State Authorization Reciprocity Agreement

April, 2012 -- Working Draft

WORKING DRAFT

***SARA*: Working Draft of a *State Authorization Reciprocity Agreement*,**

including outlines of an organizational and financing framework to support such an agreement

April, 2012

Background

- Most states have for many years regulated the offering of postsecondary education (through various delivery methods) within their borders. They have carried out that regulation in remarkably different ways, with widely varying standards, policies, practices, and 'triggers" for application and enforcement. In turn, institutions vary in the degree to which they have paid attention to state regulation, particularly in regard to activities they pursue outside their home state, and especially in regard to "distance" or "online" students.
- As a condition for institutional participation in federal financial aid programs, U.S. Department of Education rules require institutions to be approved to operate in all states or territories in which they serve students ("state authorization"), or to document that such approval is not required by the states or territories in which those students reside. (Although this regulation is currently being reviewed in the courts, we expect that the Department of Education will make every effort to see that it is kept in place.)
- At present, there is no alternative to each institution separately pursuing state authorization (or assurance that authorization is not required) in each state and territory in which it serves students. Consequently, thousands of institutions must seek approval/authorization in as many as 54 states and territories.
- That approach is inefficient and challenging for institutions and states alike.

Another approach to the issue

- The *Lumina Foundation* has provided funding to the *Presidents' Forum,* working with the *Council of State Governments*, to develop a "model state reciprocity agreement" that states could adopt to acknowledge other states' work and decisions in regard to institutional authorization. ***SARA***, developed as a working draft by a team familiar with these issues, is the current product of that effort.

Goals

- ***SARA*** offers a process that could make state authorization more efficient, more uniform in regard to necessary and reasonable standards of practice that could span states, and more effective in dealing with quality and integrity issues that have arisen in some online/distance education offerings. It could also be less costly for states and institutions

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and, thereby, the students they serve. The achievement of those goals will support the nation in its efforts to increase the educational attainment of its people.

Challenges

Anyone engaging these issues faces some hard realities:

- State laws, rules and regulation around these issues are remarkably diverse, making agreement between states about any one way to do this work especially challenging. In addition, the *reasons* for that diversity vary from state to state, in some cases stemming from a desire to uphold very high standards, while in others, perhaps, the desire to limit competition for in-state institutions or generate revenue for agency operations.
- Efforts to facilitate and enable good practice must not only deliver on those points; they must also maintain the ability for appropriate entities to deal with, and, if necessary, punish bad institutional behavior.
- In particular, states must be able to trust other states to carry out their responsibilities.
- Any alternative to the current situation must include a means of effective governance and a workable model for financial sustainability.
- A fully effective means of dealing with these issues requires a comprehensive national model, one that can serve all interested states, accommodate all sectors of higher education (public, independent non-profit, and for-profit), and embrace the diversity of institutional and specialized accreditation.

Essential characteristics of the current working draft. *SARA*:

- Acknowledges the traditional roles of members of the accountability triad: federal government, states, and recognized accrediting bodies.
- Preserves full state oversight of on-the-ground institutions and campuses.
- Sets forth a reasonable set of "triggers" of "physical presence."
- Requires institutional accreditation by an accrediting body recognized by the U.S. Secretary of Education.
- Proposes a uniform set of minimal standards for state and institutional participation.
- Allows states, at their discretion, to rely on accreditors for various tasks.
- Calls on states to assume the principal role in matters of consumer/student protection while working in partnership with recognized accreditors.
- Shifts principal oversight responsibilities from the state in which the "distance learning" is being offered to the "home state" of the institution offering the instruction.
- Lays out a model reciprocity agreement that states could adopt to do this work, including outlines of a possible organizational structure and a financial plan to support operations.

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Issues *SARA* does not address

- The drafting team is aware that approval to offer certain types of programs (nursing, education, or psychology, for example) in a state may require approval by a licensing board, as well as approval by a more general authorizing agency. SARA does not cover approval by professional licensure boards, leaving that to future work, probably carried out by others. The issues SARA does attempt to handle are challenging enough.
- The drafting team has intentionally provided minimal details on the operation of the organization that will be required to support SARA. Those would be generated by the entity itself, and the organization could be constituted and managed in a variety of ways.

Partnerships and consultation

- The drafting team has benefited from feedback from an advisory committee that includes representatives from a broad range of higher education constituencies.
- We have also benefited greatly from several conversations with representatives of the country's four regional higher education compacts: WICHE (Western Interstate Commission for Higher Education), SREB (Southern Regional Education Board), MHEC (Midwestern Higher Education Compact), and NEBHE (New England Board of Higher Education). WICHE, especially, is also working on state authorization reciprocity issues. The leadership of the Presidents' Forum / Council of State Governments project and the regional higher education compacts are working toward a goal of creating a unified SARA agreement. The intent is to leverage the strengths of these organizations in developing the final agreement, determining effective governance models, and developing strategies for recruiting states.
- We have also greatly benefited from conversations with and suggestions from representatives of the accreditation community. That engagement will continue, as well, and will also likely lead to further modifications of SARA.

Comments and suggestions

- We look forward to engaging further the broad higher education community, including state regulators (NASASPS), institutional organizations, and other interested and affected parties
- Comments and suggestions are welcome. They can be most efficiently handled if sent to:
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THE PRESIDENTS' FORUM

&
THE COUNCIL OF STATE GOVERNMENTS
NATIONAL CENTER FOR INTERSTATE COMPACTS

Interstate Reciprocity Compact

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STATE AUTHORIZATION RECIPROCITY AGREEMENT

April 2012 Working Draft Draft

ARTICLE I

PURPOSE

It is the purpose of this compact to facilitate expanded access to high quality distance educational opportunities for students by improving the policy and operational mechanisms in the state regulatory environments and encourage consideration by the states of reciprocal agreements that will make the regulatory process more efficient.

Significant benefits will accrue to students, institutions and states if the current lack of uniformity in the patchwork of state regulation could be improved through sharing in common, high quality and consistently applied processes and standards. It is hoped that institutions and states will also reap financial benefits by no longer having to engage in the duplicative process of seeking approval to operate on an individual, case-by-case basis.

It is the purpose of this compact to build upon and strengthen the existing efforts of states, accrediting bodies, and the federal government to facilitate expanded access to high quality education by:

1. Providing for consumer protection and a complaint resolution process;

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2. Providing for the uniform collection and sharing of information between and among member states;
3. Reducing barriers to innovation in educational delivery;
4. Increasing access to post-secondary education and degree completion;
5. By establishing common, high quality and consistently applied processes and standards endorsed by participating states, which are efficient and cost-effective.

Quality in postsecondary education derives from three components: inputs, processes, and outcomes. Student outcomes are paramount, but students depend on the quality of institutional inputs (services and processes) to enable them to acquire knowledge and skill. While institutions should ultimately be held accountable for outcomes and encouraged to pursue them in innovative, cost-effective ways, their contributions to those outcomes and the connection between student achievement and institutional services and processes is the basis of institutional quality.

ARTICLE II

DEFINITIONS

A. "Accredited" means: holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

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B. “Authorized” means: holding a current valid charter, license or other written document issued by a state, federal government or government of a recognized Indian tribe, granting the named entity the authority to issue degrees.

C. “Career School” means a postsecondary instructional provider that does not offer any degrees or credit applicable toward a degree.

D. “Bylaws” means: those bylaws established by the SARA Policy Board pursuant to Article VIII for its governance, or for directing or controlling its actions and conduct.

E. “Board” or “Policy Board” means: the board created pursuant to Article VII of this compact.

F. “Certificate or Diploma” means: A formal document certifying the successful completion of a prescribed program of studies. (See IPEDS).

G. “Certify” or “Certification” means: written assertion by a member state that an institution for which it is the Home State meets the standards required by this compact for interstate operation under this compact.

H. “Charter” means: a document bearing the name Charter issued by proper governmental authority that names a college or university as a degree-granting institution authorized to operate under the laws of the issuing jurisdiction.

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I. “Clinicals” means experiential placements at work sites, typically used by programs leading to degrees in health related fields.

J. “Complaint” means a formal assertion made known to an appropriate recipient that the terms of this compact, or of laws, standards or regulations incorporated by this compact, are being violated by a person, institution, state, agency or other organization or entity operating under the terms of this compact.

K. “Credits” means numeric descriptors of completion of academic work applicable toward a degree, following the Carnegie unit system commonly in use at U.S. colleges.

L. “Degree” means: An award conferred by a college, university, or other postsecondary education institution as official recognition for the successful completion of a program of studies. (See IPEDS)

M. **“**Exempt” means: an institution that by state regulation is not required to have a full approval to operate based on meeting certain criteria in that state.

N. “Faculty” means: a professional individual employed by or contracting with an institution primarily to teach, conduct research or provide similar professional education services.

O. “Hybrid” means: an educational program that includes both face-to-face and distance education. Also known by the name “blended” and sometimes other terms.

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P. “Home State” means: a member state where the institution holds its principal institutional accreditation.

Q. “Host State” means: a member state in which an institution operates under the terms of this compact, other than the home state.

R. “Internships” means: experiential placements at work sites typically used by programs in the social sciences and management fields, but also used in other fields.

S. “Institution” means: a degree-granting school or a system of schools doing business as one entity.

T. “Member State” means: any state or territory that has enacted the enabling compact legislation.

U. “Operate” means: activities conducted by an institution in support of offering degree or non-degree courses or programs in the state, including but not limited to instruction, marketing, recruiting, tutoring, and other student support services.

V. “Physical Presence” (or “to operate”) means:

1. Conduct the following activities in the home state:

a. Establishing a physical location in a state for students to receive synchronous or asynchronous instruction; or

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b. Requiring students to physically meet in a location in the home state for instructional purposes more than once during the course term; or

c. Establishing an administrative office in the home state, including:

i. Maintaining an administrative office in the home state for purposes of enrolling students, providing information to students about the institution, or providing student support services;

ii. Providing office space to instructional or non-instructional staff; or

iii. Establishing a mailing address or phone exchange in the home state.

2. Physical presence (or "to operate") is not triggered by the following:

a. Courses offered online or through the United States mail or similar delivery service that do not require the physical meeting of a student with instructional staff in a home or host state.

b. Advertising to students within a home or host state, whether through print, billboard, direct mail, internet, radio, television or other medium;

c. An educational experience arranged for an individual student, such as a clinical, practicum, residency, or internship, EXCEPT AS SPECIFIED IN ARTICLE III, SECTION B(3);

d. An educational field trip arranged for a group of students that are normally in residence at an institution in another state;

e. Course offerings in the nature of a short course or seminar if instruction for the short course or seminar takes no more than twenty classroom hours;

f. Course offerings on a military installation;

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g. Operation of a server, router or similar electronic service device when such device is not housed in a facility that otherwise would constitute a physical presence; The presence of a server or similar pass-through switching device in a state does not by itself constitute the offer of a course or program from that state.

h. Having faculty, adjunct faculty, mentors, tutors, or other academic personnel residing in this the home or host state; The presence of instructional faculty in a state, when those faculty offer entirely online or other distance-education instruction and never meet their students in person for educational purposes while in that state, does not establish a presence of the institution in that state or an offer of a course or program from that state for purposes of this compact.

i. Requiring a student to take a proctored exam at a location or with an entity in this the home or host state prescribed by the institution;

j. Having a contractual arrangement in this the home or host state.

W. "Policy Board Representative" means: the voting representative appointed by each member state pursuant to Article VII of this compact.

X. "Practicum" means: experiential field placements at work sites typically used by programs in teacher education but also by some other fields.

Y. "Rule" means: a written statement by the policy board promulgated pursuant to Article X of this compact that is of general applicability, implements, interprets or prescribes a

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policy or provision of the compact, or an organizational, procedural, or practice requirement of the board, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

Z. "State" means: any state, commonwealth, district, or territory of the United States.

ARTICLE III

GENERAL APPLICABILITY

A. This compact shall apply to degree granting institutions that are chartered and/or authorized to operate within a home state as defined in this compact and that serve students in multiple states via distance education. All institutions that have the authority to operate in the home state are potentially eligible to be authorized to operate in host states under the following conditions:

B. The activities to which this compact applies are:

1. Distance learning courses that are offered to private individuals separately, without in-person group activities, classroom activity; in-person meetings or similar work;

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2. That portion of hybrid and blended courses and programs that consist of distance learning and the non-distance portions that meet any requirements that a host state may have for the operation of an institution;
3. Field placements, clinicals, internships and similar short-term educational activities that are not part of any program separately approved by a host state under its customary laws for the operation of colleges or programs.

C. New programs duly authorized by the home state following the development of this compact.

D. In order to be eligible to participate under the terms of this compact, an institution must:

1. Be accredited by an accrediting agency recognized by the U.S. Department of Education;
2. Declare a qualified home state for purposes of this compact;
3. Provide distance education from the home state into host states;
4. Be responsible for and accountable to the home state and to the institution's accrediting agency for the academic quality and appropriate delivery of its offerings under this compact, irrespective of the actual provider of courses and services.
    a. Only an institution, as defined in Article II is eligible to operate under the terms of this compact, and all such work must be offered in its own name and be transcripted by it.

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b. Any institution operating under this compact shall be directly responsible to the home state and/or SARA, as needed, for responding to any questions, data requests, complaints or other communications regarding its academic activities and/or actions or practices of any third party supplier whose products or services are part of the institution's activities under this compact.

5. Provide indemnification, including but not limited to, surety bonds, tuition protection funds, multi-institutional cooperatives, and state supported financial arrangements as required by the home state

6. Meet all other requirements set forth in this compact.

E. The home state shall exercise legal authority over all offerings by an institution in any member state under the laws of the home state. This does not, however, include meeting qualifications for professional licensure in each member state.

F. Multiple providers with common ownership

1. Public systems or networks having a single board ultimately responsible for new program approvals may operate under the terms of this compact as a single unit. States in which the approval of new programs is by a coordinating board rather than an institutional board are also qualified under this section. State systems using this provision must name a single contact for information and problem-solving, including compliant processing, under this compact.

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2. Multiple units of a nonpublic institution or network bearing the same institutional name and accreditation and for which a single board or owner is ultimately responsible for new program approvals may operate as a single unit under the terms of this compact. An institution using this provision must name a single contact for information and problem-solving, including complaint processing, under this compact.

G. Institutions that offer non-degree programs in addition to degree programs:

1. All non-degree courses or programs offered by an institution shall be governed by the applicable laws or regulations of the home state.
2. This compact supersedes any host state law that provides for separate authorization of non-degree activities of degree-granting institutions.

H. Recruiting by an institution:

1. An institution operating under the rules of this compact may recruit students in any member state for any degree or non-degree program authorized by the home state under this compact without restriction except as noted in this section.
2. An institution is responsible for the activities conducted by its recruiters.
3. Recruiters must meet legal requirements established by the institution's home state.
4. Recruiters are liable for adherence to, and may be sanctioned for violation of, any

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laws of a host state not covered by this compact.

An institution not exempt from all laws of host states are liable for adherence to, and may be sanctioned for violation of, any laws of a host state not covered by this compact.

ARTICLE IV

RESPONSIBILITIES OF THE HOME STATE

The home state for purposes of this compact agrees to do the following:

A. Present a formal plan and procedures for review and approval by the SARA Policy Board that the state will employ in accordance with standards outlined in Article V, for reviewing and authorizing institutions in the home state for purposes of this compact.

1. A home state may choose to rely on reviews conducted by a federally recognized accrediting association as the basis for authorization that an institution meets some or all of the standards set forth in Article V for purposes of its operation under this compact. In so doing, a home state may require an institution to provide documentation related to its accreditation upon request of the state.
2. If the home state does not or cannot authorize an institution based on the standards in Article V or on actions of an accrediting body, it must evaluate an institution's compliance with it's own standards not included within the accreditation review.

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3. An institution that is exempt from its home state's evaluation standards and processes covering subjects set forth in Article V cannot be authorized under section B of this Article, nor can it operate under the provisions of this compact, unless such authorization is based on subsection 1 or 2.
4. A home state that relies on the standards of an accreditor recognized by the U.S. Department of Education is responsible for investigating and resolving complaints arising from the institution's operations under this compact.
5. A home state may require an institution to provide documentation related to its accreditation.
6. The home state shall investigate and resolve any complaints or other issues arising from its own standards for authorization, or the standards under this compact , even if an institution has been authorized by virtue of its accreditation.

B. Verify to other member states that each eligible institution meets the standards under this compact.

C. Provide not less than once each year a list identifying those institutions that have received authorization to operate under this compact to the SARA Policy Board.

D. Report any changes, including the addition, substantial modification as reported to the accrediting body or elimination of offered programs, to an institution's authorization to operate to SARA Policy Board within thirty days after such change in status.

E. The home state must require each institution operating under the provisions of this compact to provide for the indemnification of any student or enrollee who is a resident of

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any member state and who suffers loss or damage because of a violation of the SARA standards by the institution, as determined by the home state.

1. The home state shall establish the type or types of indemnification available to institutions that satisfy this requirement. Indemnification types may include, but are not limited to, surety bonds, tuition protection funds, multi-institutional cooperatives, and state supported financial arrangements.
2. In order to be considered adequate, the home state requirement must ensure the following:
    a. The maintenance of an indemnification amount that is equal to at least 25 percent of the institution's total tuition and fee income (less refunds) received from students residing in the member states for the most recently completed fiscal year, and
    b. Coverage of all students who are residents of a member state.

F. In the event of the closure of an institution or the cessation of the delivery of education services to residents of a member state, the home state shall require each institution to establish a process to protect student interests.

1. The process must provide for the preservation of transcript records for all students enrolled at the institution in manner approved by the home state.
2. The process may provide for the completion of training through teach-out arrangements or other provisions approved by the home state.
3. If an institution fails to fulfill its obligations under this provision, the home state may use student indemnification funds to provide for the protection of these student interests.

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G. Provide any member state and/or the SARA Policy Board, upon request, with copies of any evaluative or authorization-related documents pertaining to an institution operating under the compact.

H. Provide such data as requested by the SARA Policy Board.

I. Investigate and resolve any consumer complaints regarding the activities of an institution in a host state, applying the laws of the home state to an institution's activities in any member state.

J. Investigate at the request of any member state any reported noncompliance with these standards and report to the SARA Policy Board the results of such investigation.

K. A home state may contract with other member states or entities to assist with activities under this compact.

ARTICLE V

RECIPROCAL STANDARDS UPON WHICH STATE AUTHORIZATIONS TO OPPERATE WILL BE GRANTED

This compact relies on a high level of engagement and authority being exercised by the home state In order to increase and encourage the confidence of states in the authorization requirements of other states, this compact includes standards that are intended to mirror and

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reinforce the standards customarily used by accrediting bodies and states. The standards set forth in this compact may also serve as an example to home states that desire to be a member state and whose standards may not currently be at these levels. Home states have the ultimate legal responsibility for the quality of offerings and operations of institutions that they authorize. These standards apply to all aspects of an institution's activity and are designed to complement the work of accreditors; moreover, the states have the legal responsibility to enforce their laws.

The standards outlined in this article are designed to serve as a framework for home states to use in developing their plans and procedures for the review of an institution and for the SARA Policy Board to use in review of each member state's plans to meet the requirements of this compact. The SARA Policy Board will determine whether a state has standards that meet or exceed the standards in this compact, and will monitor state adherence to the standards. State applications for membership in this compact must:

1. Address each of the standards in this article, may and are encouraged to set acceptable levels above the minimum levels for its institutions
2. Be able to demonstrate and document how each institution has met the standards of this compact as required in Article V.

In the event that a home state finds that an institution has violated any of the standards set forth in this compact, the state will follow a written process to address the violation and may remove the institution from the list of authorized institutions under this compact.

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The requirements in each of the areas below will be reasonably determined under rules promulgated by the SARA Policy Board created hereunder. Reciprocal state authorizations to operate shall be granted when a home state indicates compliance in the following areas. While the institutional review and approval process will be determined and conducted by the home state, the procedures for ensuring compliance with the standards under this compact must be approved by the SARA Policy Board as a prerequisite to joining the compact.

Home states shall verify to other member states that each eligible institution meets the following standards.

1. Institutional status and oversight
    a. The institution is operating legally in the home state,
    b. The institution has the authority to offer in the home state each program that it proposes to offer in member states.
    c. The institution is accredited by a U.S. Department of Education - recognized accrediting body, and the accreditation includes offering distance education.
    d. Distance education program activities serving students outside the home state are consistent with the institution's role and mission and are authorized by the home state.
    e. The institution clearly states its commitment to support the instructional programs to its conclusion.

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f. The institution has and applies a clearly defined plan to assess the quality and effectiveness of its programs on a continuing basis.

g. The institution has and applies processes to verify student identity.

2. Curricula

a. Program and/or course activities are part of the institution's authorized degree and program curricula.

b. The content, sequence and schedule of courses making up a complete program are clearly delineated, including the total number of credits (or other academic milestones) to complete the program.

c. Programs are structured in a logical way, with graduate work requiring performance demonstrably higher than undergraduate work.

d. The institution has appropriate administrative and academic policies in place.

3. Learning Outcomes

a. Program and/or course outcomes are clearly defined and are appropriate for the level of the educational activity.

b. Learning outcomes are assessable and consistent regardless of however or wherever delivered.

4. Award of credit

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a. Credit is awarded by an institution consistent with definitions applied by its U.S. Department of Education-recognized accrediting body.

b. Policies for the recognition of credits previously earned at other institutions must be clearly defined and consistent.

c. Credit recognized for experiential learning must be documented by an appropriate third party recognized by American Universities, or by an institution's clearly defined and documented assessment processes. Direct assessment processes must be clearly defined, documented, and consistent.

d. The compact does not guarantee the transfer or application of credit between institutions in member states

5. Student support services

a. The institution clearly defines the nature and scope of services provided for students in all programs.

b. Student services shall be available to students in all member states.

6. Academic support services: the institution shall make available appropriate levels of library and other learning resources.

7. Admissions

a. The institution clearly states its requirements for admission to all academic programs.

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b. The institution determines that students admitted are appropriately prepared.

c. These standards are not intended to prohibit course auditing, attendance by non-matriculated students under institutional policies, or dual enrollment by qualified high school students in postsecondary courses.

8. Recruitment, marketing and other institutional disclosures

a. An institution provides the general public with full information about institutional and program requirements, costs, and accreditation.

b. Advertisements and promotional information are clear and complete in describing the instructional activity, including a description of any colloquia, conferences, or workshops that are a required part of the program.

c. If employment or related salary information is provided to the public, sufficient supporting data is made accessible by the institution.

d. An institution offering programs intended to prepare a student for a licensed profession shall explicitly state whether the program meets standards for licensure in any member state in which the program enrolls students.

e. An institution must fully disclose its institutional and programmatic accreditation status.

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f. An institution is responsible for the conduct and activities of its recruitment personnel.

g. An institution shall disclose its tuition, fees and other costs of attendance and program completion.

h. An institution shall have and fully disclose its refund policies.

i. An institution must disclose its complaint policy and procedures.

j. An institution must disclose the technologies required for successful completion of its programs.

k. An institution must publish all institutional policies mandated by the home state and accreditor.

l. An institution must provide information about financial assistance (including federal and state financial aid, grants, loans, institutional aid) that is complete, accurate, and consistent with federal and state law.

m. An institution will refrain from unfair, false, or misleading statements or practices, promotions, recruiting, marketing, etc.

9. Financial issues

a. An institution has the financial resources necessary to support program activities in all member states, and to discharge all obligations to students.

b. An institution is limited to charging tuition and fees for the current term of enrollment and cannot be charged or obligated for any period longer than six months.

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c. An institution must have a published tuition refund policy in accordance with the home state requirements.

d. An institution must secure a surety bond and/or provide monies to a student tuition recovery fund as determined by the home state.

10. Data Reporting

a. An institution must provide the required data as determined by the SARA Policy Board to the home state by the specified deadline.

ARTICLE VI

STATE COORDINATION

Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among the agencies responsible for governing higher education in each member state concerning the state's participation in, and compliance with, this compact. Each member state may determine the membership and governance of its own state council.

ARTICLES VII-X

Article VII – Governance of State Authorization Reciprocity Agreement (SARA)
Article VIII – Powers and Duties of the SARA Policy Board
Article IX – Organization and Operations of the SARA Policy Board
Article X – Rulemaking Function of the SARA Policy Board

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Proposed Governance Model

For a diagram of the governance structure please refer to Appendix A

The Drafting Team has been working over the last several months to establish a governance structure that is designed to ensure compliance with the compact and its rules, while also providing flexibility to keep up with changes in the field of distance learning. Believing that any kind of compact model should be national in scope, the governance structure aims to ensure representation from each member state, while also allowing for participation from subject matter experts and streamlining the day-to-day decision making process. Below is an overview of what the governance structure might look like and how it will potentially operate. It should be noted that this overview represents a working draft and is subject to change as a result of future drafting team discussions.

The drafting team envisions a structure that would allow for participation and input from three different levels. The largest of these bodies would be the SARA Policy Board, which would consist of one voting representative from each member state. The compact envisions the Board meeting annually and also provides for ex-officio membership to ensure participation from appropriate higher education organizations. The primary responsibility of this Board would be to designate policy and associated rules and bylaws. The SARA Policy Board shall form the SARA Executive Committee. The Executive Committee will be comprised of a subset of members of the Board and is charged with overseeing the implementation of the policies, rules, and bylaws of the compact. The Executive Committee is also granted the authority to hire an Executive Director and staff to manage the daily business of the compact. In doing so it is envisioned the

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Executive Committee will receive considerable input from and guidance from the SARA Advisory Council.

The model compact also calls for the creation of a small working group known as the SARA Advisory Council. The Advisory Council would be appointed by the Board and will be called upon as necessary to make policy and operational recommendations to the Board, the Executive Committee, and administrative staff of the compact. The Advisory Council is designed to ensure the compact is guided and influenced by subject matter experts and state authorization or accreditation specialists with a deep and intricate knowledge of state authorization and distance learning in its many forms.

The leadership of the Presidents' Forum / Council of State Governments and the regional compacts are working toward a goal of creating a unified SARA agreement. The intent is to leverage the strengths of these organizations in developing the final agreement, determining effective governance models, and developing strategies for recruiting states.

ARTICLE XI

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and

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appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the SARA Policy Board.

3. The Policy Board shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Policy Board shall render a judgment or order void as to the Policy Board, this compact, or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination

1. If the Policy Board determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Policy Board shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Policy Board. The Policy Board shall specify the conditions by which the defaulting state must cure its default.

b. Provide training and specific technical assistance regarding the default.

c. Terminate from the compact upon an affirmative vote of the majority of the member states and all rights, privileges, and benefits conferred by this

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compact. If a cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

d. Suspend or terminate membership in the compact only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Policy Board to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states and their participating institutions.

e. The state that has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

2. The SARA Policy Board shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Policy Board and the defaulting state.

3. The defaulting state may appeal the action of the Policy Board by petitioning the U.S. District Court for the District of Columbia or the federal district where the Policy Board has its principal offices.

4. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

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1. The SARA Policy Board shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and which may arise among member states and between member and non-member states.
2. The Policy Board shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

D. Enforcement

1. The Policy Board, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
2. The Policy Board, may by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Policy Board, in the federal district court where it has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default.
   a. The relief sought may include both injunctive relief and damages.
   b. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.
3. The remedies herein shall not be the exclusive remedies of the Policy Board. The Policy Board may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XII

FINANCING OF THE SARA AND ITS POLICY BOARD

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To review the draft fiscal model please refer to Appendix B

The SARA Policy Board shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. In accordance with the provisions of this compact, the Policy Board has the authority to collect fees from institutions operating in member states for the purposes of covering the Policy Board's and staff's annual operating costs and may disperse said fees to cover home state costs of serving students from other states. The Policy Board may also act as the intermediary to dispense funds to member states.

A. This compact does not infringe upon the right of any member state to charge fees to its home state institutions. The home state shall retain all such fees in order to cover the costs associated with review, approval, and monitoring of operations of institutions in its state.

B. Institutions operating in states other than their home state under the provisions of the compact shall pay an additional annual interstate fee to the SARA Policy Board. The fee shall consist of two parts:

1. A fee to help host states cover their costs of assisting students being taught by institutions from other states. The Policy Board shall annually approve a fee schedule using a graduated scale based upon the number of students served annually in a state. The fees collected will be remitted to the member states by the Policy Board.

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2. A fee to cover the Policy Board's operational costs.

a. The Policy Board shall annually approve and publish an institutional fee structure to cover its operational costs.

b. The Policy Board has the authority to determine whether to use a flat fee, graduated scale, or other criteria for setting the fee.

C. The Policy Board shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall it pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Policy Board shall keep accurate accounts of all receipts and disbursements.

1. The receipts and disbursements of the Policy Board shall be subject to the audit and accounting procedures established under its bylaws.

2. All receipts and disbursements of funds handled by the Policy Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Policy Board.

ARTICLE XIII

MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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A. Any state that meets the regulatory requirements and standards established by the Policy Board is eligible to apply to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than _____ states. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors (or designees) of non-member states shall be invited to participate in the activities of the Policy Board on a non-voting basis prior to adoption of the compact by all states.

C. The Policy Board may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Policy Board and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XIV

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute, which enacted the compact into law.

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2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to each other member jurisdiction and institutions located in the withdrawing state.

3. The withdrawing state shall immediately notify the chairperson of the Policy Board in writing upon the introduction of legislation repealing this compact in the withdrawing state.

4. The Policy Board shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

5. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

6. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Policy Board.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

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2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the SARA Policy Board shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XV

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVI

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

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1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.
2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Effect of this compact on professional licensing

1. Nothing in this compact confers professional licensure in a state, exempts students or institutions from requirements of any professional licensing agencies, replaces any professional licensure requirements, guarantees that a course or program graduate will meet professional licensing requirements, or otherwise changes, supersedes, or replaces any requirement in any state related to professional licensure.
2. All institutions retain an obligation to determine and disclose whether or not programs or courses offered under this agreement meet any standards for professional licensing.
3. Students and potential students retain an obligation to know the professional licensure requirements in the state in which they wish to practice their profession.
4. Subsections 1 and 2 of this section shall be provided in writing by all institutions to all students enrolled under the benefits of this compact, whether or not the student has declared an intent to obtain professional licensure or is enrolled in a course that leads to such licensure.

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C. Reporting requirement

1. The SARA Policy Board may establish reporting requirements that it considers necessary to ensure the proper operation of the compact.
2. Institutions operating under this compact must report to the home state data that the Policy Board considers necessary for the proper performance of its oversight functions.
3. Data that is reported to the home state under this compact is considered to meet and replace any reporting requirements to individual member states. The home state shall provide state-specific reported data to any member state upon request.

D. Binding Effect of the Compact

1. All lawful actions of the Policy Board, including all rules and bylaws promulgated by the Policy Board, are binding upon the member states.
2. All agreements between the Policy Board and the member states are binding in accordance with their terms.
3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

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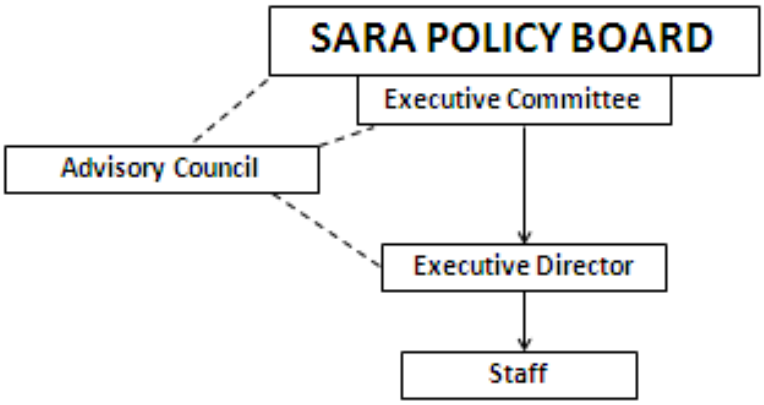
Appendix A – Governance Structure



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State Authorization Reciprocity Agreement – Fiscal Model

April 19, 2012

Introduction

The State Authorization Reciprocity Agreement (SARA) will require funds to support expanded home state activities, to assist host states in providing assistance to the home state, and to provide support staff, contracts, travel, and other expenses related to its operations.

Operational Costs

While the final activities and organizational structure of the State Authorization Reciprocity Agreement are still being determined, any estimates of operational costs are very preliminary. Table 1 (on the next page) gives an outline of the suggested cost categories and the estimated amounts needed. The total ongoing cost is estimated at approximately $750,000 annually.

This does not reflect start-up costs, which are projected to be higher. There will be more trips to states to market the Agreement, testify at state legislative hearings, and to develop many of the elements (i.e., by-laws, operational definitions, rules, regulations, financial processes) that need to be created and implemented in the first years of operation. Given the scale of these start-up requirements, external funding will probably be needed to fund some or all of these activities.

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Table 1: SARA Operational Costs Estimates

Personnel		
Executive Director		
Salary	$130,00	
Benefits	$42,900	$172,900
Professional Staff		
Salary	$90,000	
Benefits	$29,700	$119,700
Administrative Support Staff		
Salary	$50,000	
Benefits	$16,500	$66,500
Contracted Help		
Legal Assistance	$100,000	
Web Support	$50,000	
Accounting	$50,000	
Writing/Research	$40,000	$240,000
Travel		
Staff Trips	25	
Cost per trip	$1,250	$31,250
Office Space		
Offices	3	
Cost per office	$10,000	$30,000
Miscellaneous		
Meeting Expenses	$25,000	
Communications	$10,000	
Technology	$45,000	
Marketing	$5,000	
Supplies	$5,000	$90,000
TOTAL		$750,350

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Personnel

An executive director, professional staff person, and administrative staff person are proposed. While the executive director will be the face of the organization, the staff person and administrative staffer will need to track the many details of implementing the agreement.

Contracted Help

Rather than hiring staff, some duties can be contracted. In working with state laws and with interstate agreements, there will be on-going need for legal advice. The web will be an important tool for informing constituents (i.e., state regulators, institutional personnel, legislators, students) about the Agreement. Given the amount of pass-through funds, having extensive accounting and auditing expertise will be necessary. Given the constantly changing issues that arise by inclusion of new states, writing and research help can be added, as needed.

Travel

The staff will need to travel to national and regional meetings to promote the Agreement. They will also need to travel to states to meet with legislators and regulators to assist with implementation. While these costs will be higher during the implementation stage, some travel will be required as part of the ongoing operation of the Agreement.

Office Space and Miscellaneous

The staff will need office space, communications (phone and web conferencing), technology (computers, software, web licensing) , and supplies. The marketing line item will be used to create materials to help explain the need for and details of the Agreement. The meeting expenses will be used to support the costs of meetings of the Policy Board, subcommittees, and working groups undertaking tasks on behalf of the Agreement.

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Income

In reviewing interstate compacts (whether regional higher education models or for other purposes), those agreements often charge a single fee to a state for participation. Given the uneven impact on other states of institutional participation in distance education, an institutional fee charged on sliding scale (based on number of distance students) is proposed.

Recommended Fee Structure

The exact fee structure will be left to the determination of the Policy Board which will include states that decide to enter into the Agreement. The Drafting Team examined alternative fee structures and the compact draft includes the following recommendations.

An institution in a member state will pay:

3. *A fee to help host states cover their costs of assisting students being taught by institutions from other states.* SARA's Policy Board shall annually approve a fee schedule using a graduated scale based upon the number of students served annually in the member states. The fees collected will be remitted to SARA and distributed to the member states.
4. *A fee to cover SARA's operational costs.* The Policy Board shall annually approve and publish an institutional fee structure to cover its operational costs. The Policy Board has the authority to determine whether to use a flat fee, graduated scale, or other criteria for setting the fee.

The following sections further explain the reasoning behind these two charges and provide examples of financial impact.

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Funding Host State Regulatory Activities

While SARA will need to cover the on-going costs of its internal operations, the income model also takes into account the shift in activities that will occur in each of the individual state regulatory offices for states participating in the compact. SARA shifts the oversight of institutions to the institution's home state. For some states, this will mean a loss of revenue from fees charged to out-of-state institutions. Additionally, the host state retains some responsibility to assist regulatory agencies from partnering states in particular circumstances. While acknowledging that state regulatory offices have widely differing financing models, the proposed SARA financing model seeks to assist host states in funding these responsibilities.

One of the goals (but certainly not the only goal) of the fee is to help states replace funds lost due to participating in reciprocity. To obtain a grasp on the level of institutional fees required, we created the following very conservative scenario. Minnesota and Missouri had regulatory members on the Drafting Team, so we used them as examples. The Minnesota Office of Higher Education has registered 73 regionally-accredited institutions and the Missouri Department of Higher Education has licensed 53. To make the estimates more conservative, we counted only regionally accredited institutions. If both states join SARA and only half of their regionally-accredited institutions decide to participate, and each institution pays $5,000, the Minnesota institutions would pay $182,500 and the Missouri institutions would pay $135,000. All of these funds would be distributed to other states. Even with this modest fee and modest participation, substantial funds could be raised to assist the state regulatory offices.

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Once SARA is enacted, the compact draft envisions that the Policy Board will develop a sliding scale based upon the number of students that an institution has in a host state. For example, the fees might be divided by levels, such as 1-100, 101-250, and 250+ separate student enrollments in a host state in a year. Specific definitions of enrollments, time periods, and rates will need to be developed.

The financial proposal needed to meet the following goals for state regulatory agencies:

- Replace funds that some state regulatory agencies will lose due to the reciprocal agreement.
- Assist state regulatory agencies in performing the new duties required through this agreement by imposing a user fee on the institutions that decide to operate in this state.

SARA's Operational Costs

SARA will require a small and highly skilled staff to promote, implement, and manage its operations. Many of the duties are outlined in the Agreement, but there will also be the need to contract for short-term services (such as additional drafting assistance at start-up), legal assistance, travel, and technical support. It is recommended that a portion of the institutional fee be targeted to support SARA's operational costs by a flat fee that is reviewed and set annually by the Policy Board. As the number of states joining the Agreement increases, most of the fixed costs will remain the same. Taking into account the actual cost of services, the fee could be lowered over time.

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As an example, let's assume that SARA's annual operational costs are $750,000. If 15 states join SARA and 30 institutions participate from each state, an annual institutional fee of $1,667 could initially be required. Again, we used conservative estimates to demonstrate that the costs, even in these scenarios, would not be exorbitant.

The financial proposal needed to meet the following goals for SARA's operations:

- Maintain an infrastructure to effectively operate and expand the administration of the Agreement.
- Keep the fee low enough to encourage institutions to participate in the Agreement.

Overall Cost to an Institution

The institutional costs of compliance with existing state by state requirements can be very high for institutions operating in multiple states. Last year, the University Professional Continuing Education Association (UPCEA) and the WICHE Cooperative for Educational Technologies (WCET) conducted a survey on institutional compliance with state authorization laws. Institutions averaged serving students in 34 states and estimated that they had or would need to pay more than $100,000 per year in fees (or other approval-related costs, such as external reviews, travel costs to appear before boards) to obtain and retain these approvals. Note that these costs do not include the staff time required to interpret the regulations, inquire about requirements, and complete the multiple applications for approvals to operate in multiple states.

Those costs are being borne by institutions that are seeking compliance. In the UPCEA/WCET survey, 69% of institutions had not yet applied to a state for authorization to operate. While

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these institutions currently have zero cost of compliance, they may be at substantial risk for unanticipated costs at both the state and federal level.

The financial proposal needed to meet the following goals for institutions:

- Reduce the overall costs to institutions currently seeking approval.
- Keep the cost to institutions low enough to encourage institutions that have not sought approval to do so through this agreement.

By participating in SARA, an institution will incur a fraction of what it is currently expected to pay in fees. This lower fee and the simplified compliance process will attract additional institutions to comply. If we use the estimates from previous sections, a projected institutional fee might be:

- Host state fee – amount that will go to states in which the institution will serve students: $5,000. Of course this is not a flat fee. Institutions serving many students in multiple states may pay more.
- SARA Operational Cost – amount to keep SARA operating: $1,667
- Overall initial estimated institutional cost: $6,6667,000.

Even if the institutional fee were double this amount, it would still be a fraction of what many institutions are currently expected to pay.

Home State Fees: The current compact draft provides for the home state to establish fees based on its own statutory and regulatory framework, with the assumption those fees will cover any additional cost related to expanded responsibilities under SARA. Since many states already have such fee structures in place, it is assumed SARA will only have a minimum impact in this area.

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While it is anticipated that some states will raise their fee levels to cover the additional costs, it is not anticipated those increases will be substantial. If we assume an average existing home state fee of $10,000 and a 10 percent increase as a result of SARA, the Agreement would only contribute $1,000 in additional institutional costs. Combined with the additional costs reference above of $6,777, the total estimated cost ($7,7777) to cover multiple states is likely to be less than the cost of licensure currently required in just two additional states.

Note: This analysis does not include the institutional cost of providing a surety bond or paying into an state's tuition recovery fund. According to a review of the regulations in all 50 states and the District of Columbia, it appears that 29 states require at least one surety bond and/or money to be deposited into a tuition recovery fund and one state has the option to require a bond. Because the type and scope of these requirements will remain a state responsibility,

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