

# State Authorization

## FAQs for Departments



Authorization is a two-sided issue:

1

The State of Utah issues authorization to other institutions that wish to market, operate, enroll, or otherwise engage in education-related activities in Utah.

2

Individual institutions must seek authorization from each state they wish to operate in and are individually responsible for all aspects of seeking authorization and maintaining compliance with state regulations.

I've never heard of "State Authorization"—What is it exactly?

State Authorization is a legal and regulatory term that applies to a college's compliance with individual statutes, regulations, and rules in each state in which it serves students. Postsecondary institutions are required to seek individual authorization to deliver or facilitate educational services, programs, or activities from each state in which they operate or have a physical presence.



# What is the relationship between State Authorization, Online, and Distance Education?

**The State Authorization Regulation Chapter 34, § 600.9(c):** If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

The Department of Education released regulatory language in 2010 regarding online and distance education, state authorization, and institutional compliance.

The regulation seeks to protect higher education student consumers and impacts institutional eligibility regarding certain programs, such as Title IV and VA funding. The regulations hold each institution responsible for compliance, rather than state or other systems. The University of Utah, rather than the State of Utah or the Utah System of Higher Education, is ultimately responsible and accountable for state authorization.

Online and distance education places increased focus on students as consumers. Prior to the involvement of the Department of Education, states required postsecondary institutions to be authorized within their states before operating; however, many institutions were not actively pursuing authorization, particularly as the landscape of higher education evolved with emerging technologies.

Is it possible that we will have to deny students based on which states they physically reside in?

Yes. Some states make the regulatory process prohibitively complex or expensive. A 2014 survey of institutions, conducted by partners WICHE Collaboration for Educational Technologies (WCET), the Midwestern State Authorization Reciprocity Agreement (M-SARA), and University Professional & Continuing Education Association (UPCEA), revealed that many institutions will likely no longer accept students from certain states due to regulatory concerns. Arkansas, Minnesota, Massachusetts, Alabama, and Maryland are the top five states identified in the survey.







# How does this affect my department?

While the original federal regulation is not being enforced, the Department of Education is actively working on distance education state authorization requirements and has indicated that they will be a key issue in the 2015 session.

More importantly, the DOE's focus on state authorization generated a new awareness in higher education that many institutions were operating in other states without authorization. Individual state requirements pre-date the Department of Education's regulation; states expect institutions to comply with their regulations. Regardless of the outcome of federal regulations, the University of Utah must seek authorization and remain compliant in all states in which it operates.

The University of Utah must make a good faith effort to seek appropriate authorizations, and have documentation of these efforts. To do this, we must have a strong understanding of our activities in each state. **There is no better resource available than the departments themselves**—you know where you are recruiting, what your students are doing, and what your online and distance education courses require. Departments know where their adjuncts are located, whether their students are required to have proctored tests, and where internships and practicums are taking place. The departments are best positioned to help us determine in which states the University of Utah is currently operating.

“Decisions about how to proceed (where to apply; denying students access) will involve institution-wide strategic choices that must be made by or must have the full support of [an institution's] leaders.”

---WCET's "10 Steps You Can Take to Begin the State Authorization Process"

## What does it mean to “operate” in a state, especially if we are only doing online delivery?

This is the golden question. Each state defines what it means to operate differently. For example, some states only require authorization if you operate a physical location associated with the institution in that state. For other states, simply enrolling a resident in an online class is considered “operating” in that state.

Many states (but not all) determine the need for authorization based on physical presence, but all states define physical presence differently. Common physical presence “triggers” that would require the University of Utah to seek authorization in a state include:

- offering distance education courses that include field experience (such as internships or clinical practicums)
- advertising in local media
- employing proctors or instructors within that state
- housing administrative or instructional spaces
- participating in direct recruiting activities with residents of that state.

## Why don't we just seek authorization in every state?

Fee structures associated with authorization vary from \$0 - \$10,000 or more. Some states do not have a flat fee structure and instead base authorization costs on the number and type of programs an institution wants to offer. Some states require annual renewal, whereas others grant indefinite renewal as long as our activities within the state don't change.

Our current strategy for State Authorization compliance is first to *determine where we are currently operating* and then identify *where we would like to operate*. Once we have identified these states, and gathered information regarding our activity in each state, we will begin seeking authorization (or exemption) as appropriate.

Our initial actions will focus on bordering and PAC-12 states, as well as low- or no-cost states to seek authorization.



### Sample of “physical presence triggers” from Oregon:

Person assisting a school... advertiser, recruiter, admissions agent, course registrar, advisor, teacher, mentor, tutor, supervisor of an internship or practicum, occasional speaker, seminar leader, informal discussion leader, student host for group activity, evaluator, member of a thesis or study committee, publisher of educational materials, operator of a radio station, internet service provider or a cable or broadcast television station. OAR 583-030-0015 (23)



Some state regulators require submission of program-specific information, including course descriptions, curriculum, syllabi, partnering sites for field placements, projected annual enrollments, and faculty profiles.



Are there exemptions to the State Authorization requirements? What about students who now live in Utah but are considered residents of other states?

Some states offer exemptions, but we can only determine our eligibility if we have an accurate and current understanding of our out-of-state activities, including marketing, recruitment, advertising, field placements, and other factors.

Students who retain their official residency in other states, but currently reside in Utah, are considered to fall under Utah's own provisions.

Where can I find more information about State Authorization?

**WICHE Cooperative for Educational Technologies:**

<http://wcet.wiche.edu/learn/issues/state-authorization>

**State Higher Education Executive Officers Association:**

<http://sheeo.org/projects/state-authorization-postsecondary-education>

**U.S. Department of Education:**

<http://www2.ed.gov/about/offices/list/oep/policy.html>

## What kind of information does UOnline need from my department?

We will be surveying departments to gather a better understanding of their recruitment and marketing practices, as well as their instructional activities and student demographics. Initial information gathering will be conducted via e-mail. The compliance coordinator may then follow up with individual departments to gain additional information regarding any activities that may trigger the need for authorization.

We are also working with various other divisions to gather data related to student residency and online enrollment. Together with information from academic departments, we will create an inventory of our institution's out-of-state activities.



## What other considerations should we keep in mind?

Programs of study that typically require additional licensure to practice in the field may require us to gain programmatic authorization within a state before we are authorized to serve residents. Additionally, these programs may need to review their curriculum to determine if it aligns with licensure requirements in other states. If your department's program does not fit licensure requirements in another state, we should refrain from enrolling students in that state.

The most common fields listed by states as requiring programmatic approval/licensure are: nursing, social work, psychology, and education. Some states list engineering and allied health programs, as well.

As the University of Utah continues to develop and launch new online programs and course offerings, collaborations between departments, instructional design teams, and coordinators will help us identify potential authorization triggers while maintaining our good faith compliance efforts and growing our programs.



Who can answer questions I have regarding State Authorization and my department's activities, or help me learn more information about State Authorization?

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