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## GOVERNMENT NOTICE

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### DEPARTMENT OF HIGHER EDUCATION AND TRAINING

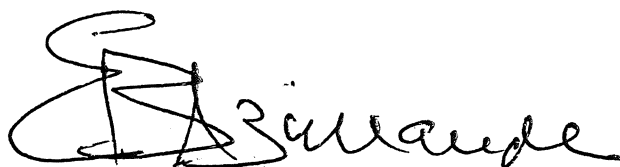
No. R. 990

3 December 2012

### SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998)

### THE SECTOR EDUCATION AND TRAINING AUTHORITIES (SETAs) GRANT REGULATIONS REGARDING MONIES RECEIVED BY A SETA AND RELATED MATTERS

I, Bonginkosi Emmanuel Nzimande, MP, Minister of Higher Education and Training, hereby publish the Sector Education and Training Authorities (SETAs) Grant Regulations regarding monies received by a SETA and related matters, as contained in the Schedule, in terms of section 36 of the Skills Development Act, 1998 (Act No. 97 of 1998), after consultation with the National Skills Authority, and repeal the Sector Education and Training Authorities (SETAs) Grant Regulations regarding monies received by a SETA and related matters, published in Government Notice No. R.713 in *Government Gazette* No. 27801 of 18 July 2005, as amended by Government Notice No. R88 published in *Government Gazette* No. 29584 of 2 February 2007.



**Dr Bonginkosi Emmanuel Nzimande, MP**  
**Minister of Higher Education and Training**

Date:

15/11/12

## **SCHEDULE**

### **ARRANGEMENT OF REGULATIONS**

#### **Preamble**

The intent behind these regulations is to:

- regulate the proportion of funds available for skills development that is spent on administration;
- provide for Sector Education and Training Authorities (SETAs) to contribute to the cost of the work of the Quality Council for Trade and Occupations (QCTO);
- discourage the accumulation of surpluses and the carry-over of unspent funds at the end of each financial year;
- improve the quantity and quality of labour market information received by SETAs in the form of workplace skills plans, annual training reports and PIVOTAL training reports, to inform planning;
- promote National Qualifications Framework (NQF) registered and quality assured PIVOTAL programmes that address priority scarce and critical skills needs identified in sector skills plans; and
- create a framework within which expanded use is made of public education and training providers for the provision of skills development programmes.

**BE IT THEREFORE ENACTED** by Regulations as follows:

### **ARRANGEMENT OF REGULATIONS**

- 1 Definitions
- 2 Limitation on administration costs of a SETA
- 3 SETA finances and financial management
- 4 Allocation of mandatory grants by a SETA
- 5 Mandatory grants paid to levy paying employers
- 6 Allocation of discretionary grants by a SETA
- 7 Approval of grants by a SETA

- 8 Grant disbursement schedule
- 9 Payment for services rendered by a SETA
- 10 Repeal of regulations previously published
- 11 Short title and commencement
- Annexure 1: Regulations repealed
- Annexure 2 (Private)
- Annexure 3 (Public)

## 1 Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned, unless the context otherwise indicates-

**‘administration costs’** means the costs relating to rent, heat, light, power, insurances, bank charges, audit fees, accounting fees, legal fees, postage, printing and stationery, documentation and books, advertising, reports, wages and salaries, travel expenses, staff training, purchase of computers and information systems, maintenance of computers and systems, general maintenance, hiring costs of photocopier, telephone and fax, meetings, land, non-residential buildings and improvements thereon, furniture and office equipment, other machinery and equipment, transport assets, consultancy fees including institutional research and sectoral research, quality assurance, promotional items, national skills development strategy conference expenses, recruitment expenses and any other reasonable administration costs approved by a SETA Accounting Authority;

**‘annexure’** means an annexure to these Regulations;

**‘APP’** means the Annual Performance Plan as contemplated in regulation 3(7);

**‘ATR’** means the Annual Training Report as contemplated in section 10(1)(b)(ii) of the Skills Development Act read with regulation 4(1);

**‘discretionary grant’** means the money allocated within the SETA to be spent on

discretionary grants and projects contemplated in regulation 3(2)(c) to (9) as read with regulation 6;

**‘financial year’** means a year ending on 31 March in accordance with the Public Finance Management Act (PFMA);

**‘institutional and sectoral research’** means research commissioned by a SETA on any aspect of the administration or management of a SETA, as well as research into sector supply and demand;

**‘labour representative’** means a representative of the labour constituency within the workplace, appointed by the recognised trade union;

**‘legal fees’** means the total amount paid for legal services rendered with regards to legal proceedings or any order of cost made by a court of law against a SETA;

**‘levy income’** means the total amount of money received by a SETA in terms of sections 7(1) and 8(2)(a) as read with 8(3)(b) of the Skills Development Levies Act;

**‘levy paying employer’** means an employer who is compelled to pay skills development levies in terms of section 3(1) of the Skills Development Levies Act;

**‘mandatory grant’** means funds designated as mandatory grants contemplated in regulation 4 to fund the education and training programmes as contained in the Workplace Skills Plan (WSP) and ATR of a SETA;

**‘occupational part qualification’** means a recognised component (theoretical, practical or work experience component) of an occupational qualification which is registered on the National Qualifications Framework;

**‘occupational qualification’** means a qualification that includes a knowledge, a

practical and a work experience component registered on the National Qualifications Framework;

**‘PIVOTAL is an acronym’ which** means professional, vocational, technical and academic learning programmes that result in qualifications or part qualifications on the National Qualifications Framework as contemplated in regulation 3(6) and (7) as read with regulation 6(11) to (15);

**‘project costs’** means costs payable for an approved project funded through a discretionary grant;

**‘public education and training institution’** means a public higher education institution as defined in the Higher Education Act, 1997 (Act No. 101 of 1997) and a public college as defined in the Further Education and Training Act, 2006 (Act No. 16 of 2006) and any Amendments thereto promulgated into law in the future;

**‘sign-off’** means an in principle agreement between the employer and its recognised trade union or unions on the identified training interventions as is provided for in regulation 5(2)(f);

**‘SSP’** means the Sector Skills Plan as contemplated in section 10(1)(a) and (b) of the Act;

**‘structured workplace learning’** means the component of learning in an occupational qualification, an internship, or work placement for professional designation whereby a learner is mentored by a qualified, and where required, registered mentor in the application and integration of the knowledge and practical skills learnt, under supervision, in the actual context of a workplace in accordance with the prescripts set by the relevant qualification authority or professional body;

**‘submit’** means to deliver by hand or registered post or to transmit a communication by electronic mechanism as a result of which the recipient is capable of printing

the communication;

**‘surplus’** means a favourable residual balance in the statement of financial performance for the financial year ending on 31 March less current liabilities and commitments to training of learners in programmes funded from discretionary funds; **‘commitments’** in this context mean that contractual obligations exist at the end of the financial year that will oblige the SETA to make a payment or payments in the ensuing year; a **‘contractual obligation’** means there is an agreement (written) with specific terms between a SETA and a third party whereby the third party undertakes to perform something in relation to a discretionary project for which a SETA will be obliged to make payment against the discretionary grant;

**‘the Act’** means the Skills Development Act, 1998 (Act No. 97 of 1998);

**‘work integrated learning’** is an umbrella term to describe curricular, pedagogic and assessment practices, across a range of academic disciplines that integrate formal learning and workplace concerns, which culminates in a qualification or part qualification and can include practicums, professional practice, internships, workplace experience, industry-based learning, cooperative education, service learning, real work learning, placements, experiential learning, clinical placements; and

**‘WSP’** means the Workplace Skills Plan contemplated in regulation 4.

## **2. Limitation on administration costs of a SETA**

- (1) In terms of section 14(3)(b) as read with sections 14(3A)(a) and 14(3B) of the Act, a SETA may not use more than 10.5% of the total levies paid by the employer as allocated in the Act received in any year to pay for its administration costs in respect of that financial year.
- (2) In addition to sub-regulation (1), a SETA may use the contributions received from

public service employers in the national or provincial spheres of government as contemplated in section 30 of the Act, and relevant national and provincial public entities as contemplated in section 30A of the Act for its administration costs.

- (3) The Minister may grant written approval authorising a SETA to use an amount not contemplated by sub-regulations (1) and (2) for its administration costs, if the Minister is satisfied that such expenditure is necessary to enable the SETA to continue performing its functions in terms of the Act.
- (4) From 1 April 2013, a SETA will transfer as part of its administration costs as contemplated in sub-regulation (1) and approved in the annual SETA strategic plan, an amount that does not exceed 0.5% of the total levy paid by the employer to the QCTO for quality assurance functions as contemplated in section 26H of the Act, and the actual quantum of funds to be transferred will be determined by the Minister by 31 July of each year.

### **3 SETA finances and financial management**

- (1) Each SETA must, in compliance with the Public Finance Management Act, establish banking accounts.
- (2) A SETA must use all monies received in terms of the Skills Development Levies Act to-
  - (a) administer the activities of the SETA;
  - (b) pay employers their mandatory grants; and
  - (c) implement its SSP and APP as contemplated in the Treasury Regulations issued in terms of the Public Finance Management Act, through the allocation of the discretionary grants.
- (3) A SETA must transfer any unclaimed mandatory funds and any interest earned thereon by 15 August of each financial year into the discretionary fund.
- (4) Any unspent administrative funds and any interest earned on funds must on 31 March

of each financial year be placed in the discretionary fund.

- (5) The amount in the discretionary fund on 1 April each year, together with the discretionary allocation from levy income received each month, must be spent or committed in the ensuing twelve months.
- (6) A SETA is required to allocate 80% of its available discretionary grants within a financial year to PIVOTAL programmes that address scarce and critical skills in its sectors.
- (7) A SETA must set out in its APP a reasonable estimate of discretionary grants that will be available in the sector for training of scarce and critical skills through PIVOTAL programmes, that will receive grant allocations for training of learning and skills programmes identified as priorities set out in the SSP.
- (8) The APP contemplated in sub-regulation (2)(c) must specifically set out how-
  - (a) the discretionary funds will be allocated to achieve SSP outputs and outcomes; and
  - (b) the National Skills Development Strategy (NSDS) outputs and outcomes will be achieved in the sector.
- (9) A SETA must state how the allocation of funds in the manner presented in the APP will achieve impact in the sector, and how this will be measured.
- (10) Notwithstanding sub-regulations (3) to (8), a SETA may for compelling reasons and circumstances, request the Director-General to approve the utilisation of the surplus in other ways, within the scope of the Skills Development Act and the National Skills Development Strategy.
- (11) At the end of each financial year it is expected that a SETA must have spent or committed (through actual contractual obligations) at least 95% of discretionary funds available to it by the 31 March of each year and a maximum of 5% of uncommitted funds may be carried over to the next financial year.



- (12) The remaining surplus of discretionary funds must be paid by the SETA by 1 October of each year into the National Skills Fund (NSF).
- (13) Where exceptional circumstances have led to projected under-spending of discretionary funds a SETA will be able to submit a business case to the Minister to request approval to carry over the surplus.

#### **4 Allocation of mandatory grants by a SETA**

- (1) Subject to sub-regulation (5), a SETA must allocate a mandatory grant to a levy paying employer -
  - (a) employing 50 or more employees that has submitted an application for a WSP and ATR grant in accordance with sub-regulation (2) and as a minimum in the format contained in Annexure 2 to these Regulations;
  - (b) employing less than 50 employees that has submitted an application for a grant in accordance with sub-regulation (2) and such employers will be given the option of submitting a WSP and ATR using a simplified form provided by the SETA;
  - (c) who, notwithstanding sub-regulation (2), has registered for the first time in terms of section 5 of the Skills Development Levies Act and the employer has submitted an application for a mandatory grant within 6 months of registration.
- (2) An application for a mandatory grant in terms of sub-regulation (1) must be submitted by 30 June 2013.
- (3) With effect from 1 April 2014 an application for a mandatory grant in terms of sub-regulation (1) must be submitted by 30 April of each year.
- (4) 20% of the total levies paid by the employer in terms of section 3(1) as read with section 6 of the Skills Development Levies Act during each financial year will be paid to the employer who submits a WSP and ATR.
- (5) Before making payments, the SETA must approve the WSP and ATR to ensure the levy

paying employer meets quality standards set by the SETA.

- (6) The mandatory grant contemplated in sub-regulation (1) must be paid to the employer at least quarterly every year.
- (7) If the levy paying employer does not claim a mandatory grant within the time period specified in sub-regulation (2), the SETA must transfer the levy paying employer's unclaimed mandatory grant to the discretionary grant by 15 August of each year.
- (8) A SETA Accounting Authority may grant an extension up to a maximum period of one month from the date contemplated in sub-regulation (2) for late submission of an application for a mandatory grant subject to a written request by a levy paying employer.

## **5 Mandatory grants paid to levy paying employers**

- (1) A levy paying employer claiming a mandatory grant must meet the eligibility criteria for the payment of a mandatory grant as prescribed in sub-regulation (2).
- (2) A SETA may not pay a mandatory grant to an employer who is liable to pay the skills development levy in terms of section 3(1) of the Skills Development Levies Act, unless the levy paying employer –
  - (a) has registered with the Commissioner in terms of section 3(1) of the Skills Development Levies Act;
  - (b) has paid the levies directly to the Commissioner in the manner and within the period determined in section 6 of the Skills Development Levies Act;
  - (c) is up to date with the levy payments to the Commissioner at the time of approval and in respect of the period for which an application is made;
  - (d) has submitted a WSP and ATR as contemplated in regulation 4(1) that contributes to the relevant SETA SSP within the timeframes prescribed in regulation 4(2) and 4(3);
  - (e) with effect from 1 April 2013, has submitted and implemented its WSP for the previous financial year to the extent that it satisfies the criteria for implementation

that must be established and approved by the SETA Accounting Authority based on guidelines provided by the Department; and

- (f) in the case of an employer who has a recognition agreement with a trade union or unions in place, there must be evidence provided that the WSP and ATR have been subject to consultation with the recognised trade unions and the WSP and ATR must be signed off by the labour representative appointed by the recognised trade union unless an explanation is provided.

## **6 Allocation of discretionary grants by a SETA**

- (1) A SETA may determine and allocate discretionary grants in support of the implementation of its SSP.
- (2) A SETA must develop its SSP by taking account of national strategic goals as set out in the National Skills Development Strategy, the National Skills Accord and other relevant national priorities.
- (3) The APP must make clear how the SETA will allocate discretionary grants in a manner that prioritises the offering of skills development programmes to address sector needs through public education and training institutions.
- (4) A SETA must, on an annual basis, and in accordance with any guidelines issued by DHET, approve a Discretionary Grants Policy, specifying how the SETA discretionary funds will be allocated to meet sector needs as set out in the SSP.
- (5) The Discretionary Grants Policy must set out the funding framework, the different delivery models and project types that will be deployed and the mechanism for SETA member organisations, as contemplated in sub-regulation (10), to access the discretionary grants.
- (6) The Discretionary Grants Policy must set out how PIVOTAL programmes can be delivered through public education and training institutions.

- (7) A SETA must prepare and distribute grant application and project proposal forms in a manner that enables within the sector national access and opportunities for a legal person or enterprises of different sizes (including small and micro enterprises, Non Government Organisations (NGOs) and cooperatives in the sector) to apply for any category of grant, or participate in any type of skills development programme, as identified in the SETA Discretionary Grants Policy.
- (8) The Discretionary Grants Policy must embrace the principles of transparency, openness, access and fairness.
- (9) The Discretionary Grants Policy must –
- (i) indicate the purpose of the various grants, funding frameworks and projects and specify what is intended to be funded from the grant, including any administrative costs that may be considered appropriate by the Accounting Authority;
  - (ii) provide for procedures and communication on strategy with potential beneficiaries as contemplated in sub-regulation (10) that set out timeframes for processing of applications, communication of decisions, and payment schedules;
  - (iii) determine the proportion of discretionary grants that can be used for administration or project management purposes in the various grant and project categories provided it indicates that a maximum of 7.5% of any grant or SETA-funded project may be used for administration or project management costs; and
  - (iv) ensure that value for money is achieved and generally ensure that funds are spent on skills development to meet sector needs.
- (10) A discretionary grant may be paid to a legal person, including -
- (a) a public education and training institution;
  - (b) an employer or enterprise within the jurisdiction of a SETA, including an employer or enterprise not required to pay a skills development levy in terms of the Skills Development Levies Act;
  - (c) other legal person contemplated in sub-regulation (7) that meets the criteria for the payment of such grant; or
  - (d) an employer contemplated in section 30 and 30(A) of the Act who has submitted to its relevant line SETA or Public Service SETA (PSETA) within the time

frames prescribed in regulation 4(2) and 4(3), a WSP and ATR as a minimum in the format contained in Annexure 2.

- (11) A key focus of SETAs must be to address scarce and critical skills through programmes that are designed to address such skills needs, and which include work integrated learning.
- (12) At least 80% of discretionary grant funding must be allocated to PIVOTAL programmes.
- (13) A SETA may allocate a maximum of 20% to funding of programmes, other than PIVOTAL programmes, to develop the sector in accordance with the priorities outlined in the SSP.
- (14) In order to obtain discretionary grant funding for PIVOTAL programmes from a SETA, a legal person falling into the categories set out in sub-regulation (10) must complete and submit a PIVOTAL training plan and report using the template attached to these regulations.
- (15) Companies employing less than 50 employees will not be required to complete the prescribed PIVOTAL training plan and report, but will be asked to provide information on participation in PIVOTAL programmes and the impact of these programmes; SETAs must develop suitable templates for the provision of information by small and micro enterprises.

## **7 Approval of grants by a SETA**

The SETA criteria for grants must be approved by the SETA Accounting Authority before funds are allocated.

## **8 Grant disbursement schedule**

Each SETA must prepare and distribute a schedule setting out the criteria in terms of regulations 4 and 6 and the dates by which applications for grants must be submitted, as

well as timeframes for disbursement of grants.

## **9 Payment for services rendered by a SETA**

For the purpose of section 14(1)(e) of the Act, a SETA may only charge for services if-

- (a) it has submitted a motivation in writing to the Director-General; and
- (b) the Director-General, in accordance with any guidelines issued by the Minister on the advice of the National Skills Authority, has approved the SETA charging for those services.

## **10 Repeal of Regulations previously published**

The Sector Education and Training Authorities (SETAs) Grant Regulations regarding monies received by a SETA and related matters, published in Government Notice No. R.713 in *Government Gazette* No. 27801 of 18 July 2005, as amended by Government Notice No. R88 and published in *Government Gazette* No. 29584 of 2 February 2007 are hereby repealed.

## **11 Short title and commencement**

These regulations are called the Sector Education and Training Authorities (SETAs) Grant Regulations and will come into operations on 1 April 2013.

**ANNEXURE 1****REGULATIONS REPEALED**

<b>Government notice</b>	<b>Date</b>	<b>Title</b>	<b>Extent of repeal</b>
R 103	7 February 2000	Skills Development Act, 1998 (Act 97 of 1998) Regulations for the period 1 April 2000 to 31 March 2001 regarding the funding and related issues	As a whole
R 571	22 June 2001	Skills Development Act, 1998 (Act 97 of 1998) Skills Development Regulations	As a whole
R 344	7 March 2003	Skills Development Act, 1998 (Act 97 of 1998) Skills Development Regulations	As a whole
R 729	11 June 2004	Skills Development Act, 1998 (Act 97 of 1998) Skills Development Funding Regulations: Amendment	As a whole
R 1200	15 October 2004	Skills Development Act, 1998 (Act 97 of 1998) Skills Development Funding Regulations: Amendment: Government Notice R729 of 11 June 2004. Correction Notice	As a whole
R88	2 February 2011	Sector Education and Training Authorities (SETAs) Grant Regulations regarding monies received by a SETA and related matters.	As a whole