

IN THE MATTER OF Payne-Pulliam School of Trade and Commerce,  
Respondent.

Docket No. 91-33-ST  
Student Financial Assistance Proceeding

## DECISION

Appearances: Betty Pulliam, Pro Se of Detroit, Michigan, for the Respondent

Lawrence G. Brett, Esq. of Washington, D.C., Office of the General Counsel, United States  
Department of Education, for the Office of Student Financial Assistance

Before: Judge Allan C. Lewis

This is a combined proceeding initiated by the Office of Student Financial Assistance of the United States Department of Education (OSFA) to terminate the eligibility of the Payne-Pulliam School of Trade and Commerce (Payne-Pulliam) to participate in the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, and to impose a fine of \$11,000. [See footnote 1 1/](#) The termination action proposed was based on Payne- Pulliam's purported failure to satisfy the current ratio and deficit net worth tests under the financial responsibility regulations, 34 C.F.R. § 668.13 (1989), and to submit, when due, a biennial non-Federal audit for the years 1988 and 1989 as required by 34 C.F.R. § 668.23(c)(3). The fine action proposed was based on the same program violations asserted in the termination action and reflected a fine of \$5,000 for Payne- Pulliam's failure to satisfy the financial responsibility standards and a fine of \$6,000 for its failure to submit the biennial audit.

Based upon the findings of fact and conclusions of law, *infra*, Payne-Pulliam violated the financial responsibility regulation and failed to submit its biennial audit in a timely manner. As a result, Payne-Pulliam shall submit a letter of credit in the amount of \$35,000 to OSFA. In the event this letter of credit is not submitted, Payne-Pulliam's eligibility to participate in the campus-based Title IV programs is terminated. As a separate matter, a civil fine in the amount of \$4,000 is imposed as a result of the late submission of the biennial audit.

### I. FINDINGS OF FACT

The pertinent facts are set forth in the opinion. Other detailed findings of fact are set forth in the appendix, *infra*. To the extent that proposed findings of fact or conclusions of law by a party have not been adopted in this decision, they are rejected as being inaccurate or unnecessary to the disposition of this case.

### II. OPINION

In this combined proceeding, OSFA seeks to terminate the eligibility of Payne-Pulliam to participate in the student financial assistance programs under Title IV of the Higher Education

Act of 1965, as amended, and to impose a fine of \$11,000. On April 2, 1991, OSFA notified Payne-Pulliam that, as of April 25, 1991, it intended to terminate the institution from participation in the Title IV programs and to fine the institution. On April 17, 1991, and within the period specified by 34 C.F.R. §§ 668.84(b)(1)(iii) and 668.86(b)(1)(iii) (1989) to request a hearing on the record, Payne-Pulliam filed its request for a hearing. Accordingly, jurisdiction is proper.

A. Termination Issue. The Secretary is authorized under 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)), 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, 34 C.F.R. § 668.86(a) (1989) was promulgated and 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.

In its notice of termination, OSFA asserts two violations which warrant the termination of Payne-Pulliam. It argues that Payne- Pulliam is not financially responsible to continue to participate in the student financial assistance programs and that it failed to submit a biennial non-Federal audit for the years 1988 and 1989.

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) where--

(1) [u]nder its basis of accounting, it--

. . . .  
(ii) [h]ad, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(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;

(3) [u]nder a fund accounting system, its unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years;

Here, OSFA asserts that Payne-Pulliam was not financially responsible for 1989 as it failed to satisfy the current ratio and deficit net worth tests and that, as requested by OSFA, it has not submitted a letter of credit in order to continue to participate in the programs.

The current ratio measures, as of a specified date, whether the cash which will be produced over the next 12 months from the current assets on hand will exceed the cash necessary to satisfy the present liabilities which must be satisfied over the next 12 months. For the year 1989, the balance sheet for Payne-Pulliam reported current assets of \$62,961 and current liabilities of \$141,147. Thus, its current ratio was 1:2.2 and this ratio fails to satisfy the minimum 1:1 current ratio required under 34 C.F.R. § 668.13(c)(2).

Payne-Pulliam's balance sheet for 1989 also revealed total assets of \$134,874 and total liabilities of \$141,147 which results in a negative net worth of \$6,273. A negative net worth, according to 34 C.F.R. § 668.13(c)(1)(ii), reflects a lack of financial responsibility. Thus, Payne-Pulliam failed two financial tests adopted by the Secretary and, therefore, is not financially responsible to participate in the student financial assistance programs. [See footnote 2 2/](#)

The second ground raised in OSFA's termination notice is Payne- Pulliam's failure to submit, when due, its non-Federal biennial audit for the Federal award years ending June 30, 1988 and 1989.

Under 34 C.F.R. § 668.23(c)(1), an institution which participates in the Pell Grant, SEOG, CWS and GSL programs "shall have performed a financial and compliance audit of its Title IV, HEA programs . . . conducted by an independent auditor in accordance with the general standards and the [General Accounting Office's] standards for financial and compliance audits." The biennial audit provides an external means of evaluating the accuracy of an institution's determination of students' eligibility, its awarding and disbursing of aid, and its refunds of students' unearned tuition and other costs. In re Hartford Modern School of Welding, Dkt. No. 90-42-ST, U.S. Dep't of Education (1991) at 11. The audit shall be performed at least once every two years and submitted to OSFA by March 31 of the year following the last award year if the institution receives campus-based funds.

In the instant case, Payne-Pulliam's non-Federal biennial audit for the award years 1988 and 1989 was due on or before March 31, 1990, under the above regulations. Payne-Pulliam submitted this biennial audit toward the end of March or the first part of April 1990 which was approximately one year late. Therefore, even though the biennial audit was filed, its late submission, nonetheless, constitutes a program violation; however, termination on this basis alone is not justified.

While Payne-Pulliam does not satisfy the financial responsibility regulations, it may submit a letter of credit and, nevertheless, continue to participate in the student financial assistance programs. 34 C.F.R. § 668.13(d)(1). In this context, the tribunal may review and determine the proper amount of the letter of credit requested by the Department pursuant to 34 C.F.R. § 668.90(a)(3)(ii)--

(ii) [i]f 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.

Originally, OSFA proposed that Payne-Pulliam submit a \$90,000 letter of credit. At the hearing, OSFA reduced the amount of the requested letter of credit to \$35,000 which reflected the recent termination of Payne-Pulliam's eligibility to participate in the guaranteed student loan programs. Thus, the \$35,000 figure was the amount which OSFA determined was adequate to permit Payne- Pulliam to continue to participate in the campus-based programs, i.e. the Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, and College Work-Study programs.

The \$35,000 amount was based upon an unpublished directive by the Office of the Inspector General within the Department which counsels, apparently, that the amount of a surety should be established between 25 to 33% of the annual assistance under the Federal student financial assistance programs received by the institution's students. As applied to Payne-Pulliam, \$35,000 is approximately 30% of the \$115,000 in financial assistance received by the students of Payne-Pulliam during the last student aid fiscal year--the fiscal year ended June 30, 1991.

OSFA asserts, as justification for the \$35,000 amount, that the poor financial condition of Payne-Pulliam poses significant financial risks to the Federal government concerning the student financial assistance programs. In its view, this amount is commensurate with these financial risks which include possible nonpayment of liabilities arising as a result of audits of Payne- Pulliam's participation in the student financial assistance programs over the four year period for 1988 through 1991 and the costs which would be incurred by the Department for a teach-out of its students in the event the institution closes.

In this regard, students of Payne-Pulliam received student aid ranging between \$115,000 and \$288,000 during the four years which have not been audited by the Department.[See footnote 3 3/](#) Thus, the amount of Payne-Pulliam's potential liability for errors in overseeing these programs might be substantial but presently is unknown; however, past audits have uncovered only minimal liabilities. In addition, OSFA placed Payne-Pulliam on the reimbursement system for the campus-based programs. Assuming the participation of students of Payne-Pulliam continues in the campus-based programs at the 1991 level, the reimbursement system may diminish the costs of a teach-out somewhat; however, there is no evidence to indicate the extent of such diminishment.

Although OSFA proffered some evidence to support the \$35,000 amount, the amount of the letter of credit requested by OSFA must be sustained by the tribunal unless Payne-Pulliam can demonstrate that this amount was unreasonable. 34 C.F.R. § 668.90(a)(3)(ii). In this regard, Payne-Pulliam urges that some action is appropriate other than the one sought by OSFA which requires the posting of a letter of credit and, failing such a posting, the termination of the institution's eligibility to participate in the campus-based financial assistance programs. Alternatively, Payne-Pulliam asserts that the \$35,000 amount for the letter of credit is excessive and unwarranted in its circumstances.

There are various actions other than the letter of credit/termination action which are available to the Department where an institution has violated program regulations. These actions include a fine, a limitation, or a suspension. These remedies or penalties, however, are inappropriate in this instance due to the nature of the Payne-Pulliam's violation. This violation concerns its poor financial condition as determined by the financial responsibility regulation of 34 C.F.R. §

668.13. These sanctions do not alleviate this problem and are not suitable as a penalty in this matter. [See footnote 4 4/](#)

Payne-Pulliam urges that the letter of credit should be waived in this instance. It cites the extreme difficulties that it, as a minority operated and small institution, faced in attempting to secure the original \$90,000 letter of credit requested by OSFA and the present \$35,000 letter of credit demanded by OSFA. The banks through which Payne-Pulliam attempted to secure the \$35,000 letter of credit requested cash or liquid assets equivalent to the amount of the letter of credit as collateral. They refused to accept as collateral items such as receivables and the equity in a personal residence, the school building or the automobiles owned by the school operators. As a result, Payne-Pulliam was only able to raise a \$13,950 letter of credit which was submitted in September 1992.

The attitude of the banks is apparently consistent with the difficult times and conditions in which banks operate in the present day. Loans and collateral for loans undergo much greater scrutiny than in past. While the tribunal sympathizes with the plight of Payne-Pulliam, the purpose of the letter of credit would be thwarted in this case in the event it was waived. That is, a waiver would not allow the Department to protect itself in the face of a potential bankruptcy by the institution which, if it occurred, would likely result in the nonrecovery of the expenditures incurred by the Department in a teach-out of the students and the nonrecovery of any liabilities due to program violations by Payne-Pulliam. In short, the letter of credit is a mechanism which permits the Department to prefer itself over the other creditors of the institution in order to recover or preserve Federal funds.

Payne-Pulliam also argues that the \$35,000 amount for the letter of credit is excessive. It asserts that its financial statement does not reflect its true net worth because the school building is reflected therein at its depreciated value while its fair market value is substantially greater. This difference is not significant as it is associated only with the balance sheets for 1989 and prior years. For 1990 and thereafter, Payne-Pulliam utilized the fund accounting approach in which the values assigned to capital assets are not a consideration in the financial responsibility regulations.

Payne-Pulliam also urges that its prospects for financial improvement in the future are much better and, therefore, the amount of the letter of credit should be reduced to no more than the \$13,950 letter of credit furnished in September 1992. This amount is some \$21,000 less than the amount requested by OSFA.

As a result of its recent financial problems, Payne-Pulliam developed a business plan with short and long range objectives designed to strengthen its programs. The short range objectives include the addition of two new course curriculums in the areas of health care and building trades which would increase its enrollment. Its long range objectives include seeking an accreditation with a different association which will change its status from a business college to a junior college and thereby expand its areas of teaching, enrollment, and student base to include students who are financially able to pay for their education.

In addition, Payne-Pulliam executed in 1991 an installment agreement with the Internal Revenue Service to liquidate its obligation for unpaid back taxes in the approximate amount of \$73,000

over a three-year period through monthly installments of \$2,000. It also reached an agreement with the Michigan Employment Security Commission to liquidate its \$37,000 obligation for unpaid state unemployment taxes. Payne-Pulliam agreed to pay \$1,500 every six weeks over a three-year period. As of January 31, 1992, Payne-Pulliam's unpaid Federal tax obligation was approximately \$50,000 and its unpaid state tax obligation was \$23,000. Hence, Payne-Pulliam has made progress in reducing these obligations; however, the size of these obligations remain substantial.

Payne-Pulliam initiated various cost cutting measures in 1991 and thereafter. It joined the Michigan Volunteer Agency which enabled it to reduce its future state unemployment taxes significantly. This action and other measures resulted in an unaudited net profit of \$7,500 for the first quarter of 1992, according to its certified public accountant. In addition, Payne-Pulliam received from the City of Detroit a grant from the Neighborhood Opportunity Fund for 1992-93 in the amount of \$130,000 for rehabilitation of its building and \$15,020 for counseling and tutoring of low to moderate income students.

Even with the above positive steps however, Payne-Pulliam remains an institution in a precarious financial condition. In an unaudited financial statement for the period ending June 30, 1992, Payne-Pulliam's unrestricted fund balance still reflected a negative balance--a loss of \$74,000. Thus, the measures taken by Payne-Pulliam have not significantly altered the prospect of a complete financial recovery of Federal monies by the Department in the event of a closure of the institution. Accordingly, Payne-Pulliam has not shown that the \$35,000 figure, requested by OSFA as the amount of the letter of credit, is unreasonable.

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. Payne-Pulliam shall have 40 days from the date the decision in this action becomes final in which to deliver to OSFA a letter or letters of credit in the total amount of \$35,000. To the extent that Payne-Pulliam has already furnished OSFA with letter of credit, this amount shall be credited toward the \$35,000 figure.

B. Fine Issue. In addition to the proposed termination of the eligibility of Payne-Pulliam to participate in the student loan programs, OSFA also proposes a civil fine in the amount of \$11,000. Under Section 487(c)(2)(B)(i) of the Higher Education Act of 1965, as amended 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)(2)(B)(i)), the Secretary "may impose a civil penalty upon an institution of not to exceed \$25,000 for each violation or misrepresentation" of any provision of this subchapter or any regulation thereunder.

OSFA proposes two fines. The first fine is \$5,000 due to Payne-Pulliam's failure to satisfy the financial responsibility standards. As noted above, Payne-Pulliam's eligibility to participate in the campus-based programs will be terminated unless it posts the proper amount of a surety. Termination is the most severe penalty available to the Secretary and, therefore, no purpose would be served by imposing a financial penalty. In the event the institution posts the surety, OSFA has obtained the financial security necessary to protect the Department and has achieved its goal. Therefore, the proposed fine is denied.

The second fine proposed by OSFA is \$6,000 due to Payne-Pulliam's failure to submit the biennial audit for the years 1988 and 1989. In this regard, Payne-Pulliam submitted the biennial audit at approximately the same time that the notice of fine was issued. Despite this submission, OSFA urges, however, that the \$6,000 figure is appropriate whether it is imposed as a result of the failure to submit the biennial audit or the submission of an audit which was approximately one year late. A late submission of the biennial audit is a program violation of consequence and a fine is appropriate.

In *In re Hartford Modern School of Welding*, Dkt. No. 90-42-ST, U.S. Dep't of Education (1991) at 18, the tribunal held that--

[i]n determining the amount of the fine, 34 C.F.R. § 668.92(a) provides that the Administrative Law Judge and the Secretary "shall take into account . . . [t]he gravity of the violation . . . and [t]he size of the institution." The gravity of the violation reflects the relative degree of the seriousness of the violation vis-a-vis other violations as well as the relative nature and extent of the violation itself. In addition, an imposition of a fine functions as a punishment of the offender as well as a warning to others.

The size of institutions range from small schools where the total amount of annual Federal financial assistance is \$100,000 (*In re Katie's School of Barbering and Beauty College*, Dkt. No. 90-68- ST, U.S. Dep't of Education (1991)), to small-to-medium size schools with annual assistance approximately \$1.2 to \$1.4 million (*In re Hartford Modern School of Welding*; *Southern Institute of Business and Technology*, Dkt. No. 90-62-ST, U.S. Dep't of Education (1991)), and to large institutions with annual assistance of \$7.0 to \$12 million (*In re Deloux Schools of Cosmetology*, Dkt. No. 89-59-S, U.S. Dep't of Education (1990); *In re Trend Colleges, Inc.*, Dkt. No. 90-56-ST, U.S. Dep't of Education (1991)).

The students of Payne-Pulliam received less than \$300,000 in Federal student financial assistance in 1989 and less than \$175,000 in Federal student financial assistance in 1990. In this respect therefore, Payne-Pulliam is a small institution.

While OSFA sought a \$6,000 fine for the nonsubmission of the biennial audit, Payne-Pulliam submitted the biennial audit on approximately the same day that the notice of fine was issued. The late submission of an audit is not nearly as egregious as the nonsubmission of an audit. With the submission of the biennial audit, OSFA has available one means to ascertain the extent of Payne-Pulliam's compliance with the various programs. This would suggest that a lesser fine is warranted.

Payne-Pulliam urges that the fine should be waived or lowered. In early 1989, which was approximately one year before the biennial audit was due, Payne-Pulliam discovered that the auditor who had conducted its prior audits was not available to perform the biennial audit for 1988 and 1989. While it began the search to hire another auditor at this time, it experienced difficulties locating a certified public accountant who had the time available to perform the audit and whose charges were reasonable. As a result, the biennial audit was submitted approximately one year late.

It took Payne-Pulliam two years to locate an auditor and to complete the audit. This is a significant amount of time and reflects that compliance with this aspect of the program requirements was not a primary concern of Payne-Pulliam. From the perspective of the Department, the submission of the biennial audit is one important aspect in monitoring the activities of the participants in the student financial assistance programs. In view of the above, a fine in the amount of \$4,000 is appropriate.

### III. ORDER

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

ORDERED that Payne-Pulliam submit to the United States Department of Education a letter or letters of credit in the total amount of \$35,000 within 40 days after the decision in this action becomes final; and, in the event such letter or letters of credit are not submitted within the period provided herein, the eligibility of Payne-Pulliam to participate in the campus based student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended, is terminated; and it is further

ORDERED that Payne-Pulliam immediately and in the manner provided by law pay to the United States Department of Education a fine in the amount of \$4,000.

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Allan C. Lewis  
Administrative Law Judge

Issued: October 23, 1992  
Washington, D.C.

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### APPENDIX--OTHER FINDINGS OF FACT

1. In accordance with 34 C.F.R. Part 668, OSFA has monitored the financial condition of Payne-Pulliam since its entry into the student financial assistance programs in 1984. In March 1988, OSFA requested Payne-Pulliam to post a performance or surety bond in the amount of \$50,000 following a review of the financial statements for 1986 and 1987. A comparison of these financial statements revealed a general deterioration of the school's financial condition, including deficits in net worth, net working capital, net income, and retained earnings.

2. Following further discussions with OSFA and the submission of a revised financial statement for 1987 reflecting a positive net income and net worth, OSFA still requested the posting of a \$50,000 performance and began preparations to institute a termination proceeding. In August 1988, Payne-Pulliam submitted a \$50,000 irrevocable letter of credit which expired August 31, 1989.



3. In April 1989, and following a review of Payne-Pulliam's financial statement for 1988, OSFA requested Payne-Pulliam to extend the expiration of the \$50,000 letter of credit from August 31, 1989 to May 31, 1990. Subsequently, the expiration date was extended by Payne-Pulliam to June 30, 1990.

4. In April 1990, OSFA reviewed the financial statements for the years 1988 and 1989 and concluded that a general deterioration in the school's financial condition was occurring. The net worth, net working capital, net income, and retained earnings have decreased and are negative for 1989. Therefore, on May 3, 1990, OSFA requested an increase in the letter of credit posted by Payne-Pulliam from \$50,000 to \$90,000 with an expiration date of July 31, 1991. The amount of the letter of credit requested by OSFA, i.e. \$90,000, was determined based upon the \$285,000 of Federal student financial assistance received by the students of Payne-Pulliam during the fiscal year ended June 30, 1989. The amount represents approximately 30 percent of total student financial assistance. Shortly thereafter, Payne-Pulliam requested a reduction in the amount of the letter of credit and OSFA denied the request. In June 1990, OSFA advised Payne-Pulliam that, unless it posted the letter of credit, the matter would be referred over for administrative action.

5. On September 4, 1990, OSFA placed Payne-Pulliam on the reimbursement system of payment. Under this system, the institution must demonstrate, before OSFA releases the funds to the institution, that it has earned the funds by properly following program requirements for awarding and disbursing funds to eligible students enrolled and attending eligible programs. The purpose of this system is to ensure, to the extent possible, that Federal funds under the Pell Grant and Campus-based programs are properly spent.

6. Subsequent to the issuance of the April 2, 1991 termination notice, OSFA reduced the amount of the requested letter of credit from \$90,000 to \$35,000. This reduction reflected the termination of Payne-Pulliam's eligibility to participate in the Guaranteed Student Loan program.

7. Based upon the financial statement for the period ended December 31, 1988, Payne-Pulliam had total assets of \$182,353 of which \$100,656 were current assets. It had liabilities of \$172,398, all of which were current liabilities. Thus, its current ratio was 1:1.7. The balance sheet reported a net worth of \$9,995. It reported a net income of \$3,249 which reflected revenues of \$440,667 and expenses of \$437,418.

8. The financial statement for the period ended December 31, 1989 was prepared in accordance with standards established by the American Institute of Certified Public Accountants. It reported assets of \$134,874 of which \$62,961 were current assets. Its liabilities were reported as \$141,147, all of which were current liabilities. No long term liabilities were reported. Thus, its current ratio was 1:2.2. The balance sheet reported a negative net worth of \$6,273. The financial statement reflected a loss of \$16,269 for the year which represented the difference between revenues of \$357,431 and expenses of \$373,700. The financial statement was prepared by a certified public accountant and subject to the disclaimer that the financial statements reflect the representation of management and were not audited or reviewed by the certified public accountant. The financial statement was certified by the vice-president of Payne-Pulliam.

9. Payne-Pulliam's audited financial statement for the period ended December 31, 1990 was prepared under the fund method of accounting. As reported on the balance sheet, the operating fund had total assets of \$101,320, total liabilities of \$213,462, and a fund balance of \$(112,142). The total figures for the three accounts--the operating fund, the restricted fund, and the plant fund--were \$145,700 of assets, \$214,280 of liabilities, and a negative \$68,500 of fund balance. In the statement of revenues, expenses, capital additions, and changes in the balances for the operating fund, it reported total revenue and support of \$323,607, expenses of \$362,169, transfers of \$(1,500), and a fund balance of \$(112,142). The unrestricted fund had an opening balance of \$(72,080) and a closing balance of \$(112,142).

As part of the audited statement, the certified public accountant stated that the financial statements were prepared on the assumption that Payne-Pulliam would continue as a going concern. The auditor noted that the nonpayment of \$124,000 of payroll withholding taxes and the deficiency of \$112,142 in the operating fund raises substantial doubt about the ability of the organization to continue as a going concern.

10. Payne-Pulliam's audited financial statement for the period ended December 31, 1991 was prepared under the fund method of accounting. As reported, the unrestricted current fund had current assets of \$80,626 and current liabilities of \$202,672. The unrestricted operating fund had, as of the close of the year, a negative balance of \$122,046. As part of the audited statement, the certified public accountant stated that the financial statements were prepared on the assumption that Payne-Pulliam would continue as a going concern. The auditor noted that Payne-Pulliam owes \$98,682 in payroll withholding taxes and has a deficiency in the operating fund of \$122,046 which raises substantial doubt about the ability of the organization to continue as a going concern.

11. Students of Payne-Pulliam received approximately \$285,000 of Federal student financial assistance during each of the fiscal years ending June 30, 1988 and 1989. This included approximately \$206,000 of Pell grants and \$69,000 of loans guaranteed under the Stafford Loan program. For the fiscal year ended June 30, 1990, the students received an estimated amount of \$240,000 of Federal student financial assistance. This included \$162,000 of Pell grants and an estimated \$69,000 of Stafford Loans based on an assumption that Payne-Pulliam's students utilized the Stafford Program in 1990 to the same extent as 1989. For the fiscal year ended June 30, 1991, the students received \$115,000 of Federal student financial assistance. This included \$98,000 of Pell grants and no loans guaranteed under the Stafford Loan program.

12. During 1991, Payne-Pulliam executed an agreement with the Internal Revenue Service regarding its deficiency in Federal withholding taxes. Pursuant to the agreement, Payne-Pulliam paid a substantial amount toward its delinquencies upon its execution, must pay \$2,000 per month until the balance is paid in full, and must remain current in its withholding tax payments. As of December 31, 1991, the remaining balance of unpaid Federal taxes was \$62,500. Assuming Payne-Pulliam satisfied its monthly payment, its Federal tax obligation will be satisfied by July 1994. Payne-Pulliam also secured an arrangement with the State of Michigan to pay \$1,500 per month on its delinquent unemployment taxes. As of December 31, 1991, the remaining balance of unpaid state unemployment taxes was \$36,000. Assuming Payne-Pulliam

satisfied its monthly payment, its state unemployment tax obligations would be satisfied by January 1994.

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## SERVICE

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On October 23, 1992, a copy of the attached decision was sent by certified mail, return receipt requested to the following:

Jack Reynolds  
Acting Director, Institutional Monitoring Division  
Office of Student Financial Assistance  
Room 3923, ROB-3  
7th and D Street, S.W.  
Washington C.C. 20202-5254

Ms. Betty Pulliam  
President, Payne-Pulliam School of  
Trade and Commerce  
2345 Cass Avenue  
Detroit, Michigan 48201

On October 23, 1992, a copy of the attached decision was also sent to--

Lawrence Brett, Esq.  
Office of the General Counsel  
U.S. Department of Education  
Room 4091, FOB-6  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-2110

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*Footnote: 1 1/ In OSFA's original notice of April 2, 1991, it sought to terminate Payne-Pulliam 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. Subsequently, Payne-Pulliam was terminated from participation in the Guaranteed Student Loan programs due to excessively high default rates in an unrelated action. Thus, this aspect is now moot in this proceeding.*

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*Footnote: 2 2/ For the year ending December 31, 1990, Payne-Pulliam changed its method of accounting from the accrual to the fund method. 34 C.F.R. § 668.13(c)(3) requires that an institution which utilizes the fund method must not sustain material deficits over at least its two most recent fiscal years in its unrestricted current or operating fund. Under this method of accounting, Payne-Pulliam sustained a material deficit in the year of its adoption and sustained a material deficit in 1991, the second year under this new system of accounting.*

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*Footnote: 3 3/ While Payne-Pulliam has submitted a biennial audit for 1988 and 1989, these years are still under review by OSFA and, therefore, are not closed.*

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*Footnote: 4 4/ Moreover, the imposition of these sanctions would only exacerbate Payne-Pulliam's financial problem which could lead to additional losses incurred by the Department.*