NATIONAL OFFICE
61 Katherine Street, Sandton, 2196
P.O. Box 652807, Benmore, 2010
www.busa.org.za
+27 11 784 8000

17 February 2023

Minister Blade Nzimande
Department of Higher Education and Training
123 Francis Baard St,
Pretoria, 0002

By Email: Mvalo.Z@dhet.gov.za, Nqaba.Nqandela@dst.gov.za

Dear Minister Nzimande

BUSA SUBMISSION ON THE DRAFT SECTOR EDUCATION AND TRAINING AUTHORITIES (SETAS) GRANT REGULATIONS REGARDING MONIES RECEIVED BY A SETA AND RELATED MATTERS

Background

BUSA is the apex Business body in South Africa, representing Business' views on economic, social, trade, environment, and transformation issues; at national (inclusive of Nedlac), and international fora.

It was formed in 2003; and is constituted by organisational members such as: unisectoral business organisations; corporate representative organisations; chambers of commerce and industry; as well as professional organisations. Our membership reaches across the major sectors of the economy, from AgriSA, the Minerals Council of South Africa, the Steel & Engineering Federation of South Africa, the Hospital Association of South Africa, to the Banking Association of South Africa. It includes representation from chambers of commerce and industry, such as, the Small Business Initiative; as well as, representatives of corporate South Africa, such as, the Manufacturing Circle, and Business Leadership South Africa.

REGISTRATION NUMBER: 2014/042417/08
PRESIDENT: Bonang Mohale **VICE PRESIDENT:** Adrian Gore **CEO:** Cas Coovadia **NEDLAC CONVENOR:** Kaizer Moyane
DIRECTORS: Bongi Kunene, Busisiwe Mavuso, Busisa Jiya, Christopher Campbell, Deidre Penfold, Gareth Ackerman, John Dludlu, Mike Mabasa, Michelle Constant, Roger Baxter, Stavros Nicolaou, Zoleka Lisa.

Introduction

Skills development is a significant contributor, if not a key determinant, to ensuring that South Africa has adequate, appropriate, and high-quality skills that contribute towards economic growth, employment creation and social development. The skills development levy was introduced to encourage learning and development in South Africa and is determined by the employer's salary bill.

The Mandatory Grant aims to fund the development and improvement of skills of employees. The reduction of the Mandatory Grant to 20% has hampered employers' ability to provide essential workplace training. Practically speaking, employers with the largest pay roll, who in turn employ the largest proportion of the workforce, are worst affected. Resultantly, depriving the country's engine room with the requisite opportunity to improve productivity in these, already trying, times.

The demands of today's globalised economy go beyond maintenance of the status quo; the prevailing competitive environment, and labour market demands, require companies to continuously upskill and reskill employees just to remain relevant.

Business reaffirms its position of 30% for the Mandatory Grant, and an additional 20% condition on the submission of ATR/WSP.

Business Concerns:

Business notes with concern, that our Nedlac input, made during the Skills Strategy for ERRP 2021, appears to have been disregarded. We can only hope that this was due to a drafting oversight within DHET, and not an intentional omission of employers' inputs and proposals on grants. We reiterate that business seeks to establish a balance between labour market realities, youth employment stimulation and the greater good of the economy.

Business has consistently appealed for the **urgent** overhaul of the current grant configuration, with the Mandatory Grant at 20%. A warranted view, given the evidence of the overall poor performance of South Africa's Post School and Education Training system (PSET).

Despite ongoing calls for the reduction of red tape, the proposed grant regulations are complex, and include funding linked to conditionalities managed at the discretion of the SETAs. There is an increase in the number of grants, and their related criteria creates confusion; making it difficult for employers to understand and access grants. As things stand, SETAs struggle to deal with the grant system. The addition of new grant categories will likely serve to worsen the system and create backlogs.

The proposal to shift from Discretionary grants and pivotal programmes to Sectoral Priority programmes demands processes and systems which are responsive to a rapidly changing labour market, which is presently not in place. For example, the Critical Skills List is published once every two years, which is inadequate for the rapidly changing business environment. The paradox is that these regulations focus on the delivery of new occupationally based qualifications. However, it is not clear whether there are sufficient, newly developed qualifications in industry to adequately satisfy all the grant requirements.

The draft regulations only recognise, and fund, programmes provided by public education institutes, to the exclusion of private providers. This fails to acknowledge the challenges (in terms of quality) of some public PSET institutes, nor the fact that some required programmes may not be offered by public providers.

These regulations appear to centralise the governance and administration of SETAs. Decision making has been assigned to the Minister or the DG in several areas. We do not believe this is good practice; and we question the role of SETA boards in the governance of these institutions.

Business notes, with disappointment, that the department has only allowed 21 days for public comment on the draft regulations – as opposed to the traditional 30 days, which allow for richer engagement. Business thinks the Mandatory Grant submission deadline, of 30 June 2023, impractical. The timing of the published regulations overlaps with current Workplace Skills Plan (WSP) preparation, if the intention is to implement the amended regulations effective 1 April 2023 – as per your proposal.

Moreover, it appears that there is the assumption that all deliberations (public comment, Nedlac and the National Skills Authority Board) would have been concluded; and that the data management systems calibrated to accommodate the new regulations (inclusive of social partners agreed changes).

We anticipate that these timelines, if promulgated without amendment, will have adverse effects on how our members conduct their business.

Business Recommendations:

BUSA requests that the Department consider the below:

- It is recommended that the proposed regulations be given due consideration and deliberation for implementation on 1 April 2024.
- The **Mandatory Grant be set at 50%** effective 1 April 2023. This affords adequate time for deliberations, system changes to accommodate agreed regulations and DHET time to further develop an effective Integrated Learner Management Information System (LMIS).
- The department considers Business's detailed queries in Annexure 1.

Cas Coovadia
CHIEF EXECUTIVE OFFICER

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ANNEXURE 1

BUSA POSITION ON THE DRAFT SECTOR EDUCATION AND TRAINING AUTHORITIES (SETAs) GRANT REGULATIONS REGARDING MONIES RECEIVED BY A SETA AND RELATED MATTERS

Comment on Specific Sections of the Regulations

General Arrangement of Regulations:

The numbering and headings of the regulations is disordered. The top of the page is titled "General Provisions" and has the "Table of Contents" immediately below it. There are two entries for the "Interpretation" section, and the numbers section/chapter numbers do not correspond to the numerical order of the regulations' contents.

The Annexures have not been updated. Section 2(F) refers to Pivotal grants despite the proposal to introduce Sectoral Priority grants.

Definitions

Section 3(a)

This definition suggests that Administration costs can be reviewed annually. This should be fixed in the regulation not reviewable annually. Administration costs erode the amount of funding available to be returned as grants and should be fixed for long term periods, and not open to annual review.

Section 3(l)

The definition of "occupational part qualification" should include a Skills programme which can be part of a qualification, whether it is accredited or non-accredited.

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Section 3(n)

These terms should not be used interchangeably, we recommend that they are split into two. Defining "Sectoral Priority Occupations" and "Sectoral Priority Interventions**"** separately.

Section 3(q)

It is unclear which funding could be paid internally to SETAs or externally to service providers.

Section 3(r)

This definition should include private education and training institutes. Funding should not be limited nor ringfenced for public institutions.

Section 3 (t)

The term "in principle agreement", used in this definition, is in contradiction with the principle of consultation and should be removed as a requirement. The WSP/ATR process should remain one of consultation only. This is also in contradiction with 9 (2) (f) that requires evidence of consultation only.

Section 3(v)

We suspect that the two terms that have been merged here are "Workplace Based Learning" and "Workplace Integrated Learning", for ease of interpretation and consistency of use across the sector we recommend that this is split into two separate terms. We request that workplace-based learning and work readiness programmes are defined clearly. It needs to be made clear whether workplace-based learning cannot be part of a part qualification.

Administration Costs

Section 4(1)

We support this principle.

Section 4(2)

Public Sector Employers levy contributions should be treated in the same way that private sector employer contributions do.

Section 4(3)

The principle of the Minister being allowed to determine additional levels of funds to be used by a SETA for administration should not be allowed. This opens the way for funding intended for grants to be diverted to administration.

SETA Finances and Financial Management

Section 6(3)

The impact of the proposed 30 June 2023 WSP submission date should be reconsidered. There is insufficient time to consider extensions granted by SETAs for WSP / ATR submissions.

Section 6(5)

We recommend that the department indicates the actions and/or consequences for not spending or committing funds.

Section 6(6)

This requirement leans too strongly on the Critical Skills List, which is neither dynamic nor current enough to address real-time shortages and skills demands.

Section 6(7)

We recommend that the department clearly defines the meaning of "reasonable estimate"; practically how will this be measured through the performance management lens.

Section 6(11)

We recommend that the department elaborates the consequences, and actions, of targets not being achieved, as well as the impact on the accrual of the funds.

Allocation of Mandatory Grants by a SETA

Section 7(1)

This creates confusion. It is proposed that these grant regulations be implemented on 1 April 2024. {see Section 6(3)}

Section 7(4)

The Business position is 30% for the Mandatory Grant, and an additional 20% condition on the submission of ATR/WSP – as presented in opening statement.

Section 7(8)

The department is requested to consider the impact of Section7(2); which proposes 30 June 2023 for the application of the Mandatory Grant. In addition, we believe that leaving the granting of an extension at the sole discretion of the SETA Accounting Authority is inconsistent with generally accepted practice.

Allocation of Workplace Based Learning Grant by a Seta

Section 8(1)

The criteria to determine whether an employer has "proven or demonstrated they can take on unemployed learners" is not clear. How will this be determined? This grant should be open for employed learners as well as unemployed learners. Limiting this to only unemployed learners may eliminate employers who cannot for good reason take on unemployed learners from accessing this grant reducing the proportion of grants available for them even further. Is there an obligation for a proportion of unemployed learners to be employed at the end of the program?

Section 8(2)

The amount allocated by a SETA to an employer should not be limited to what "the SETA can afford". An employer should have full access if they meet the criteria. **The Business position is 30% for the Mandatory Grant, and an additional 20% condition on the submission of ATR/WSP – as presented in opening statement.**

Section 8(4)

SETA's currently do not have the capacity to implement these workplace approvals especially for employers with multiple workplaces. What happens to sites the SETA cannot get to? Is there is no timeframe for the SETA to complete this within.

Section 8(6)

{See Section6(6)}

Section 8(7)

The lack of standardisation across sectors will inevitably cause variances where employers and employees may feel short-changed. The DHET/NSA/QCTO should be able to determine these rates.

Mandatory Grants Paid to Levy Paying Employers

Section 9(2)(e)

SETAs have never been able to determine whether the reasons for not meeting the WSP goals are acceptable or not. This requires the SETAs to conduct assessments they do not have the capability to undertake.

Section 9(2)(f)

Business strongly opposes this; the profit motive ensures that the WSP/ATR is driven by business/market needs. We are not opposed to consultation with labour, however sign-off takes it one step further than is practical.

Allocation Of Sectoral Grants by A Seta

Section 10(5)

{see Section6(6)}

Section 10(7)

Public education and training institutions should not be prioritized in any part of the regulations over the use of private institutions. Requiring employers to use specific (public) institutions for the delivery of programs will compromise the supply and demand principles embedded in the current provider (public and private) environment which promotes quality standards.

THE SECTORAL GRANTS POLICY MUST

Section 10(10)(a)

This section suggests that other administrative costs can be considered by the SETA outside of those covered in Section 4. We strongly oppose the inclusion of added administrative costs.

Section 10(10)(c)

Business's experience has been that project management costs have decreased in the post-Covid period due to the wider use of electronic communications platforms. Additional costs erode the amount of funding available to be returned as grants, and should therefore be fixed for long term periods, not open to annual review. The Business position is that the Project management grant should not be increased to 8% but remain as current.

A Sectoral Grant May be paid to a Legal Person, Including

Section 11(a)

{see Section10(7)}

Section 11(12)

There's a spelling mistake in the draft.

Business recommends, for standardisation as well as to increase understanding that the following terms are defined:

"Scarce skills"; "Occupations in High Demand"; as well as "Critical Skills"

Section 11(13)

Repetition.

Section 11(14)

Business sees these formulations as overly complex and opaque. Moreover, a maximum of 50% on short / non accredited and accredited programmes should be allowed as the world of work is a dynamic ever changing playing field that needs quick and agile responses.

Section 11(15)

Business strongly objects to this. Non-levy paying employers should not access any grants from SETAs. It does not stand against the test of fairness and equity, consider cases where non-paying entities outnumber those that do.

Section 11(15)

{see Section6(6)}

Payment for Services Rendered by a Seta

Section 14(1)

Business is taken aback by this proposal, as we did not foresee SETAs turning into profit centres. Under which circumstances would a SETA provide such fee-based services?

We are principally opposed to this.

ANNEXURE 2

Annexure 2 E2

Refers to verified beneficiaries on the planned section of the report. SETA verification is typically done well after these plans are submitted. The timing of verification needs to be revisited as there are long delays by the SETA often resulting in verification only being completed several years after leaner registration.

Annexure 2 H

This annexure requires delivery by hand, post or fax. In most circumstances this is not possible, especially with regards to the timeframes involved. Electronic submission is provided for in the definitions, but not covered here.

END