

GENERAL NOTICE

NOTICE 151 OF 2005

DEPARTMENT OF LABOUR

SKILLS DEVELOPMENT ACT, 1998 (ACT NO. 97 OF 1998) AS AMENDED

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

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, acting in terms of section 36 of the Skills Development Act, 1998 (Act No. 97 of 1998) hereby publish for public comment proposed SETA grant regulations regarding monies received by a SETA and related matters for public comment.

Interested parties are invited to submit written comments on the proposed regulations within 21 days after the publication of this notice by:-

- a) Posting comments to: The Executive Officer
National Skills Authority
Ms. B. Bulunga
Department of Labour
Private Bag X117
Pretoria
0001
- b) Fax comments to: The Executive Officer
National Skills Authority
(012) 309 4472
- c) Deliver comments to: Room 333
Third Floor
Laboria House Building
215 Schoeman Street
Pretoria
- d) E-mail to: bessie.bulunga@labour.gov.za /
sibongile.mashao@labour.gov.za

M.M.S MDLADLANA
MINISTER OF LABOUR, MP.

DEPARTMENT OF LABOUR
SKILLS DEVELOPMENT ACT, 1998 (ACT NO 97 OF
1998) AS AMENDED

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

The Minister of Labour has, under section 36 of the Skills Development Act, 1998 (Act No. 97 of 1998) as amended, and after consultation with the National Skills Authority, made the regulations in the Schedule.

SCHEDULE

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Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act bears that meaning, and unless the context otherwise indicates-

"Act" means the Skills Development Act, 1998 (Act No. 97 of 1998) as amended.

"administration costs" means the administration costs contemplated in regulation 4(4)(2);

"annexure" means an annexure to these regulations;

"chamber" means a chamber established under section 12 of the Act;

"Commissioner" means the Commissioner for the South African Revenue Services, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

"credits" means recognition of achievement of competence of a standard or part of a qualification registered on the National Qualifications Framework;

"discretionary grants" means discretionary grants as contemplated in regulation 7(2);

"D-G" means the Director General: Department of Labour

"ETQA" means a body accredited in terms of section 5(1)(a)(ii)(b) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of the South African Qualifications Authority Act, 1995;

"financial year" means the period referred to in regulation 2;

"Learnership Regulations" means the Regulations relating to the Registration of Intended Learnerships and Learnership Agreements published under the Act in Government Notice No.R330 of 3 April 2001;

"levy income" means the total amount of money received by a SETA in terms of sections 7 and 8(3)(b) of the Skills Development Levies Act, 1999;

"levy payment" means the skills development levy contemplated in section 3 of the Skills Development Levies Act, 1999;

"mandatory grants" means mandatory grants as contemplated in regulation 6.

"Public Finance Management Act" means the Public Finance Management Act, 1999 Act No. 1 of 1999) as amended.

"Skills Development Levies Act, 1999" means the Skills Development Levies Act, 1999 (Act No. 9 of 1999) as amended.

"submit" means to serve 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;

"training boards" means training boards established in terms of section 12A of the Manpower Training Act, 1981 (Act No. 56 of 1981) and referred to in clause 4 of the Transitional Provisions, Schedule 2 of the Act;

"training levy schemes" means training levy schemes established in terms of section 39 of the Manpower Training Act, 1981 (Act No. 56 of 1981) and referred to in clause 9 of the Transitional Provisions, Schedule 2 of the Act.

Financial Year

2. The financial year for every SETA is the year ending 31 March.

Limitation on administration costs of SETA

3. (1) A SETA may in terms of section 14(3)(b) of the Act, not without the prior written approval of the Director-General, use more than 12,5% of the moneys it receives in terms of the Skills Development Levies Act, excluding interest and penalties, to pay for its administration costs.
- (2) A SETA may, in addition to sub-regulation (1), use the contributions received from public service employers in the national or provincial spheres of government for its administration costs.

SETA finances

4. (1) In compliance with good financial practice, each SETA must establish a banking account with separate sub-accounts from which -
- (a) the amounts for the administration for the SETA activities;
 - (b) mandatory grant disbursements;
 - (c) discretionary grant and project disbursements; and
 - (d) investments amounts,
- will be both lodged and withdrawn.
- (2) A SETA receiving funds from training boards or training levy schemes must open an additional sub-account other than that specified

in subregulation 4(1) for a transitional period until all outstanding assets, rights, liabilities and obligations are finalised.

- (3) A SETA receiving funds from amalgamated SETAs must open an additional sub-account in the manner provided for in subregulation 4(1) for a transitional period until all outstanding assets, rights, liabilities and obligations of each amalgamating SETA are finalised.
- (4) A SETA must use all moneys received in terms of the Skills Development Levies Act to -
- (a) administer the activities of that SETA;
 - (b) implement its annual business plan and
 - (c) if not otherwise specified by the Public Finance Management Act, invest the moneys in accordance with the investment policy approved by National Treasury.
- (5) For the purposes of subregulation (1)(a), the administration costs are defined as follows:
- rent, heat, light, power, insurances, bank charges, audit fees and accounting fees, general administration, 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, hire costs of photocopier, telephone and fax, meetings and seminars, land, non-residential buildings and improvements thereon, furniture and office equipment, other machinery and equipment, transport assets.
- (6) Monies received by a SETA from-
- (a) a training board, training schemes, training levies or any other source contemplated in the Transitional Provisions contained in Schedule 2 of the Act; and
 - (c) the Minister or the Department to pay outstanding obligations arising from the Transitional Provisions contained in Schedule 2 of the Act,
- must be paid into a banking account referred to in section 14(2) of the Act.
- (7) A SETA must maintain the account referred to in subregulation (6) until all outstanding obligations arising from the Transitional Provisions contained in Schedule 2 of the Act are finalised.

Transfer of funds by Minister if administration of SETA is taken over

5. (1) In order to transfer any funds in a SETA's bank account to the National Skills Fund in terms of section 15(2)(d) of the Act, the Minister may, in a notice issued by him or her in terms of section 15(1) of the Act, require-
- (a) the SETA concerned to identify any bank account or other financial account operated by the SETA; and
 - (b) a bank or other financial institution concerned to transfer, in accordance with section 15(2)(d) of the Act, the funds in the account contemplated in paragraph (a) to a bank account opened and administered for that purpose by the National Skills Fund.

Allocation of mandatory grants by SETA

6. (1) A SETA must allocate a mandatory grant to an employer if-
- (a) an employer who employs fifty or more employees has submitted an application by 30 September 2005 for the financial year 2005 / 2006 and 30 June for all subsequent financial years for a Workplace Skills Planning grant in the form prescribed in Schedule "2" to these Regulations; or
 - (b) an employer who employs less than fifty employees has submitted an application by 30 September 2005 for the financial year 2005 / 2006 and 30 June for all subsequent financial years for a grant in the form prescribed by the relevant SETA; or
 - (c) an employer who employs less than fifty employees has met such standards as the SETA has set subject to any limits and conditions that the Director-General may determine
 - (d) an employer achieves a national standard of good practice in skills development. A SETA must secure agreement on information required from an employer.
- (2) **If the employer qualifies** for a mandatory grant in terms sub-regulation 6(1)(a), or (b), or (c) and (d), a SETA must disburse grants in respect of either subregulation 6(1)(a), or (b), or (c) or (d).
- (3) The mandatory grant to be paid by the SETA in terms of subregulations 6(1)(a); (b); (c); or (d)
- (a) must be equivalent to 50 per cent or such lesser amount as prescribed in Annexure 2B of the total levies paid by the employer in terms of section 3(1) of the Skills Development

- (b) must be paid to the employer on a quarterly basis; and
- (4) An employer who has newly registered in terms of section 3(1) of the Skills Development Levies Act must submit an application for a Workplace Skills Planning grant in terms of these regulations within 6 months of establishment.
- (5) If the employer does not claim a mandatory grant within time periods specified in Clause 6 (1) (a) and (b) the SETA must transfer the employer's unclaimed mandatory funds to the discretionary grant fund.

Allocation of discretionary grants by SETA

- 7. (1) Subject to any limits or conditions that the Director-General may determine, a SETA may, of any moneys not committed to mandatory grants or administrative costs, determine and allocate a discretionary grant to:
 - (a) commission research in order to identify critical skills in the sector in accordance with guidelines prepared by the Department of Labour.
 - (b) fund the development of guides and the training of sector specialists or skills development facilitators.
 - (c) an employer, association or organisation that is not liable to pay skills development levy in terms of section 3(1) of the Skills Development Levies Act, 1999, that has submitted an application as prescribed by the relevant SETA;
 - (d) an unemployed learner, worker, a qualified employer or recognised agent on their behalf for Adult Basic Education and Training and has submitted an application as prescribed by the relevant SETA;
 - (e) a learner who enters a learning programme to acquire a scarce skill identified by the SETA and has submitted an application as prescribed by the relevant SETA;
 - (f) an employer who provides work experience opportunities to learners in sector relevant programmes and has submitted an application as prescribed by the relevant SETA;
 - (g) train and mentor youth to form sustainable new ventures.
 - (h) fund an institute of sectoral or occupational excellence that has submitted an application as prescribed by the relevant SETA;

- (i) fund a new venture creation project or institution that has submitted an application as prescribed by the relevant SETA;
- (j) fund an education and training provider or an institution responsible for the implementation of the NQF in support of the NSDS and who has submitted an application as prescribed by the relevant SETA;
- (k) fund SETA constituency capacity building initiatives and promotion of skills development in the sector.
- (l) fund a lead employer contemplated in Regulation 3(4) of the Learnership Regulations, 2001 if the lead employer has submitted an application in the form determined by the SETA;
- (m) fund an agency established in terms of Section 17(7) of the Act.
- (n) fund an employer if the employer has submitted an application for discretionary grant in the form determined by the SETA for learnership registered under a different SETA.
- (o) fund an employer, if the employer has submitted an application for a discretionary grant in the form determined by the SETA for sector priorities.

(2) The discretionary grants to be paid by the SETA in terms of subregulation 7(1) must be funded from income received from :

- (a) 2 per cent of the total levies paid by the employer in terms of section 3(1) of the Skills Development Levies Act during each financial year; and
- (b) surplus administration funds; and
- (c) unclaimed mandatory grants; and
- (d) interest and penalties received in terms of Sections 11 and 12 of the Skills development Levies Act; and
- (e) interest earned on investment and
- (f) contributions received from public service employers in the national or provincial spheres of government as contemplated in section 30(b) of the Act.

Approval of grants by SETA Board

8 The SETA criteria for discretionary grants required under regulations 6 and 7 must be approved by the SETA before funds are allocated

Grant disbursement schedule

9 (1) Each SETA must prepare and distribute to-

- (i) employers;
- (ii) education and training providers;
- (iii) workers; and
- (iv) learners

a schedule setting out the dates by which they must submit their applications for the grants as contemplated in Regulations 6 and 7 of these Regulations.

- (2) Each SETA must, in the schedule contemplated in sub-regulation 9(1), require every application for a mandatory grant to be submitted -
 - (i) not later than 6 months from the commencement of the 2005/2006 financial year in respect of which the application is made; or
 - (ii) not later than 3 months from the commencement of the 2006/2007 financial year and subsequent financial years thereafter in respect of which the application is made;
- (3) Applications for mandatory grants in respect of the 2004/2005 financial year must be submitted by 30 June 2005. The SETA must transfer all 2004 / 2005 mandatory funds not claimed by 30 June 2005 to the discretionary grant fund. A SETA must not make any mandatory grant payments for financial years prior to the 2004/2005 financial year.

Grant recovery by employers

- 10 (1) An employer seeking recovery of a grant against the levy payment must meet the eligibility criteria for grant recovery.
- (2) Save for employers, organisations and associations who are not liable to pay skills development levy in terms of section 3(1) of the Skills Development Levies Act, an employer seeking recovery against the levy payment by way of grants -
 - (a) must have registered with the Commissioner in terms of section 5 of the Skills Development Levies Act, 1999;
 - (b) must have paid the levies directly to the Commissioner or the SETA, as the case may be, in the manner and within the period determined in section 6 of the Skills Development Levies Act, 1999;
 - (c) must be up to date with the levy payments to the Commissioner and the SETA, as the case may be, at the time of approval and

payment of a grant from the payments of the levy income transferred to the SETA.

- (d) must, in 2005/2006 financial year, submit a Workplace Skills Plan-
- (i) within the timeframes as prescribed in regulation 6(5) of these regulations;
 - (ii) that directly supports the achievements of the equity targets of the NSDS as envisaged in annexure 213.
 - (iv) that is approved by the relevant stakeholders;
- (e) must, with effect from 2006/2007 financial year and subsequent financial years thereafter, submit a training report of performance against the **previous** financial year's Workplace Skills Plan in addition to the documents outlined under section (d).
- (3) Employers who fail to meet the prescribed criteria will forfeit the grant referred to in regulation 6 of these regulations.

Sale of services rendered by SETA's

11. For the purposes of section 14(1)(e) of the Act, a SETA wishing to charge for services must obtain the written approval of the Director General after consultation with the NSA for those charges and must clearly specify the motivation and the proposed charges for those services.

Commencement

12. These Regulations come into effect on 01 April 2005.

Repeal of Regulations

13. The Regulations referred to in Annexure I are hereby repealed as a whole.

SCHEDULE 2



ANNEXURE 1 REGULATIONS REPEALED

Regulations No.	Date	Title	Extent of Repeal
R103	7 February 2000	Regulations for the period 1 April 2000 To 31 March 2001 Regarding the Funding and Related Issues.	As a whole
R571	22 June 2001	Skills Development Regulations	As a whole
R344	7 March 2003	Skills Development Act, 1998: Skills Development Regulations	As a whole
R729	11 June 2004	Skills Development Act, 1998 (Act No. 97 of 1998) Skills Development Funding Regulations: Amendment	As a whole
R1200	15 October 2004	Skills Development Funding Regulations Amendment: Government Notice No. R729 of 11 June 2004 Correction Notice	As a whole

ANNEXURE 2A



**APPLICATION FOR MANDATORY GRANT BY AN EMPLOYER
[Regulation 6(1)(a)]**

Annual Skills Priorities													
Skills priority number	Skills priorities	Level of planned education and training								SAQA registered?			
		General		Further			Higher					If yes, provide SAQA ID number	
	List education and training priorities	Up to and including level 1	2	3	4	5	6	7	8	Yes	No		
1													
2													
3													
4													
5													
6													
7													
8													



ANNEXURE 2B

**NSDS Equity Target – min. 85% black, 54% women, 4% people with disabilities OR
HIGHER Sector Charter Target**

TARGET	% of Levy to be paid as mandatory grant.	Where SETA Boards agree to include ABET criteria (indicator 2.7)
All three NSDS equity targets met	50%	ABET = 4th criteria if adopted by SETA Board - SETAs to determine % of 50% mandatory grant to be conditional on ABET
Two out of the three NSDS equity targets met	45%	
One of the three NSDS equity targets met	40%	
Within 20% of all three NSDS equity targets	35%	
Within 20% of two NSDS equity targets	30%	
Within 20% of one NSDS equity target	25%	
NOT WITHIN 20% OF ANY OF THE NSDS EQUITY TARGETS	NO MANDATORY GRANT PAID	

