

HIGHER EDUCATION INFORMATION MEMO

NOVEMBER 14, 2024

Student Financial Aid Regulations May Require Additional Reporting of Transactions Involving Trustees and Employees

On July 1, 2024, revised regulations governing federal student financial assistance programs became effective. The regulations, which can be found at 34 C.F.R. 668.23(d), require institutions that participate in the federal student assistance programs under Title IV of the Higher Education Act to provide annual financial reports to the U.S. Department of Education (ED or the Department). Additional [guidance](#) was released on Oct. 31, 2024 by Federal Student Aid, an office of the ED¹.

One requirement of the revised regulation that may be relevant to certain institutions of higher education is the disclosure of all “related parties,”² including the relevant identifying information of such related parties, as defined by the FASB Accounting Standards Codification (ASC) 850, in their reports to ED.

ASC 850 defines a “related party” as follows:

- a. Affiliates of the entity.
- b. Entities for which investments in their equity securities would be required, absent the election of the fair value option under the Fair Value Option Subsection of Section 825-10-15, to be accounted for by the equity method by the investing entity.
- c. Trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management.
- d. Principal owners of the entity and members of their immediate families.
- e. Management of the entity and members of their immediate families.
- f. Other parties with which the entity may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- g. Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Although ED’s guidance issued in conjunction with the revised regulations states that “the related party disclosure requirement put into the regulations is not an expanded requirement, it has been the

¹ Federal Student Aid, Disclosure of Related Party Transactions in Financial Statements (Oct. 31, 2024), available at: <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2024-10-31/disclosure-related-party-transactions-financial-statements>

² Note that the regulations appear use “related party” and “related entity” interchangeably.

Department's practice of requiring the level of detail now specified in the regulations,"³ many institutions may not have been aware of such requirements. Federal Student Aid further clarified that the "the new regulations require institutions to include *specific information* on related party disclosures to clearly identify the related party being disclosed that had previously only been identified as *possible information* to include in the disclosure." (emphasis added).

The institution must provide information that "include[s], but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred" (34 C.F.R. 668.23(d) (1)). With respect to higher education institutions, the ASC 850 definition of a "related party" could include a trustee, a high level administrator,⁴ an immediate family member of such trustee or administrator, an affiliated entity or other parties (e.g., financial institution, insurance provider, contractor, professional service provider, etc.) with which the institution may deal depending on the level of control, influence or ownership between the parties. Additionally, if there are no related party transactions during the audited fiscal year or related party outstanding balances reported in the financial statements, a note must be added to the institution's financial statements to disclose this fact.

The Department has provided a [FAQ](#) document that clarifies who might be a "related party" and provides examples of under what circumstances a report would be required.⁵ For example, the guidance states:

Question: The institution's president's spouse established an endowment fund of \$500,000 five years before the reporting year-end. The donor's relationship to the president and the president's relationship with the institution has not changed. Even though an endowment is a perpetual gift, there would be no related party disclosure in the current fiscal year because the contribution was made five years ago, correct?

Answer: It depends on whether the donor maintains any level of control over the endowment/donation/gift. For any period where control exists, it remains a related party transaction and must be reported.

Question: A trustee promises to give \$700,000 over three years in the current reporting year. Under GAAP, nonprofit institutions recognize contribution revenue, with a time restriction (three-year promise) and a pledge receivable. In the current reporting period, the \$700,000 promise will be disclosed: pledge receivable and restricted revenue. In subsequent reporting years the institution would report cash receipts on the pledge and the reduced receivable balance. In other words, the institution reports the reduced receivable balance and the cash receipts every reporting year until the pledge is fulfilled. Correct?

3 U.S. Department of Education, Financial Responsibility Regulations—Questions and Answers FR-Q20 (Oct. 31, 2023), available at Financial Responsibility Regulations - Questions and Answers | U.S. Department of Education.

4 ASC 850-10-20 defines "Management" as "Persons who are responsible for achieving the objectives of the entity and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, the chief executive officer, chief operating officer, vice presidents in charge of principal business functions (such as sales, administration, or finance), and other persons who perform similar policy making functions. Persons without formal titles also may be members of management."

5 U.S. Department of Education, Financial Responsibility Regulations—Questions and Answers (Oct. 31, 2023), available at Financial Responsibility Regulations - Questions and Answers | U.S. Department of Education.

Answer: Yes. This would be reported in all three years as a related party transaction, as indicated in the example.

Question: Clarification is needed on the phrase found in 34 CFR 668.23(d)(1), “regardless of when the (related party) transaction occurred” and how it applies in the following example:

The provost’s adult daughter is the CEO of a financial institution that provided a line of credit to the college three years ago. The line of credit is a \$1,000,000 liquidity facility that has not been drawn upon, but it is still available. The provost resigned last year, before the reporting period/fiscal year began. Is it correct that for the current reporting period, there is no related party disclosure because the provost is no longer employed by the college?

Answer: Yes, to the extent that the former provost has no association with the institution.

Question: If the provost was still employed by the college, the off-balance sheet line of credit facility would be disclosed along with the name and location of the related party (the provost’s adult daughter), correct?

Answer: Yes.

Despite the language of the ED guidance, it appears that the Department’s decision and subsequent FAQ document has at least made more explicit its requirement that institutions report any transactions between a trustee, administrator or the family members of a trustee or administrator, as well as a financial institution that has provided a current or future source of funds to the institution, as transactions between related parties. Moreover, Federal Student Aid’s guidance reinforces that:

[The Department] expects an institution to have a system of internal controls that is adequate to provide reasonable assurance about an institution’s compliance with the Department’s regulations, including the existence of related party relationships and transactions, as well as being able to identify the related parties. The institution’s internal controls must be sufficiently rigorous to provide for reasonable assurance that, when an institution’s financial statements include that it has disclosed all of its related party transactions or that it has no related party transactions, the disclosure is complete and accurate.

The revised regulations are in effect and will govern annual reports to ED concerning the use of their Title IV funds. Because there is still lingering uncertainty regarding the scope of disclosure, we recommend that institutions review their conflict of interest policies and consult with their accountants and legal counsel to assess current reporting practices and implement any additional procedures to ensure compliance.

If you have any questions or concerns related to disclosure requirements of institutions of higher education please contact [Thomas W. Simcoe](#), [Delaney M. R. Knapp](#) or the attorney at the firm with whom you are regularly in contact.

