

# Government Gazette

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## GOVERNMENT NOTICE

Notice 688 of 1999

### MINISTRY OF EDUCATION

#### NATIONAL STUDENT FINANCIAL AID SCHEME BILL, 1999

The Minister of Education, hereby publishes the National Student Financial Aid Scheme (NSFAS) Bill, 1999 and the Higher Education Amendment Bill, 1999 for comments.

All persons concerned are invited to comment in writing on the draft bill and to send the comments to:

The Director-General, Private Bag X895, Pretoria, 0001, for attention:  
Ms M Locke, Fax no. (012) 326 9128, or e-mail: [locke.m@educa.gov.za](mailto:locke.m@educa.gov.za)

The comment must reach the Department of Education not later than 18 June 1999.

Please also provide the name, address, telephone number, fax number and e-mail address of the person or organisation responsible for submitting the comment.

**DEPARTMENT OF EDUCATION  
MAY 1999**

#### NATIONAL STUDENT FINANCIAL AID SCHEME BILL, 1999

### BILL

**To establish the National Student Financial Aid Scheme (NSFAS) to replace the Tertiary Education Fund of South Africa, a company recognised in terms of section 2 of the Provision of Special Funds for Tertiary Education Act, 1993 (Act No. 121 of 1993); to provide for the management, governance and administration of the NSFAS; to provide for the granting of loans and bursaries to eligible students at public higher education institutions and for the administration of such loans and bursaries; and to provide for matters connected therewith.**

### PREAMBLE

**WHEREAS** it is desirable to address equity and access in higher education; and

**WHEREAS** it is necessary to establish an expanded national student financial aid scheme that is affordable and sustainable;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:

### CHAPTER 1

#### DEFINITIONS AND PURPOSE

##### Definitions

1. In this Act unless the context otherwise indicates

'**board**' means the NSFAS board referred to in section 3(3);

'**borrower**' means a student to whom a loan has been granted in terms of this Act;

'**bursar**' means a student to whom a bursary has been granted in terms of this Act';

'CHE' means the Council on Higher Education established in terms of section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);

'Department' means the Government department responsible for education at national level;

'designated higher education institution' means a higher education institution with which the NSFAS has entered into an agreement in terms of section 20;

'Director-General' means the Director-General of the Department;

'employer' means any person or body who employs a borrower;

'higher education' means all learning programmes leading to qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution;

'higher education institution' means a public higher education institution as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);

'loan' means a loan granted to a person by the NSFAS in order to enable the person to defray the costs connected with his or her education at a designated higher education institution, and with the board and lodging of that person for purposes of attending the institution;

'Minister' means the Minister of Education;

'NSFAS' means the National Student Financial Aid Scheme established by section 3;

'student' means any person registered as a student at a higher education institution;

'TEFSA' means the Tertiary Education Fund of South Africa, a company recognised in terms of section 2 of the Provision of Special Funds for Tertiary Education Act, 1993 (Act No. 121 of 1993); and

'this Act' includes a regulation contemplated in section 27.

## **Purpose of Act**

2. (1) The purpose of this Act is to establish a financial aid scheme for students at higher education institutions.
- (2) The aim of the NSFAS is to provide financial aid to eligible students who meet the criteria for admission to a higher education programme.

## **CHAPTER 2**

### **ESTABLISHMENT, COMPOSITION, GOVERNANCE AND FUNCTIONS OF NSFAS**

#### **Establishment of National Student Financial Aid Scheme**

3. (1) The National Student Financial Aid Scheme (NSFAS) is hereby established as a juristic person.
- (2) The NSFAS is the legal successor of TEFSA.
- (3) The NSFAS is managed, governed and administered by the NSFAS board.

#### **Functions of the NSFAS**

4. The functions of the NSFAS are to-
  - a. allocate funds for loans and bursaries to eligible students;
  - b. develop criteria and conditions for the granting of loans and bursaries to students;
  - c. raise funds;

- d. recover loans;
- e. maintain and analyse a database and undertake research for the better utilising of financial resources;
- f. advise the Minister on matters relating to student financial aid; and
- g. perform other functions assigned to it by this Act or by the Minister.

### **Composition of board**

5. (1) Subject to subsection (4), the board consists of-

a. 11 appointed members of whom-

- i. one member must be nominated by the Director-General of Education; and
- ii. one member must be 1 nominated by the Director-General of Finance;

b. not more than four co-opted members; and

c. the chief executive officer who is the secretary without voting rights.

(2) The selection of the appointed members and co-opted members must be undertaken in such a manner as to ensure, insofar as is practically possible, that

a. the functions of the NSFAS in terms of this Act are performed according to the highest professional standards;

b. the membership taken as a whole-

- i. is broadly representative of the higher education system and related interests;
- ii. has deep knowledge and understanding of higher education;
- iii. has financial expertise and experience;
- iv. appreciates the role of the higher education system in reconstruction and development; and
- v. has known and attested commitment to the interests of higher education; and

c. due attention is given to representivity of the board on such relevant grounds as race, gender and disability.

(3) The Minister must, by notice in the Gazette and a national newspaper circulating in every province of the Republic, and by any other means regarded necessary by him or her, invite nominations for the 11 appointed members of the board from-

a. the public;

b. the CHE;

c. national organisations representing students, academic employees, employees other than academic employees, university principals, technikon principals, higher education college principals, organised business and organised labour; and

d. non-governmental organisations.

(4) The Minister must consider the nominations as contemplated in subsection (3), and from the persons so nominated, the Minister must appoint-

a. 11 members of the board; and

b. one of the 11 members as chairperson of the board.

(5) At least three of the members contemplated in subsection (4) (a) must be appointed on account of their particular financial experience and expertise.

(6) The board may co-opt not more than four members.

**Term of office of members**

6. (1) The chairperson of the board holds office for a period of four years.
- (2) An appointed member of the board holds office for a period of four years.
- (3) A co-opted member of the board holds office for a period determined by the board.
- (4) A member of the board may not serve for more than two consecutive terms of office.

**Vacation of office by members**

7. A person ceases to be a member of the board if he or she-
  - a. resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
  - b. is absent from three consecutive meetings of the board without the leave of the chairperson or, in the case of the chairperson, the leave of the executive committee;
  - c. is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offense involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or
  - d. is declared unable to attend to his or her personal affairs by a court of law.

**Filling of vacancies**

8. If a member vacates his or her office, the resultant vacancy must be filled by appointment or co-option in accordance with section 5.

**Executive officer and employees of NSFAS**

9. (1) The board must appoint an executive officer to
  1. manage the affairs of the NSFAS;
  2. perform the functions determined by the board;
  3. supervise the employees of the NSFAS; and
  4. account for the assets and liabilities of the NSFAS.
- (2) The board may appoint such other employees as it deems necessary to assist the executive officer.
- (3) The board must, with the concurrence of the Director-General and the Director-General of Finance, determine the conditions of service of the executive officer and the other employees of the NSFAS.

**Executive committee**

10. (1) The board must establish an executive committee and determine its functions.
- (2) The executive committee consists of-
  - a. the chairperson of the board;
  - b. the member representing the Department; and
  - c. three other members appointed by the board.
- (3) A decision of the executive committee must be regarded as a decision of the board, unless such decision is revoked at the next meeting of the board.
- (4) Anything done in consequence of a decision of the executive committee before its revocation, is not invalid by reason only of the fact that the decision is revoked by the board under subsection (3).

**Finance committee**

11. (1) The board must appoint a finance committee consisting of -

- a. the chairperson of the board;
- b. the member appointed from the Department;
- c. the member appointed from the Department of Finance;
- d. not more than five financial experts who may be from the private sector or members of the board.

(2) The finance committee is responsible for the financial management of the NSFAS, which includes but is not limited to, loan recovery, fund raising and investment of repayments.

(3) The finance committee must advise the board with regard to the granting of loans and bursaries.

(4) The finance committee performs such other functions as the board may delegate or assign to it.

### **Other committees**

12. (1) The board may establish other committees in addition to the executive committee and the finance committee, to assist it in the performance of its functions.

(2) Any committee other than the executive committee may include persons who are not members of the board.

(3) The chairperson of a committee must be appointed by the board.

(4) Members of the committees contemplated in subsection (2) may be appointed for such period or periods as the board may determine.

### **Meetings of board and committees**

13. (1) Meetings of the board and its committees must be held at such times and places as may be determined by the chairperson concerned, but the chairperson must convene a meeting at least twice a year or if asked to do so in writing by at least one third of the members of the board or the committee or by the Minister, as the case may be.

(2) Whenever the chairperson is absent from any meeting of the board or a committee, the members present must elect a person from among themselves to preside at that meeting.

(3) The board may make rules relating to the procedure at meetings of the board and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of its functions.

(4) The proceedings at a meeting of the board or of a committee are not invalid by reason only of the fact that a vacancy exists on the board or such committee, as the case may be, at the time of such meeting.

### **Funds of NSFAS**

14. (1) The funds of the NSFAS consist of-

- a. money appropriated by Parliament;
- b. donations or contributions;
- c. interest;
- d. money repaid or repayable by borrowers; and
- e. any other income received by the NSFAS.

(2) The board

- a. must keep records of all funds received and spent and of all assets, liabilities and financial transactions;
- b. must in each financial year, at such time and in such manner as the

- Director-General may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Director-General for his or her approval granted with the concurrence of the Director-General of Finance;
- c. may in any financial year submit adjusted statements of its estimated income and expenditure to the Director-General for his or her approval, granted with the concurrence of the Director-General of Finance; and
  - d. may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(3) If the Director-General does not approve the board's statement of its estimated income and expenditure, the Director-General must require the board to provide a revised statement within a specified period to him or her.

(4) The money contemplated in subsection (1 ) must be used by the NSFAS in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year.

(5) Subject to subsection (4), the board may invest any portion of its funds in such manner as the Director-General, with the concurrence of the Director-General of Finance, may approve.

(6) The NSFAS may not conduct a business.

(7) The NSFAS may borrow money with the approval of the Minister, but such money may only be used for the granting of loans.

#### **Annual audit**

15. The books of account and financial statements of the NSFAS must be audited at the end of each financial year by the Auditor-General

#### **Annual report**

16. (1) The board must, within three months after the end of each financial year, submit a report which must at least include a financial statement to the Minister on the performance of its functions during the past financial year.  
  
(2) The Minister must table copies of the report in Parliament as soon as reasonably practicable.

#### **Remuneration and allowances of members of board and committees**

17. The chairperson of the board, every other member and any person appointed as a member of a committee, who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the board or a committee, be paid by the NSFAS
  - a. such travelling, subsistence and other allowances; and
  - b. in the case of the chairperson of the board, such additional remuneration,as the Minister with the concurrence of the Minister of Finance may determine.

### **CHAPTER 3**

#### **ADMINISTRATION OF LOANS AND BURSARIES**

##### **Application for loan or bursary**

18. Any student may, subject to the provisions of this Act, apply in writing to the NSFAS for a loan or a bursary on an application form determined by the board.

##### **Conditions of loans and bursaries**

19. (1) Loans or bursaries granted by the board may be subject to such conditions as it may

determine, either generally or in respect of a particular loan or bursary.

(2) A loan or bursary is granted in respect of a particular course of study, which must be specified in the loan or bursary agreement in question, and may not be used for any other purpose.

(3) A written agreement must be entered into between the NSFAS and every borrower and bursar.

(4) The board may impose a condition in respect of any loan or bursary to the effect that if the borrower or bursar does not, in the opinion of the board, perform satisfactorily in his or her studies, the board may terminate the granting of finance in terms of the agreement and demand that any obligation which applies to the borrower or bursar as a result of the granting of the loan or bursary be complied with on or with effect from the date specified by the board.

(5) The amount of the loan or bursary is paid by the NSFAS to the designated higher education institution concerned by way of allocations in respect of amounts payable to the institution by the borrower or bursar.

(6) No provision of this Act shall be construed as giving any person the right to obtain a loan or bursary from the NSFAS.

### **Designated higher education institution**

20. (1) The board may enter into an agreement with a higher education institution which agrees to become a designated higher education institution for purposes of administering loans and bursaries to students of that institution on behalf of the NSFAS.

(2) The agreement referred to in subsection (1) must authorise the institution on behalf of the NSFAS to

- a. administer loans and bursaries granted to students of the institution;
- b. receive loan and bursary applications from students;
- c. consider and assess the applications in the light of the criteria for the granting of loans and bursaries developed by the NSFAS;
- d. grant loans and bursaries if the criteria are met, after ascertaining that funds are available; and
- e. enter into a written agreement with a borrower or bursar in accordance with the provisions of this Act and on the terms and conditions determined by the NSFAS.

(3) A designated higher education institution must

- a. at such intervals as agreed to between the institution and the board, report to the board on the progress made by a borrower or bursar with regard to the course of study followed by him or her; and
- b. immediately notify the board if a borrower or bursar discontinues his or her studies.

## **CHAPTER 4**

### **RECOVERY OF LOANS**

#### **Repayment of loans**

21. (1) A loan must be repaid as provided in the loan agreement.

(2) Notwithstanding anything to the contrary contained in a loan agreement, a borrower may repay a loan wholly or in part before the due date.

(3) If a borrower fails to make repayments as provided in this Act, his or her name may be placed on any list of defaulting debtors published by any person or body whose business it is to compile and publish such lists.

(4) The name of a borrower may not be placed on a list contemplated in subsection (3) unless he or she-

- a. has been notified by registered letter addressed to his or her chosen *domicilium citandi et executandi*, of the failure to make repayments and of the intention to act in terms of subsection (3); and
- b. has been afforded a reasonable opportunity to pay the arrear amount and has failed to do so.

(5) A borrower whose name has been placed on a list contemplated in subsection (3) has the right to approach a court of law if he or she is of the opinion that reasonable grounds exist for the removal of his or her name from the list.

### **Obligations of borrower**

22. (1) A borrower must for as long as he or she is indebted to the NSFAS -

- a. at such intervals as may be fixed by the board, furnish the board-
  - i. with his or her postal and residential addresses, as well as his or her chosen *domicilium citandi et executandi*;
  - ii. with information regarding his or her employment status;
  - iii. if he or she is employed, with the name and address of the employer; and
  - iv. with any other relevant information required by the board; and
- b. immediately notify the board of-
  - i. any change of address and furnish the new address;
  - ii. any change in his or her employment status; and
  - iii. any change of employer and furnish the name and address of the new employer.

(2) Any failure by a borrower to comply with the obligations referred to in subsection (1) will, if the board so decides, have the effect to render the loan immediately repayable.

### **Obligations of employer**

23. (1) The board may by written notice sent by registered mail inform the employer of a borrower that the borrower is indebted to the NSFAS in consequence of a loan which was granted by the NSFAS to the borrower and of the deductions that the employer has to make from the remuneration of the borrower.

(2) Any employer who is given notice in terms of subsection (1) is obliged to make deductions from the remuneration payable by him or her to the borrower according to the scales prescribed by regulation.

(3) Any amount deducted by an employer in terms of subsection (2) must be paid over to the NSFAS, and any amount so paid over must be a proportionate discharge of the loan by the borrower concerned.

(4) Any amount deducted in terms of this section must for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other applicable law, be regarded as forming part of the remuneration of the borrower.

(5) Any employer who fails to make a deduction in accordance with the provisions of this section is liable to pay to the NSFAS the amount which the employer failed to deduct, and such liability of the employer may be enforced by the NSFAS in any manner which may be available to the NSFAS at law.

### **Obligations of Commissioner for Inland Revenue**



24. The Commissioner for Inland Revenue must, at the request of the board, furnish it with the name and address of the employer of a borrower, if such information is known to the Commissioner of Inland Revenue.

## CHAPTER 5

### GENERAL

#### Information to be provided to NSFAS

25. Every national and provincial department of state, every publicly funded science, research and professional council, every higher education institution and any other person or body who grants loans or bursaries to students must provide the NSFAS with such information as the NSFAS may reasonably require for the performance of its functions in terms of this Act.

#### Delegation of powers

26. (1) The Minister may, on such conditions as he or she may determine, delegate any of his or her powers under this Act, except the powers conferred upon him by sections 6(4) and 28, to the Director-General.
- (2) The Director-General may, on such conditions as he or she may determine, delegate any of the powers delegated to him or her in terms of subsection (1), to an employee of the Department.
- (3) The board may, on such conditions as it may determine, delegate any of its powers under this Act, to any of its committees or to any employee of the NSFAS.

## HIGHER EDUCATION AMENDMENT BILL, 1999

### GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

### BILL

**To amend the Higher Education Act, 1997, so as to provide that the principal is the chairperson of the senate and the registrar of a public higher education institution is the secretary of the council; to empower a council to differentiate between foreign students who are not permanent residents and students who are citizens or permanent residents; to make technical adjustments; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:

#### Amendment of section 26 of Act 101 of 1997

1. Section 26 of the Higher Education Act, 1997, is hereby amended-
- a. by the substitution for subsection (3) of the following subsection:
- "(3) Subject to subsection (4) [A] a structure referred to in subsection (2)(a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament."; and
- b. by the addition of the following subsection:
- "(4) Notwithstanding the provisions of subsection (3)-
- (a) the principal is the chairperson of the senate;  
(b) the registrar of the public higher education institution appointed by the

council, is the secretary of the council; and  
(c) the chairperson of the council may not be elected from members contemplated in section 27(4)(a), (b), (d), (e), (f) and (g)."

**Amendment of section 39 of Act 101 of 1997**

2. Section 39 of the Higher Education Act, 1997, is hereby amended by the addition of the following subsection:

"(4) The policy referred to in subsection (1) may differentiate between foreign students who are not Permanent residents of the Republic and students who are citizens or permanent residents of the Republic."

**Amendment of section 40 of Act 101 of 1997**

3. Section 40 of the Higher Education Act, 1997, is hereby amended by the substitution for paragraph (g) of the following paragraph:

"(g) money payable by students for higher education programmes provided by the institution, but the council may differentiate between foreign students who are not permanent residents of the Republic and students who are citizens or permanent residents of the Republic when the amount payable is determined."

**Amendment of section 68 of Act 101 of 1997**

4. Section 68 of the Higher Education Act, 1997, is hereby amended by the addition of the following subsections:

"(3) The principal of a public higher education institution may, on such conditions as he or she may determine, delegate any of his or her powers under this Act or delegated to him or her in terms of subsection (2), and assign any of his or her duties in terms of this Act or assigned to him or her in terms of subsection (2), to any other employee of the public higher education institution concerned.

(4) The CHE may, on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to any of its committees or employees."

**Short title**

5. This Act is the Higher Education Amendment Act, 1999.