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For-Profit College Group Sues to Block New Regulations

By MELISSA KORN

A trade group has filed suit in federal court to block a series of U.S. Department of Education rules that would increase regulatory scrutiny over segments of higher education.

The lawsuit, filed by the Association of Private Sector Colleges, doesn't include the so-called gainful employment regulation, which could punish programs for graduating students with high debt loads. The Education Department is scheduled to issue that final rule in the first quarter of this year, at which point the rule is likely to face court challenges.

The trade group, known as Apscu, instead focused its lawsuit on rules that would change the way state governments review school programs, restrict incentive compensation for employees and curtail misrepresentation in promotional materials. The three rules are among the 13 whose final versions were issued in late October.

On Friday Apscu asked the U.S. District Court for the District of Columbia to block the rules from going into effect as planned on July 1. The group alleged in the complaint its members are "grievously and irreparably injured" by the three rules and asked the court to find the regulations unlawful. It said the Education Department didn't follow correct procedure in creating the rules and violated its scope of power and the Constitution.

Apscu boasts more than 1,500 member schools including campuses owned by [Career Education Corp.](#), [Education Management Corp.](#), [ITT Educational Services Inc.](#), [Washington Post Co.](#)'s Kaplan Higher Education and others.

The group said it sent a letter to U.S. Secretary of Education Arne Duncan, asking him to voluntarily withdraw the regulations. Mr. Duncan is also named as a defendant in the lawsuit.

The Education Department confirmed receipt of the letter late Friday.

If not withdrawn within a given time frame, Apscu will ask the court for an injunction "until the substance of our challenges are resolved," said Harris Miller, who heads the trade group.

Justin Hamilton, a spokesman for the Education Department, said the agency is "confident that the published regulations will do the best job of protecting students and taxpayers."

Mr. Miller warned the issue of state authorization may be difficult on which to compromise. The rule issued in October will require a school to receive approval from every state in which it has students, using metrics approved by the federal government. That's a daunting task for some schools with nationwide online operations.

Mr. Miller said it's unlikely all states will be able to update their procedures to meet the federal government's

requirements by the July 1 deadline, leaving students in those states potentially ineligible for access to federal student aid.

The incentive compensation regulation has been a lightning rod for criticism, as many industry insiders say it's unclear who is restricted from receiving bonuses based on student performance. The rule is intended to ensure that recruiters don't enroll underqualified students to meet bonus targets, but many say they don't know whether the rule would also apply to football coaches who bring in top athletes or even chief executives who improve student retention and graduation rates.

Meanwhile, Mr. Miller said the two sides could likely come to an easy agreement on the rule governing how schools can be punished for misrepresenting information to the public, and what constitutes a "substantial misrepresentation." According to the lawsuit, the current rule violates the Constitution's due process clause in the way the rule handles penalties for misstatements.

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