

DEPARTMENT OF LABOUR

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

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

DRAFT GUIDELINES

1. INTRODUCTION

On 18 July 2005, the Minister of Labour published the SETA Grant Regulations Regarding Monies Received by SETAs and Related Matters. The Regulations govern the SETA levy-grant scheme and are informed by the 2005-2010 National Skills Development Strategy.

Section 5(1) of the Skills Development Act provides that the functions of the National Skills Authority (NSA) are, amongst others,

- to advise the Minister on Guidelines regarding the implementation of the National Skills Development Strategy.

On 8 August 2006, the NSA approved Amendments to the existing SETA Grant Regulations and referred them to the office of the State Law Advisers for comment.

The NSA agreed that Guidelines on the following aspects of the SETA Grant Regulations should be developed, namely:

- Definition: “institutional research”;
- Definition: “project costs”;
- Regulation 6(1)(c): mandatory grants in respect of newly registered companies;
- Regulation 7(1)(b): persons involved with skills development facilitation;
- Regulation 7(4)(c) : discretionary grants to government and public entities at national and provincial level;
- Regulation 10(2)(d): linkage between Workplace Skills Plan and Sector Skills Plan;
- Regulation 10(2)(e): level of implementation of the Annual Training Report;

Above all, it is still not clear what the requirements for mandatory grants are. This is evident from the fact that some employers still submit their applications for mandatory grants late. *One SETA received a qualified audit report and another Emphasis of Matter for irregular mandatory grant disbursements.*

The Amendments to the SETA Grant Regulations give a SETA Board or Council discretion to condone late submission of applications for mandatory grants up to a maximum period of month based upon valid reasons provided by an employer. It is important that the requirements of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000) be factored into the Guidelines.

2. SUGGESTED MEANING

2.1 Meaning to be assigned to the following definitions:

(a) Institutional research

This is research commissioned by a SETA on internal administrative matters like quality management system, human resources management, strategic and operational management, and others.

Institutional research is distinguished from research commissioned by a SETA in terms of the requirement of the National Skills Development Strategy (NSDS) or the sector skills plan.

(b) Project costs

These are project related administration costs funded through discretionary grants. A separate budget for these administrative costs must be approved by the SETA Board or Council upfront.

Remuneration of permanent SETA staff members is excluded.

2.2 Meaning to be assigned to the following subregulations:

(a) Subregulation 6(1)(c)

Subject to regulation 10, A SETA must allocate a mandatory grant to an employer who has registered for the first time in terms of section 5(1) of the Skills Development Levies Act that has submitted an application for a Workplace Skills Planning grant within 6 months of registration.

The liability date on the monthly Downloads from SARS must be used to distinguish between new from old companies. Since the due date for submission of WSP and ATR is 30 June of each year, an employer who became liable for SDL between January-June of the year in question is exempted from submitting an ATR for the financial year in question.

The said employer is entitled to mandatory grant upon submission of WSP only, provided that the other requirements specified in subregulation 10(2) of the Regulations are met.

(b) Subregulation 7(4)(c)

A discretionary grant may be paid in terms of subregulation 7(1) to an employer contemplated in section 30 and 30(A) of the Act who has submitted to its relevant line SETA and Public Service SETA (PSETA) within the timeframes prescribed in regulation 6(2) of these Regulations, a Workplace Skills Plan and Annual Training Report as a minimum in the format contained in Annexure 3.

With effect from the date of publication of the Amendments to the SETA Grant Regulations, government departments and public entities at national and provincial spheres may receive discretionary grants from their line function SETA or PSETA for submitting the entity's WSP and ATR to the line function SETA and to PSETA on or before 30 June of the year in question.

(c) Subregulation 7(5)

A discretionary grant paid in terms of subregulation 7(1)(a) to (n) must fund all project costs for any project funded by a discretionary grant under subregulation 7(1) inclusive of project administration costs for the discretionary project subject to the approval by a SETA Board or Council of a separate budget for the project administration costs not exceeding a maximum of 10% of total project cost.

This provision is linked to the definition of project costs above. This means that the discretionary grants referred to in paragraphs 7(1)(a)-(n) of the Regulations may include project administrative costs as defined not exceeding 10% of the total project cost.

[we need to provide suitable examples to illustrate the application of project admin costs]

(d) Subregulation 10(2)(d)

A SETA must 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 employer has submitted a Workplace Skills Plan that contributes to the relevant SETA sector skills plan as contemplated in section 10(1) of the Act within the timeframes prescribed in regulation 6(2) of these Regulations; and

This means that the WSP must be informed by the sector skills plan of the relevant SETA. It is not expected of the entire WSP to be talking to the SSP. The duty is, however, upon the employer to draw the link. It is suggested that a single training intervention by an employer that is aligned to the SSP is sufficient for purposes of meeting the minimum requirements stipulated by this Subregulation.

(e) Subregulation 10(d)(e)

A SETA must 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 employer with effect from 2006/2007 financial year and in subsequent financial years, has submitted an Annual Training Report that has

been verified by a SETA Board or Council as having contributed to the implementation of the previous financial year's Workplace Skills Plan, except for an employer contemplated in subregulation 6(1)(c) of these Regulations.”.

This means that the employer must prove to the SETA that training indeed took place. The SETA Board or Council must be satisfied about the ATR, failing which the employer's application for mandatory grants will not be approved.

(f) Regulation 6 read with subregulation 10(2)

The Purpose of Regulation 6 read with subregulation 10 (2) is to ensure that-

- (i) Employers who employ 50 or more employees submit their applications for mandatory grants in respect of the 2005 / 2006 financial year on or before 30 September 2005. Therefore submission of a WSP entitles the employer to claim 50% mandatory grant in the 2005 / 2006 financial year, not less nor more.

It must be clear that no ATR is required by 30 September 2005. Although the article “or” is used in Regulation 6(1)(a), it is not the intention to ask for the ATR in the 2005/ 2006 financial year. Hence the article has since been amended to read “and”.

- (ii) A WSP must be submitted annually. The dates are the following:
2005 / 2006 financial year= 30 September 2005
2006 / 2007 financial year=30 June 2006
2007 / 2008 financial year= 30 June 2007
2008 / 2009 financial year=30 June 2008
2009 / 2010 financial year=30 June 2009

The dates for submission of ATRs are the following.

2006 / 2007 financial year=30 June 2006
2007 / 2008 financial year= 30 June 2007
2008 / 2009 financial year=30 June 2008
2009 / 2010 financial year=30 June 2009

- (iii) It must be borne in mind that if an employer did not submit his/her WSP, he/ she will not be entitled to a mandatory grant. Timely submission of a WSP is therefore a prerequisite for the 50% mandatory grant.

There is a further condition to be met in 2006 with the disbursement of a mandatory grant. This condition is provided for in Regulation 10(2)(e). This condition requires that the employer provides proof of performance of the implementation of the WSP. This must be done through the ATR the format of which is attached in Annexure 2 of the Regulations.

The level of performance required is not stated in the Regulations. It is our submission that performance must be reasonable or sufficient to trigger payment of the mandatory grant. SETAs have discretion to evaluate the

performance tendered by an employer in terms of Section 10(1)(b)(ii) of the Act which provides as follows:

10.(1) A SETA must-

(b) implement its sector skills plan by-

(ii) approving workplace skills plans; and

(iii) allocating grants in the prescribed manner to employers, education and training providers and workers.

- (iv) SETAs are free to prescribe the format for the claim in respect of employers who employ less than 50 employees. However, to the extent that the claim is in respect of a mandatory grant, the claim must be submitted within the following time-frames:

2005 / 2006 financial year= 30 September 2005

2006 / 2007 financial year=30 June 2006

2007 / 2008 financial year= 30 June 2007

2008 / 2009 financial year=30 June 2008

2009 / 2010 financial year=30 June 2009

It must be noted that the claim by an employer who employs less than 50 employees (Small and Micro Enterprises) is not necessarily for a WSP, but could cover a wide variety of training interventions including the provision of free courses. The only condition to be met by the SME is timely submission of his/her claim or invoice.

- (v) The deadlines stipulated in Regulations 6 and 10(2) are all peremptory. Note the use of the word **must** throughout the whole of the above Regulations.
- (vi) The SETA Board or Council, however, has a discretion to approve late submission of an application for mandatory grant based upon valid reasons provided by an employer. The extension can only be given up to a maximum period of one month.

When exercising the discretion to approve or disapprove of any late application for a mandatory grant, due regard must be given to the requirements of a fair and just administrative action as provided for in the Promotion of Administrative Justice Act.