

# TALKING POINTS

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## SOS! SOS! Secretary of State Compliance Demystified

### Introduction

As a state authorization professional on campus, you have a long to-do list. You are working hard on procedures for professional licensure disclosure, tracking field placements, and following what is happening in Washington. But, for many of you, “secretary of state compliance” has remained undone for a good little while because it can be hard to know where to start.

State laws typically designate the Secretary of State (SOS) to oversee business that takes place in that state. Individual state laws vary on whether out-of-state colleges and universities offering online education constitutes doing business. When these general business regulations do apply to colleges and universities, steps to comply can include registering with the secretary of state, paying a fee, and engaging with a registered agent in the state. An institution’s participation in reciprocity through SARA has no effect on these laws and regulations because they apply to colleges and universities as businesses rather than educational institutions.

The goal of this document is to provide a concise introduction to the Secretary of State (“SOS”) compliance topic and some practical tips on how to begin this process on your campus. Especially helpful, we hope, will be the perspectives of two state authorization professionals whose institutions are at different points on the journey to compliance with state SOS offices: Danielle Buckius, Executive Director of Accreditation & Authorization at Franklin University, and Allison Rogers, Coordinator of TLT Communications at Texas Woman’s University.

As with many aspects of state authorization compliance, the answer to whether an institution must register with the Secretary of State is “it depends.” Some states, for example, do not require registration for public institutions, but do require it for private institutions. Other states base their definition of “doing business” in the state on the particular activities in which your institution is engaged. This is yet another reason why it is essential to stay informed of what your institution is doing in other states. This is also why we are unable to provide a definitive yes/no list for whether or not your institution needs to apply with a particular state SOS office; in many cases, you will need to make this determination based on your type of institution and its activities.

**Here is the multi-step process that we suggest you use to get started:**

## **1. Talk to Campus Colleagues**

When investigating your institution's Secretary of State compliance, a great place to start is the campus business affairs office, university counsel, or other similar office. If your institution is already engaged with SOS compliance work, someone from those offices is likely to have insights and contacts. If one of these offices is doing some of this work already, collaborations may bloom.

For example, at Franklin University, the institution was already engaged with statutory agents in some states for SOS compliance from as early as the 1990s, when the University first launched its Community College Alliance program (partnering with community colleges for 3+1 programs outside of Ohio). Discovering this information, and the name of the statutory agency used by the University to manage its SOS activities and fees, helped to pave the way for the Accreditation & Authorization team to seek further SOS registrations in subsequent necessary states. Both the Finance Office and the Department of Accreditation & Authorization at Franklin University now communicate regarding statutory agent fees, activities, and assessment of services. (There are several statutory agencies available for hire, and we recommend that you assess their services/fees periodically to ensure your institution continues to receive the best value.)

What legal entity is your institution? A corporation? A government entity? Something else? You should research and then confirm the answer to this question with one of these offices. This is an important fact to know when doing SOS research because the regulatory requirements in some states differ depending on the identity of the institution's legal entity.

## **2. Find out Where Your Students Are**

Hopefully, you have done this already, but if not, get to it! It is essential that you know where your students are located so that you can prioritize states for compliance. This type of demographic data is usually processed in the office of institutional research and data management or some similar title. State authorization compliance professionals are encouraged to make a connection with someone in the campus institutional research office to explain what data is needed and to be able to access it easily.

The most effective data will show the students who list a state other than the institution's home state as their "residence" (or however institutions define the address of where students are located while taking courses) AND are taking only online courses. State and Federal regulations direct that the institution must determine where the student is "located". How accurate that address is depends on how often students are asked to update their address and if it is clear to them which address that they need to give.

## **3. Research**

Next, institutions should start their research. Texas Woman's University, which early in its compliance journey in this area, began by combing through the state's Secretary of State websites and looking through statutes and definitions. In many state regulations, a key phrase that institutions should focus on is "foreign corporation." If a state requires foreign corporations to register, and if higher education institutions meet that definition, then it is likely that they would need to register. In addition to looking carefully at the definition of "foreign corporation," it is also important to investigate whether the regulations contain "out-of-state educational

entity” or any similar terms. Another important question is whether the regulations contain guidance on activities that are NOT considered “doing business” in that state and does any of it pertain to education or online education? In many states, for example, transacting business in “interstate commerce” is an exception to the definition of “doing business” in the state. Therefore, if online education meets such a state’s definition of transacting business in interstate commerce, then registration is likely not required. Please also be aware that in some states, online education might not be considered “doing business” at all, and therefore not require registration.

The next step in the research is to call the Secretary of State’s office to verify what was found online and/or to ask the representative how their office defines “Foreign Corporation.” Sometimes the response over the phone gives more detail about the definition that was given in the statutes. If a phone call is not helpful, another “test” to see if an SOS office oversees institutions of higher education is to search their list of registered institutions on their website. Do a keyword search for “college” or “university” -- are any listed? Are only schools with an on-ground presence in the state listed? This can help you to make the compliance determination for your institution.

#### **4. Follow-up with Decision Makers and Act**

Finally, campus state authorization compliance professionals should share their SOS research findings with the appropriate institutional decision makers to determine if filing is necessary. As mentioned previously, that decision maker might be the general counsel or someone in a business services role. Once those official decisions have been made, institutions can file with the appropriate states, engage with a statutory agency to file on your institution’s behalf, and/or document the reason why your institution concluded that filing was not necessary.

For smaller institutions, or those without the benefit of general counsel, there may be reason to make a compliance decision based on state research alone. Perhaps the state’s definition of “doing business” or “foreign entity” does not quite line up with your institution or its activities. Maybe you have given the Secretary of State’s office a call, but they offer no new information in helping you to make your compliance decision. Within this gray area, one strategy is to file for SOS compliance even when in doubt. Costs are minimal, applications are brief, and, if you have applied in error, the SOS office might even return your application and fee.

The only constant with compliance is change. Franklin University’s Accreditation & Authorization team monitors SOS compliance as part of its regular state authorization review cycle. As most states will not proactively communicate changes to institutions, the responsibility lies with each institution to stay informed of state-level regulatory news. Franklin maintains this awareness through a regular review cycle but will also dive in and review specific state regulations if there is a particular news item or listserv topic about the state that is germane. WCET/SAN is a great source for staying informed.

#### **Getting started is the hardest part**

As with much state authorization compliance work, getting started with SOS registration is the intimidating part. Once you know where your students are and have researched the states where SOS registration is a requirement, you will likely find that you only need to maintain authorization with a handful of state SOS offices. This is very manageable work. The forms are generally very brief (nothing like a full state authorization

application), the costs are minimal (compared to program authorization in some states), and the maintenance is not overly burdensome.

We hope that this collaborative document will help you tackle a pesky item on your to-do list and will encourage you to communicate with other members of your network as you encounter questions along the way.

Best of luck!

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*Note: As of this updated version in December of 2020, Danielle and Allison are no longer at the institutions listed here. If you have additional questions, please contact Dan Silverman at [dsilverman@wiche.edu](mailto:dsilverman@wiche.edu).*

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