To: Members of “State Authorization of Distance Education” work group

From: Andy Harrington

Re: state authorization rules

Date: March 11, 2015

This memo is to provide an overview of the varying requirements which states impose on institutions of higher education offering e-learning programs to residents of those states.

Most states have a postsecondary education quality assurance law or regulation, requiring higher education institutions to seek authorization (registration, licensure, etc.) from a state agency to operate within the state. An institution in State A accepting enrollment from e-learning students residing in State B may need authorization from State B. To address the issue, the State Authorization Reciprocity Agreement (SARA) was proposed as a voluntary agreement among member states. Each participating state agrees to designate a “portal” agency with authority to investigate and resolve complaints against degree-granting institutions in that state; and agrees that complaints about a degree-granting institution operating from another SARA state will be investigated by the appropriate agency in that institution’s home state. SARA is overseen by a National Council and administered by the four regional education compacts. A state can voluntarily join SARA through its respective regional compact, and thereafter participating colleges or universities only need their home state authorization to offer distance education to any other SARA member state.

Twenty (20) states, including Alaska, have signed onto SARA. Seven (7) other states are likely to join soon; six have passed enabling legislation to join SARA, and one state and the District of Columbia have had SARA legislation introduced.

That leaves twenty-three (23) states currently outside the SARA umbrella, each with its own requirements on whether authorization is required for an out-of-state institution enrolling that state’s residents as on-line students, varying with respect to how clear their law is, and as to whether that is laid out in statute, in regulation, or merely in administrative practice reflected in the responses to the SHEEO (State Higher Education Executive Officers Association) questionnaire. (Posted and updated at http://sheeo.org/sheeo_surveys/.) Several states make their licensure/registration requirement turn on whether the out-of-state institution has a “physical presence” within that state, but some do not, and even for those that do, the criteria for what constitutes “physical presence” vary from state to state.

Of those, there are nine (9) states in which I think UA’s distance education e-learning programs will likely not need to seek authorization. (This assumes that we don’t
approach the residents of that state with any targeted recruiting efforts generated from within that state, instead just sending them the same general recruiting materials that we would send out to anyone, and perhaps occasionally attending a college fair or similar event in that state.) One additional state, although it does not require registration, does request that universities write a letter confirming their exemption, which we should do.

There are ten (10) states that include some types of internship/externship in their definitions of “physical presence,” that is, if the out-of-state institution places interns within that state, the out-of-state institution may be deemed to have a “physical presence” and thus need authorization. The criteria for what types of internship will and will not constitute a “physical presence” vary from state to state. The typical UA internship (by “typical,” I mean one that is required for the particular degree the student seeks, but the internship is arranged by the student and approved by the university, with the university not compensating or paying the placement mentor who will be supervising the intern’s work) is likely to constitute a physical presence in four of those states, and unlikely to constitute a physical presence in the other six.

There are three states in which out-of-state online programs are required to seek authorization or registration regardless of “physical presence.”

Over time, it appears likely that more and more states will be joining SARA, so the task of complying with the individual requirements of each state will diminish. Still, it is completely voluntary, so it is possible, perhaps likely, that there will be a handful of states that do not join.

In the meantime, it would be advisable for the universities to decide what their level of activity should be in seven states: the three states in which out-of-state online programs are required to seek authorization or registration regardless of “physical presence” (where each university should either register or take steps to decline online enrollments from residents of those states, or at least screen each application from those states to determine whether acceptance of that application would trigger the registration requirement), and the four states in which placement of UA interns may constitute physical presence (where each university should either register, or take steps to refrain from approving intern placements in those states, and in either situation should be able to continue offering on-line courses).