/ This represents current assets in the amount of $4,976,680 divided by current liabilities of $7,143,705.*

Footnote: 17 *17/ In fact, Trend asserts that its current ratio has been less than one every year since at least fiscal 1983.*

Footnote: 18 *18/ Moreover, if sanctions are imposed, Trend urges that a comprehensive plan proposed by it will enable it to work itself out of its existing financial problems relating to the student financial assistance programs. This will benefit the students to whom it owes refunds, its present students, and ED.*

Footnote: 19 *19/ This does not mean, however, that a claim may not arise later, for example, where a student withdraws and is owed a refund. In this circumstance, the student's claim is treated as an account payable.*

Footnote: 20 *20/ ED argues that this account represents a liability or claim against Trend. ED is incorrect. The account does not represent a typical current liability in the sense that it does not reflect a liability incurred to produce, manufacture, or sell a product that will be satisfied from current assets. Instead, it represents unearned tuition income. This is apparent from the nature of the account and the circumstances under which the account is adjusted as noted previously.*

Footnote: 21 *21/ Under its method of accounting, Trend books the deferred revenue as earned tuition on a pro rata basis. This method produces reliable financial information for business related decisions as it seeks to match revenues with expenses. As a legal matter, Trend is entitled to retain the full tuition of a student attending school once the student has completed one-half of the program. Trend asserts that if it accrued the unearned tuition at the half-way point, this method of accounting would decrease its current liabilities and raise its current ratio. Under this approach, Trend alleges that the current ratio becomes 0.75 for fiscal 1989, 0.80 for fiscal 1990, and 0.80 for the four-month period ending October 31, 1990. Ex. RX-23.*

These current ratios, however, appear to be misleading. The change in method of accruing revenue involves only a timing problem, not a substantive change in the determination of the current ratio. The additional unearned revenue accrued in the first year of the change would definitely raise the current ratio since the deferred revenue account is reduced. Where, as here, the figures are taken from the former method of calculation, the deferred revenue numbers in each succeeding year must first be adjusted downward to reflect the unearned revenue shifted to the preceding year and recognized in that year as earned income. Thus, with this adjustment, this proposed change in its accounting method would have nominal effect in future years with the exception of a one-time favorable adjustment in the first year.

Footnote: 22 *22/ In its calculations, Trend did not have information to estimate this amount. Therefore, it utilized the amount of refunds payable during the preceding twelve month period as an estimate.*

Footnote: 23 *23/ Inherent within this approach is an examination of whether each asset or liability realistically reflects its assigned value. This requires time, effort, and access to the information to perform this task or to verify it--a matter which is not a factor under the construction of 34 C.F.R. § 668.13(c)(2) adopted earlier. For example, Trend's balance sheet for fiscal 1989 included $687,138 of current assets which represents primarily an unsecured* *demand note from its parent MEI. It is highly questionable whether Trend could draw upon this current asset to satisfy its current liabilities.*

Footnote: 24 *24/ For fiscal 1990 and the four-month period ending October 31, 1990, the "revised" current ratios would be 0.93 and 1.1, respectively.*

Footnote: 25 *25/ Trend proposes a set of limitations (Ex. RX-52) under which it will, inter alia, (1) pay off the $1 million in refunds and $80,000 in interest and special allowances incurred by ED over a three year period on a pro rata monthly basis, (2) establish an escrow account in lieu of the reimbursement payment system into which the campus-based financial aid funds and the noncampus-based financial aid funds will be deposited and then disbursed to Trend as the students' obligations arise, and (3) submit to ED various monitoring and financial reports on a monthly basis and submit to a limitation, suspension or termination hearing within 30 days of a notice of default in the limitation agreement. Alternatively, Trend proposes the above limitations except that the reimbursement payment remains in effect which eliminates the escrow account and the pay off period of the refunds occurs over a four year period instead of a three year period. The accelerated pay off period under the first proposal is possible due to the cost savings attributable to the elimination reimbursement payment system. Under the first proposal, Trend will expend in excess of $370,000 per year for the first three years in order to comply.*

Footnote: 26 *26/ The initial request by ED was made in November 1989. Trend appealed and submitted additional information concerning its method of accounting. Thereafter on February 2, 1990, ED decreased the request for a letter of credit to $500,000.*

Footnote: 27 *27/ With the implementation of the reimbursement system, this diminishes the prospect of financial improvement somewhat since the initiation of the program created a cash flow gap and requires Trend to expend additional resources in order to receive the student assistance.*

Footnote: 28 *28/ For example, Trend paid $120,000 per year under a covenant not to compete with its former owners as a result of its acquisition. On June 29, 1990, the covenant, which had over 5 years remaining, was modified and the former owners agreed to accept class B common stock to be redeemed in February 1997 in lieu of the monthly payments. Also on June 29, 1990, Trend converted $1 million of indebtedness owed to First Interstate Bank of Oregon for class B preferred stock which may be redeemed beginning April 1, 1994, at a yearly rate of $250,000.*

Footnote: 29 *29/ The mandatory payment to MEI was reduced to $310,000 annually in July 1990. This was possible due to a suspension of the principal payments by MEI on the remaining acquisition debt between December 1989 and February 1991 and a $70,000 temporary reduction in lease payments due another company between June 1990 and December 1991.*

Footnote: 30 *30/ According to the emergency action notice, ED will, as of May 22, 1991, withhold all future funds from Trend or its students and withdrew Trend's authority to obligate funds under any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.*

Footnote: 31 31/ Under the emergency action notice, the primary basis for ED's action is Trend's nonpayment of institutional and non- institutional charges to its students or their lenders of approximately $1 million dollars.