



higher education & training

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Higher Education and Training
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To: SETA Administrators and Chief Executive Officers


Skills Development Circular No. 11/2016

THE SECTOR EDUCATION AND TRAINING AUTHORITIES (SETAs) GRANT REGULATIONS: 3(12) and 4(4)

1. On 7 August 2015 the Labour Court set aside Regulations 3(12) and 4(4) of the SETA Grant Regulations of 3 December 2012.
2. The Labour Court judgment had set aside Regulation 4(4) and provided the Minister of Higher Education and Training until 31 March 2016 to consult with the National Skills Authority (NSA).
3. The NSA provided its advice to the Minister of Higher Education and Training on 30 October 2015. The NSA advice supported the re-promulgation of the Mandatory Grant at 20%. Based on the advice received from the NSA, the Minister re-promulgated Regulation 4(4) as per Government Gazette 39592 dated 13 January 2016.
4. Gazette 39592 of 13 January 2016 was communicated to all SETAs on 13 January 2016.

5. The re-promulgation provides that the Mandatory Grant be set at 20%, as per Regulation 4(4).
6. The Department of Higher Education and Training issued four (4) Circulars to SETAs communicating its position on the matter and how the SETAs must treat Regulation 3(12) and 4(4). The SETA Circulars as annexed are:
 - a) SETA Circular 16/2015 issued on 2 September 2015;
 - b) SETA Circular 04/2016 issued on 5 April 2016;
 - c) SETA Circular 05/2016 issued on 21 April 2016; and
 - d) SETA Circular 06/2016 issued on 31 May 2016
7. Regulation 3(12) is still under a process of legal review.
8. As things presently stand, with effect from 1 April 2016 SETAs are neither entitled nor obliged to comply with Regulation 3(12).
9. It should be noted that if the appeal is ultimately reinstated and is ultimately successful, SETAs will be obliged to comply with the terms of Regulation 3(12).
10. In the meantime, SETAs must continue to disclose uncommitted surpluses transferable to the NSF as a contingent liability at the end of each financial year.
11. Concurrently the National Skill Fund (NSF) will continue to disclose a contingent asset for uncommitted surpluses receivable from SETAs at the end of each financial year.
12. SETAs are required to continue to submit their applications for the retention of surpluses to National Treasury and the Department of Higher Education and Training as prescribed by the Public Finance Management Act (PFMA).
13. The Minister received another challenge from BUSA on 30 June 2016 pertaining Regulation 4 (4).
14. However, there is no court decision on the matter. Regulation 4 (4) as gazetted by the Minister on 13 January 2016 remains enforced until the court makes a ruling on the matter.

15. A communique will be issued to all SETAs as soon as the matter related to Regulation 3(12) is finalized by the Labour Court of Appeal.



Mr GF Qonde

Director-General

Date: 18/08/2016